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PREFACE

We are very glad to release the new series of the Newsletter book, whose first series was published last year by our Office. The Newsletter 2011 systematically gathers the articles published each month on our Office's website. The previous book named, Newsletter 2010, has attracted the attention from our business partners, clients and other legal practitioners. This has encouraged us to develop and expand our publication of this year.

This publication has the same systematic with that of last year. However, during the year 2011 many amendments were made to statute laws, which were highly debated. Therefore, the articles in this book focus on the Turkish Commercial Code, which will enter into force from July 2012, on the Turkish Code of Obligations, which will also enter into force from July 2012 and on the Code of Civil Procedure, which entered into force from October 2011. As is expected, the Competition Law also constitutes an important part of our publication of this year. Articles related to the Turkish Commercial Code aim to give to the reader a general opinion on the regulations concerning various subjects as well as the philosophy of the code by explaining the principal provisions of the code. The latest legal developments part includes important insights into international agreements, laws, regulations, communiqués, The Competition Board's decisions, and The Privatization Board's decisions, which were accepted in 2011.

This book is the culmination of self-sacrificing, dedicated and concerted efforts of a very large team constituting of colleagues who have contributed to writing of manuscripts, and colleagues, who have edited, proofread and checked the translated text of manuscripts and also colleagues, who have uploaded the articles to our website. We sincerely acknowledge the hard work of all our colleagues and truly appreciate their invaluable contribution to this publication, which is the accomplishment of an extremely pleasing teamwork.

We hope that the content of this publication will be a useful source for our clients and business partners, and we wish 2012 brings prosperity, joy and contentment to all.

Nisantasi, January 2012

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SUMMARY OF CONTENTS

LIST OF ABBREVIATIONS*

Art.	: Article
CB	: Competition Board
CC	: Civil Chamber
CPC	: Civil Procedure Code
D.	: Decision
ECM	: Emerging Companies Market
etc.	: Et Cetera
EU	: European Union
FMCG	: Fast Moving Consumer Goods
fn.	: Footnote
ISE	: Istanbul Stock Exchange
JSC	: Joint Stock Company
JV	: Joint Venture
No.	: Number
p.	: Page
par.	: Paragraphe
TCC	: Turkish Code of Commerce
TCO	: Turkish Code of Obligations
V.	: Volume

* Abbreviations set forth in that part are general abbreviations. All other abbreviations are mentioned in articles.

COMMERCIAL LAW

The New Turkish Commercial Code has been Accepted in the New Year *

Prof. Dr. H. Ercüment Erdem

The Draft Turkish Commercial Code (hereinafter referred to as the "New TCC") replacing the current Turkish Commercial Code (herein after referred to as the "TCC"), which went into force in 1957 and which has been in use for more than fifty years without a structural change, was accepted by Grand National Assembly of Turkey on January 14, 2011. The New TCC will enter into force on July 1, 2012. Therefore, a transition period of approximately one year and a half has been granted to enterprises and merchants in order to become familiar with the important amendments made to the TCC.

Why was a new Turkish Commercial Code needed? The reasons may be gathered under some main headings:

- Necessity of integration with the European Union, with which we continue membership talks and the need to transfer *acquis communitaire* into Turkish Law;
- Insufficiency of the present TCC with regard to the transparency, institutionalization, auditing, and accountability of companies, the provisions regarding maritime commerce, which do not reflect international conventions and which do not satisfy current requirements, deficiencies and defects of the provisions regarding insurance law, which have been observed since the effective date of the TCC;
- Necessity to reflect the changes which are observed in the IT industry and company structures during the last fifty years

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* ***Article of January 2011***

(participation in general meetings through the internet, publication of company information on the internet, corporation sole, professional boards of directors, group companies, consolidated and uniform accounting, external audits, etc.);

- Necessity of harmonization with new laws (Turkish Civil Code, Turkish Penal Code, certain clauses of Execution and Bankruptcy Law, Misdemeanors Code, etc.);

Needless to say, the preparation of a new Turkish Commercial Code was a controversial process. Some people objected to scrapping the existing code for practical reasons, others out of doctrinal concerns. They suggested amending the present code. However the Commission nominated by the Ministry of Justice took a more radical course of action and decided to prepare a reformed code, just as in 1957.

