THE NEW LAW ON THE PROTECTION OF THE CONSUMER

A new Law on the Protection of the Consumer No. 6502 (the "**New Consumer Law**") was adopted by the Turkish Parliament on 7 November 2013 and published in the Official Gazette numbered 28835 on 28 November 2013. It will enter into force on 28 May 2014.

This new law, replacing the former Consumer Protection Law No. 4077 (the "**Former Law**"), was enacted with the main aim to align with the provisions of the new Turkish Code of Obligations No. 6098 which entered into force in July 2012 (particularly those relating to the recently adopted concept of standardized terms, *genel işlem koşulları* in Turkish) and relevant directives of the European Commission.

The scope of the New Consumer Law covers all consumer transactions and all other consumer-related practices and in a way that is much more extended as compared to the Former Law. In particular, the New Consumer Law aims at specifically regulating certain acts and practices of private/public commercial or professional entities prior to or after their conclusion of any agreement with consumers. The definition of "consumer" has also been slightly amended to include a broader scale of (non-commercial and non-professional) transactions into the scope of the New Consumer Law.

In this context, a definition of the term "consumer transaction" has also been created, covering all agreements concluded with consumers, such as construction, transportation, brokerage, insurance, mandate and banking agreements to which a private or public entity is a counterparty, and legal transactions entered into in this respect.

Below are some of the main modifications brought by the New Consumer Law, with a specific focus on those applicable to financial services.

GENERAL TERMS

Unlike the Former Law, the New Consumer Law provides for a set of general rules that shall apply to all consumer agreements, with an aim to ensure proper information of the consumers prior to the conclusion of any agreement or transaction.

Key Principles

The New Consumer Law first addresses the following key principles that shall apply in the scope of all consumer agreements:

- All agreements shall be typed with 12-point sized characters, in a comprehensible language and shall be delivered to consumers in writing or in electronic format (e.g. SMS, email, internet, disk, CD, DVD, memory card, etc.);

- No changes in the agreement's provisions may be made to the consumer's disadvantage throughout its validity term;
- Compound interest cannot be applied (in line with existing provisions of the Turkish Commercial Code in this respect);
- All personal securities provided by the consumer shall be considered as ordinary guarantees (adi *kefalet* in Turkish), and all securities provided by the counterparty of the consumer shall be considered as joint and several guarantees (*müteselsil kefalet* in Turkish), regardless of their contractual qualification.

Unfair Terms in Contracts

The New Consumer Law further brings certain clarifications in relation to "unfair terms", i.e. terms defined without negotiation with the consumer, creating a disparity in the contractual rights and obligations which is to the detriment of the consumer in a way that is contrary to the principles of good faith. The unfair nature of a given provision shall be assessed with regards to the position of the parties at the execution date of the agreement.

In this respect, the New Consumer Law indeed specifies that, regardless of the contractual intention of the parties, unfair terms shall be considered as null and void, without however affecting the remaining provisions of the agreement.

CREDIT AGREEMENTS

Similarly to the Former Law, the New Consumer Law specifically regulates the relationship of consumers with credit institutions, but also reflects various key provisions of the EU directives and aligns with certain regulations of the Turkish capital market legislation.

Definition of Consumer Credit Agreements

In particular, the definition of consumer credit agreements has been extended (as compared to the Former Law) to cover not only cash loans but to now also include payment postponements and other financing options. It shall be noted that credit card agreements will also be considered as falling into the scope of consumer credit agreements in case of postponement of payments for more than 3 months or payments of credit card debts by way of installments.

Credit Limitations

In this respect, it is worth mentioning that the Turkish government has also recently amended various regulations relating to credit transactions, banking/credit cards and financial companies (i.e. leasing, factoring and consumer finance) to further regulate the maximum duration of consumer credits with effect starting from 31 December 2013. Accordingly, the term of standard consumer credit agreements (excluding housing finance agreements) can no longer exceed 36 months and the term of car pledge-backed credits can no longer exceed 48 months.

Additional limits (effective starting from 1 February 2014) have also been set out for car loans, car pledge-backed credits or financial leases (regardless of the type of credit institution involved).

Other recent changes made in the banking regulation also provide that for the specific case of banks extending real estate credits, real estate backed credits (except car loans) and real estate financial leases, the maximum credit amount extended by such banks cannot exceed 75% of the value of the real estate property used as security (as determined by a licensed valuation company).

Furthermore, additional changes made to the regulation relating to banking and credit cards (entering into force on 1 February 2014), provide that purchases and cash withdrawals made with credit cards cannot exceed 9 installments, it being specified that payments relating to telecommunication, jewelry, food, restaurant and fuel cannot be subject to any installments.

Pre-Information Duty

The New Consumer Law further specifies that in order to enable consumers to enter into credit agreements with proper knowledge of the terms thereof and associated risks, credit institutions and intermediaries are now required to inform borrowers on the terms of the agreements in advance by providing them an information form within a reasonable time period before such agreements are concluded.

Right of Withdrawal

After the conclusion of the agreement, consumers shall also be entitled to withdraw from the credit agreements within a period of 14 days, without need to specify any termination ground or pay any penalty. In such cases, the only payments that can be requested from the consumer are the principal amount of the credit, any accrued interest and expenses incurred by the credit institution towards public authorities and third parties with respect to this credit.

Interest Rates

As regards definite term consumer credit agreements, parties may only agree upon a fixed interest rate, which cannot be altered to the disadvantage of the consumer during the term of the credit. For indefinite term consumer credit agreements, a variable interest rate can be further agreed upon, subject however to 30-day prior notice being made to the consumer in this respect.

Parties to a housing finance credit are entitled to agree on a fixed or variable interest rate, regardless of whether the credit term is definite or not.

Early Payment

In line with the Former Law, the New Consumer Law allows the early termination of credit agreements by the consumer, subject to full repayment of the outstanding credit amount. In such a case, the credit institution shall deduct from the outstanding amount of the credit all applicable interests and other expenses (which relate to the period following the date of such early repayment).

However, for the particular case of housing finance agreements where a fixed interest rate has been applied, an indemnity amounting to maximum 1% of the credit can be imposed on the consumer for credits with terms up to 36 months and to 2% for longer terms.

Default and Acceleration of the Credit

Similar to the Former Law, the New Consumer Law provides for the possible acceleration of the credit repayment in case of default of the consumer, subject to the existence of a contractual acceleration clause, failure of the consumer to pay two consecutive installments, fulfillment of the counterparty's obligations and service of a default notice.

In this respect, and in order to enable the consumer to try to remedy the default within an appropriate period of time, the New Consumer Law provides that the default under consumer credit agreements shall be notified to the consumer with a 30-day prior notice (as opposed to the shorter 7-day notice existing under the Former Law). This increase of the notice period also allows an alignment with the provisions applicable to housing finance credits (which notice period was already set as 30 days under the Former Law and still is under the New Consumer Law).

Joint Liability in Tied Credits

In parallel to provisions of the Former Law, the New Consumer Law specifies that in the scope of tied credits (i.e. credits where financing is provided for the specific purpose of the purchase of goods or services from a third party seller/provider), the credit institution shall be jointly liable with the seller/provider in case the later fails to duly perform its duties/obligations towards the consumer. However, unlike the Former Law, the New Consumer Law provides for a double limitation of this joint liability, i.e. its duration shall be limited to maximum one year and its scope to the amount of the credit.

Insurance

In order to further emphasize the currently existing provisions of the insurance regulation setting forth the principle of the consumer's freedom of choice of its insurer, the law-maker has underlined in the New Consumer Law the fact that (i) an insurance policy cannot be mandatorily requested in relation to the conclusion of a credit agreement, (ii) such a conclusion requires the express consent of the consumer and (iii) the consumer is in any case free to conclude any such policy with the insurer of his choice. Following strong critics formulated by regulatory authorities against past practices of certain finance corporation where numerous insurance policies had been concluded without the express or enlightened consent of the consumers, it is expected that, with this new legislative emphasis, conclusion of insurance policies will now be handled with much more care and transparency.

Costs Reflected to Consumers

Aiming at better monitoring the costs reflected to consumers in their relationship with credit institutions, the New Consumer Law provides for a specific set of new rules regarding costs of financial products. Accordingly:

- Credit institutions cannot collect any cost or fee in relation to the management of any account opened for the sole purpose of repayment of credit installments;
- Opening of overdraft accounts for the collection of credit installments is also forbidden, unless the explicit consent of the consumer is obtained;
- Card issuing institutions shall provide a type of credit card which does not require payment of any fee (e.g. annual subscription fee);

DISTANCE AGREEMENTS RELATING TO FINANCING SERVICES

In order to adapt to the evolving practice of most financial institutions which tend to privilege the sale of their products through alternative distribution channels, the New Consumer Law further provides for specific rules applicable to the conclusion of distance agreements relating to financing services (including banking, private pensions, insurance, investment and payment services).

In this respect, when consumer agreements are concluded through distant marketing systems (e.g. letters, brochures, telephone, facsimile, radio, television, email, internet, etc.):

- it is not mandatory to provide consumers with pre-agreement information in a written form, even though proper information shall still be conveyed to consumers in a comprehensible language;
- the (verbal or written) declaration of intention of the consumer on the execution of the relevant agreement shall however be stored physically or electronically;
- consumers benefit from the right to withdraw from distance agreements within a period of 14 days, it being however understood that provisions of other regulations applicable to insurance and private pension agreements shall be reserved.

SECONDARY LEGISLATION

For the purpose of ensuring proper implementation of the New Consumer Law, it is expected that procedures and principles, rights and liabilities, relating to several matters such as pre-agreement consumer information, contractual default, termination right, early payment, fees and commissions to be collected by banks and financial institutions, etc. will be identified under implementing regulations to be shortly enacted. In this respect, the Banking Regulation and Supervision Agency is also expected to issue or amend secondary legislation applicable to several banking products.

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

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