The Science Commission which prepared the New TCC was organized by the Ministry of Justice and consisted of university academics, judges of appeal courts, representatives of non-governmental organizations, and members from several public institutions. The Commission, which held its first meeting on February 10, 2000, selected Prof. Ünal Tekinalp as its president. A total of 631 meetings were held during its working period of more than five years. The Draft was shared with the public in February 2005, and opinions from all relevant institutions and organizations were taken and discussed.

The Draft has submitted to the Prime Ministry in 2005 and conveyed from there to the Presidency of the Turkish Grand National Assembly. After being discussed by the Commission of Justice of the Assembly and after some minor amendments were made, the Draft was accepted by Grand National Assembly of Turkey on January 14, 2011.

The TCC consists of five sections, titled Commercial Enterprise, Commercial Companies, Negotiable Instruments, Maritime Commerce, and Insurance Law. The New TCC brings fundamental changes and innovations to all of these sections. Here are some of these changes and innovations:

Commercial Enterprise

The term commercial enterprise is defined and concretized. The term continues to be the center of the Commercial Enterprise Section.

Commercial Registration became more transparent and central; the establishment of a data bank is foreseen. The responsibility of the State for the registers is accepted, and the positive function of the register is regulated in a more detailed way.

The provisions with regard to unfair competition have been fundamentally modified by using Swiss Law. The list of the acts which constitute unfair competition was expanded, and standardized terms of contract were covered. The responsibility stemming from unfair competition was aligned with intellectual property law.

Goodwill compensation was regulated for the first time.

The use of commercial books as proof, which is common under Turkish Law but which is incompatible with general practice in the world, was removed. However, their use as discretionary evidence continues.

Out-of-date commercial brokerage, which had lost its relevance, was entirely removed from the Code since it is already regulated in the Draft Code of Obligations which was accepted by Grand National Assembly of Turkey on January 11, 2011.

Commercial Companies

The most fundamental changes were made in this area of law. Regarding general provisions, the principle of "ultra vires" (the invalidity of transactions that companies perform which are out of their scope of activities) was abandoned by taking into account the directive of the European Economic Community (EEC). New assets (electronic forms, domains, names, brands) were adopted as capital to be invested for commercial companies.

Merger and the change of form of companies were regulated in a detailed way in accordance with the directives of the European Community (EC). The procedures were rendered more transparent and secure by way of simplification, and creditors and other rightful persons were protected.

The law of subsidiary enterprises was regulated under the caption of multi-corporate enterprises. The relations between the subsidiary company and parent company were based upon the transparency, accountability, and balance of interests for the first time.

No fundamental changes were made with regard to general partnerships and limited partnerships.

The provisions regarding joint stock companies were drastically changed. Changes with regard to procedure, institutions, and the contents of the clauses have been made. The main innovations pertaining to the system and the institutions are as follows:

- Incorporation of joint stock companies was realigned, and gradual incorporation was removed. An effective and transparent auditing requirement was adopted, and actions for annulment were realigned.
- Corporation sole for joint stock companies (and for limited liability companies) was adopted. In this way, an important need in practice was fulfilled.
- Certain basic principles adopted by the doctrine with regard to joint stock companies (to be subject to equal treatment, prohibition against shareholders' becoming indebted to the company) were covered by the Code for the first time.
- The buy-back of its own shares by a company itself was based upon a more flexible, liberal system which gives to publicly-traded companies the possibility to be "market makers",
- A more transparent system was regulated for boards of directors, a distinction between executive and non-executive members was adopted, an organization regulation and partial or entire abandonment of management to professionals in accordance with the regulation was foreseen.
- The committee of early determination and management of risks was foreseen for the first time in accordance with the principles of corporate governance and made obligatory for publicly-traded companies.
- A more transparent and effective auditing system was established. Internal auditors were removed. The auditing of companies has

been delegated to independent auditing companies, to chartered accountants, or to independent accountants for small joint stock companies. Furthermore, a transaction auditor system was foreseen for certain transactions (Increase / reduction of capital, spin-offs, mergers, changes of form, issuing securities, etc.).

- With regard to financial reporting, compliance with the Turkish Financial Reporting Standards, which are identical to the International Financial Reporting Standards (IFRS) was adopted.
- The position of shareholders was strengthened (shareholder rights were expanded, new rights of action were recognized, the use of rights was rendered easier and more effective, importance was given to transparency, privilege of vote was limited, the restriction on the transferability of registered shares was released from arbitrariness, notification obligations were foreseen, an obligation to give reports to boards of directors regarding certain matters was adopted, etc.).
- Minority rights were developed (exceptions for the principle of preservation of order of business were adopted, special auditor system was strengthened, new minority rights - for instance, to demand the annulment of a company - were regulated).
- Squeeze-outs were given a legal basis for the first time.

Innovations made with regard to the limited liability companies, which are common in Turkish practice, are more limited, but no less important:

- One shareholder is allowed to have more than one share, and attaching shares to registered stocks was adopted.
- System regarding share transfers was simplified and rendered more effective.
- To be out or to squeeze out from a company was regulated on the basis of the ability of the company to survive.
- Difference between general assemblies and boards of directors with respect to functions and powers was sharpened, and the principal of chosen management was adopted.
- Regulations foreseen for joint stock companies with respect to auditing were adopted.

Negotiable Instruments

No fundamental modifications were made with the exception of the correction of simple mistakes in translation and contradictions. However, the prohibition against payment of checks, which was frequently abused, was removed.

Carriage Business

Clauses regarding carriage, which were previously regulated under Negotiable Instruments in the TCC, were regulated in a separate section in the New TCC. The provisions regarding carriage were drafted by taking CMR into account.

Maritime Commerce

Maritime commerce law is the other domain which was fundamentally modified like Company Law. In this context, the present institutions and provisions were innovated, some new institutions and provisions were added, and out-of-date provisions were removed. Basic principles may be summarized as follows:

- In order to reach a harmonization with a lot of international conventions to which Turkey is a party, the provisions of these conventions were reflected in the New TCC.
- Deficiencies in the system in the current regulations were corrected, and the new provisions were attached to a scientific systematic.
- Quite a few superannuated and out-of-date provisions were removed. Provisions regarding overseas sales, which had been inspired by the Incoterms of the 1940s and which do not meet current needs, were also removed.

Insurance Law

The other section subjected to fundamental changes is Insurance Law because the present provisions of insurance law are far from meeting the needs of international practice and doctrine.

- All provisions were attached to a scientific system.
- General provisions regarding insurance agreements were expanded in a manner that covers all sorts of insurance, and the terms were defined.
- An obligation to inform and enlighten insurance holders before the execution of and during the agreement was imposed upon insurers and their agencies.
- Certain kinds of insurance, such as fire, agriculture, or burglary insurance were not separately regulated by taking into account the dynamic and developing structure of insurance law, and general clauses suitable for each sort of insurance were adopted.
- Liability insurance, which does not exist in the current code, is quite common in practice, and is of great importance for today's insurance business, was regulated.
- Life insurance was realigned in accordance with the new products developed in the area and with the needs in practice.

Conclusion

It is certain that the New TCC makes fundamental differences in Turkish commercial law. The knowledge of company law, maritime law, and insurance law that experts know by heart, is essentially amended and renewed. As in any law, the New TCC may have its own deficiencies and parts that need to be developed. These must be tolerated; eventually, the deficiencies will be removed by taking into consideration the future needs in practice. Furthermore, the adoption and implementation of the new provisions, which are designed to be in effect for at least the next 50 years, will take some time. It is not easy to change old habits. However, the lengthy period of transition provides those active in commerce with the opportunity to make the necessary preparations. Consequently, I believe that we must persistently and insistently defend and follow the New TCC.

Innovations in the Incorporation of Joint Stock Companies *

Prof. Dr. H. Ercüment Erdem

As is known, the New Turkish Commercial Code ("New TCC") has been accepted by the Grand National Assembly of Turkey on January 14, 2011. Within the framework of the New TCC, one of the sections subject to fundamental changes is, without any doubt, commercial companies. To this respect, since commercial companies are widely-used and crucial in practical terms, the changes and innovations brought by the New TCC for joint stock companies should be analyzed. However, as all changes and innovations cannot be handled in a single essay, this issue will be handled as a series of essays.

Moderation of the Principle of Ultra Vires

Pursuant to Turkish Commercial Code ("TCC"), like any other commercial company, the principle of *ultra vires* is applied in terms of capacity to have rights of joint stock companies. Therefore, transactions out of the extent of the article of purpose and scope are null and void. Within this framework, the article of purpose and scope draws the lines of the capacity of joint stock companies.

Pursuant to Article 125/2 of the New TCC; *"Commercial companies can enjoy rights and undertake obligations within the scope of Article 48 of Turkish Civil Code."* With reference to the relevant article of the Civil Code, it has been emphasized that commercial companies can acquire rights and obligations, except for those which are specific to humans, such as gender, age and consanguinity. Therefore, from now on, article of purpose and scope does not draw the lines of capacity of joint stock companies. The article of purpose and scope will still be significant, since it defines the scope of recourse of the joint stock company to the persons who effectuated the operation in question.

Pursuant to Article 371/2 of the New TCC; in case third persons are acquainted that the operation is out of the purpose and scope or supposed

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* ***Article of February 2011***

to be acquainted, the company is not bound by the operation in question. Therefore, it is possible for the company to by-pass the operation.

The modification of the principle of "ultra vires" was made by taking into account the directive of the European Economic Community (EEC). With the New TCC, in the direction of the purpose of the Directive, third persons are protected; their assumption concerning the company to be bound by the operations of the authorized persons is protected, and the safety in the market is established.

Capital Contribution Obligation

Values that can be contributed as capital have been diversified with the New TCC. Pursuant to Article 127/1/h of the New TCC; values such as electronic medias, domains, names and signs can be contributed as capital. This article indicates that the New TCC aims to comply with technologic developments. The expression *"…such as"* enables the contribution as capital of new values that can emerge as a result of technologic developments.

Generalization of the Registered Capital System

Pursuant to Article 332/1 of the New TCC, non-public joint stock companies are enabled to choose the registered capital system. This possibility would have a positive effect, considering the fact that the allocation of the registered capital system to publicly held joint stock companies does not have any theoretical base and the efforts of reducing the differences between publicly held and non-public joint stock companies. The minimum capital for the companies choosing the registered capital system is 100.000 TL. Thus, capital increases by non-public joint stock companies can be effectuated up to the registered capital limit, through the decisions of the Board of Directors, without amending the articles of association.

System of Establishment Certificates

Pursuant to Article 336 of the New TCC, *"Articles of association, incorporators' statement, valuation reports, agreements related to incorporation concluded between the company to be established,*

incorporators and other persons and transaction auditor's report are establishment certificates. These certificates are submitted to the registry file and a copy of each is kept by the company for five years." System of establishment certificates is new to Turkish law. The purpose of this disposition is to provide transparency and to prevent, as far as possible, the conclusion of secret agreements. This disposition shall be considered within the scope of the principles of information and transparency.

Incorporators' statement is among the establishment certificates. This statement includes the suitability of the provision for the capital in kind and the necessity of such capital contribution. In addition; acquired securities and their price, important commitments assumed by the company, connections concerning the purchase of machinery or similar goods and any active value, prices, commissions and any kind of debt are clarified, comparatively with their peers. Besides, the statement should include any fact, operation and development concerning the incorporation. The statement should be prepared and signed by all of the incorporators.

Another important certificate among the establishment certificates is transaction auditor's report. Within the scope of the New TCC, some important operations effectuated within the joint stock company are audited by the transaction auditor. Incorporation takes part among these operations. The transaction auditor will audit whether the shares are totally undertaken, the minimum amount of share prices is deposited to the bank and the existence of other establishment certificates.

Corporation Sole

The corporation sole for joint stock companies has been adopted with Article 338/1 of the New TCC. Pursuant to this article, one or more incorporators are required for the incorporation of a joint stock company. Some of the reasons for the adoption of corporation sole system are as follows:

- Presence of "straw men" for the incorporation will not be necessary
- Transparency of the shareholding will be established
- Small and medium sized enterprises will be released from the unlimited liability

- Foreign investors will have less difficulty in breaking into Turkish markets
- Foundations and associations will be able to establish joint stock companies without the need to have other partners

There are some notification requirements for the corporation sole. The establishment of a joint stock company as a corporation sole and the transformation of a multi-shareholder company into a corporation sole is registered to the trade registry and published. Therefore, those who may be concerned will be informed.

Removal of the Gradual Incorporation System

The incorporation of joint stock companies was regulated under immediate and gradual incorporation. Even though gradual incorporation was not a widely-used system, it was regulated by more detailed provisions. On the other hand, provisions of the Capital Markets Law were getting ahead of the TCC provisions. Gradual incorporation system has been removed by the New TCC. "Public incorporation" system has been adopted with the Article 346 of the New TCC. According to this system, the shares to be offered to public are undertaken by one or more incorporators. The fact that the shares will be offered to public within at least two months from the registry of the company is specified in the articles of association. The integral amount of the shares offered to public and not sold in time and twenty five percent of the shares not offered to public in time will be paid in three days following the two-month period. With this disposition, a system which can be easily understood and applied has been adopted.

Registration and Publication of the Articles of Association

Dispositions of the articles of association that are obligatorily published in the trade registry gazette were enumerated in the TCC. However, despite this provision, the integrity of the articles of association was published in practice. The New TCC provides the reflection of this application to the legislation. Pursuant to Article 354 of the New TCC, the articles of association will be published in their integrity. On the other hand, each disposition of the articles of association will not have an effect

to eliminate the good faith of third persons. Pursuant to this provision, the dispositions of the articles of association will benefit from the positive effect of registration, only for the subjects enumerated in the relevant article.

Possibility to File an Action for Annulment

In company law, the principle that the registration fills every legal deficiency is applied. According to this principle, the company cannot be declared null and void after the incorporation. This principle is crucial for the protection of the transaction security. However, actions for annulment are more convenient for the balance of interests. TCC does not provide any provision concerning the action of annulment. This legal gap has arisen from the abrogation of the action for annulment regulated under the Article 299/f of the TCC by the Statutory Decree dated June 24, 1995 and numbered KHK/559.

Article 353 of the New TCC has filled in this legal gap by regulating the possibility to file an action for annulment. Pursuant to this article, concerning the incorporation and capital increase, in the presence of important reasons, an action of annulment can be filed. However, the condition is that the interests of the creditors, shareholders or the public are significantly jeopardized or violated by the infringement of legal provisions concerning the incorporation of the company.

Claimants of the action for annulment are enumerated based on the *numerus clausus* principle. Accordingly, upon demand of the Board of Directors, the creditor in question or of the shareholder, the commercial court situated at the location of the company's registered office can decide on the annulment of the company. The court may grant a delay for the correction of deficiencies and illegalities, instead of an annulment decision. The annulment should be used as the last resort.

Conclusion

Provisions of the New TCC concerning the incorporation of the joint stock companies should be considered within the scope of filling the deficiencies of the TCC, implementation of necessary reforms and simplification of proceedings. Provisions concerning the corporation

sole and action for annulment that meet the needs of the practice are included in the New TCC. Provisions concerning the registered capital system and public incorporation aim to facilitate the proceedings. Additionally, principles such as the right of information and principle of transparency are emphasized with the notification obligations concerning the incorporation proceedings.

Innovations in the Board of Directors of Joint Stock Companies*

Prof. Dr. H. Ercüment Erdem

Provisions of the New Turkish Commercial Code ("New TCC") concerning the Board of Directors ("BoD") are found among the provisions that have been significantly modified. The corporate body that is the most influenced by corporate governance rules within the scope of the New TCC is the BoD. The BoD has been regulated through new structural and functional provisions. Provisions aimed at guaranteeing professional management and transparency were adopted. In addition, the rules that will facilitate the operation of the BoD have been included in the New TCC.

Formation of the Board of Directors

The first innovation set forth by the New TCC concerning the formation of the BoD is the abrogation of the obligation of a minimum of three directors regulated under the current Turkish Commercial Code ("TCC"). In accordance with the possibility of incorporation of corporation sole, it is possible to form a BoD composed of only one director, pursuant to Article 359/1 of the New TCC. Additionally, the condition of being a Turkish citizen and having a place of residence in Turkey for at least one of the directors was adopted. The obligation of being a shareholder for the directors has been abolished.

The New TCC sets forth the condition of having a graduate degree for at least one fourth of the directors in order to guarantee formation of the BoD with more qualified members. On the other hand, this condition will not apply to the BoDs which are composed of one director.

Another innovation set forth by the New TCC is the right of representation for determined shares, shareholder groups, and minority shareholders. In accordance with the new provisions, it is possible for shareholder groups which have a preferential right in terms of profits,

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* ***Article of March 2011***

votes, liquidation shares, and certain rights *in rem* to be represented on the BoD. The aforesaid possibility was not regulated under the TCC, but recognized by the precedents of the Court of Appeal. As the ongoing precedents of the Court of Appeal recognize "the preferential right of groups", the New TCC has included these precedents within the scope of the new code.

The Possibility for Legal Entities to Be Directors

According to the TCC, only real persons are entitled to be directors. As the legal entities could not be directors, real persons were chosen to represent legal entities, and these persons held the director title. Pursuant to the New TCC, legal entities are entitled to be directors themselves. Therefore, it will be possible to hold legal entities responsible. According to the TCC, as the director title belongs to the representative of the legal entity, the legal entities could not be held responsible as directors. This fact leads to an unjust practice which does not permit financially strong legal entities to be held responsible. In accordance with the new provisions, as the director title is bestowed upon the legal entity, responsibility will also be imposed upon the legal entity. On the other hand, as the legal entity is not able to attend BoD meetings itself, a real person designated by the legal entity will attend the meetings.

Board of Directors Meetings

The meeting and resolution quorums of the BoD are set forth in Article 330 of the TCC. The aforesaid article caused misinterpretations as it used the expression of *"at least one more than half the number of members"*. These misinterpretations are eliminated by Article 390 of the New TCC. The aforesaid article prefers the expression, *"the majority of the members"* instead of the expression *"at least one more than half the number of members"*. Therefore, confusions that can arise concerning the BoDs consisting of an odd number of directors are prevented.

The ambiguity concerning the decisions taken by circulation and signature of a resolution text among the directors has been eliminated. Provisions of the TCC remained silent about whether the signatures of the directors were required to be on the same paper or not. The New TCC

clarifies that the signatures do not need to be on the same paper, but all of the papers signed by the directors need to be glued into the resolution book of the company.

The New TCC's intention of keeping up with technological developments has been concretized by the possibility for the BoD to hold on-line meetings. Pursuant to Article 1527 of the New TCC, it is possible to hold on-line BoD meetings or to hold meetings in which some of the directors participate on-line, while the others are physically present. Therefore, inconveniences concerning the joint stock companies whose directors are not physically in the same environment are prevented. It is only possible to hold on-line meetings if there is a relevant provision in the articles of association. In the aforesaid meetings, the statutory meeting and resolution quorums, or the articles of association need to be fulfilled.

Obligations and Competences of the Board of Directors

The New TCC has made a distinction between the management right and authority of representation. According to the New TCC, the management right can only be delegated in case there is a relevant provision in the articles of association, and the necessary regulations need to be adopted by an internal directive. Thus, the directors can be regrouped as executive and non-executive members. A flexible regime in which all the directors can be non-executive members is permitted with the New TCC.

Pursuant to the New TCC, the BoD is entitled to establish committees and commissions in order to keep up with the operations, to draft reports concerning the subjects that are presented, to execute its resolutions, or for internal auditing. Therefore, the BoD will be able to operate on a more professional basis.

The non-assignable rights and competences of the BoD have been clearly stated by Article 375 of the New TCC. The aforesaid article clearly stipulates the requirement of being exercised directly by the BoD concerning the authorities which are in the scope of this article. Thus, the authorities in the scope of this article cannot be assigned to commissions.

A new institution called "committee for the early determination and management of risk" is stipulated under the provisions concerning the committees. This committee will be established for the determination of the causes that jeopardize the existence, development and continuance of the company, the implementation of necessary measures and solutions, and for risk management. This committee is a requirement for companies whose shares are traded on the stock exchange. As for other companies, the committee can be established if the auditor deems it necessary. The aforesaid committee will draft reports every two months and present them to the BoD. A copy of the report is to be submitted to the auditors.

Liability of the Directors

In accordance with the amendment of the *"ultra vires"* principle, provisions concerning the liability of the directors have been widely modified. Pursuant to Article 371/2 of the New TCC, operations concluded by and between the authorized representatives and third parties beyond the purpose and scope of the company are binding for the company. On the other hand, if the third party is aware or should be aware of the fact that the operation is beyond the purpose and scope of the company, the company is not bound by the operation in question. Additionally, the publication of the articles of association of the company is not by itself enough to prove this fact. The possibility of recourse for the company against the director who concluded the operation is stipulated with the New TCC. Therefore, the article concerning the purpose and scope of the company will set the limits of recourse.

The duty of care of directors has been concretized and the degree of care of "fulfilling his duties with the care of a cautious director" has been adopted. The duty of loyalty has been regulated clearly, by establishing the duty of protecting the interests of the company in accordance with the rule of good faith.

The solidarity system that was applied for the liability of the directors has been modified, and the "differentiated solidarity" system was adopted. According to the new system, if more than one director is liable for compensation of damages, the directors will be held liable in proportion to their degree of fault and to the circumstances of the

case. The damages caused by the directors will be regrouped into two categories: Damages caused collectively by the directors and personal damages caused individually by the director in question. Therefore, the distinction between collective damage and individual damage will be made, and different liability groups may be formed.

Lastly, directors' liability insurance has been included in the New TCC within the scope of the provisions concerning the liability of directors. Hence, the possibility for directors to be insured against damages resulting from their duties as a director has been regulated by law. Pursuant to Article 361 of the New TCC, if the damage that might be caused by the directors while fulfilling their duties as directors is insured for an amount exceeding 25% of the company's capital, this fact must be announced in the bulletins of the Capital Markets Board for publicly-held companies in the bulletins of the stock exchange if the shares are traded on the stock exchange, and it will be taken into consideration for the assessment of compatibility with corporate governance principles.

Conclusion

The provisions of the New TCC concerning the BoD provide major modifications. The provisions concerning the obligation of holding a graduate degree and the possibility of working with committees were adopted for the professionalization of the BoD. The liability system of directors has been reformed by the modifications in the liability provisions and by directors' liability insurance. With provisions such as the provision that clarifies the meeting quorum and the non-assignable rights of the BoD, important steps are taken for the prevention of problems that are faced in practice. All these innovations will, without any doubt, facilitate the operation of the BoD, ensure a more professional and transparent management, and help to overcome the problems that used to arise in the implementation of the TCC.

Innovations in the General Assembly of Joint Stock Companies*

Prof. Dr. H. Ercüment Erdem

General assembly ("GA") meetings of joint stock companies play an important role, since it gives the opportunity to shareholders to enjoy exercising their rights regarding company affairs. Shareholders enjoy their essential rights such as right to obtain information and right of examination through GA meetings.

Within this framework, the New Turkish Commercial Code ("New TCC") provides innovations in order to facilitate the functioning of the GA and to ensure that shareholders enjoy their rights more efficiently. With the new dispositions, besides the aim of resolving current issues s that arise in practice, it will lead to build a robust framework to function of the system are adopted.

The Powers of the GA that cannot be Conferred and GA AS the Sole Proprietorship

The powers of the GA which cannot be conferred are enumerated in Article 408 of the New TCC. The GA cannot assign its important duties and powers such as the amendment of the articles of association, appointment and discharge of the Board of Directors ("BoD") members and the dissolution of the company.

With regards to the sole proprietorship which is one of the new novelties s adopted by the New TCC, all of the powers of the GA belong to this sole shareholder. On the other hand, pursuant to Article 408/3, the resolutions adopted by the sole shareholder as the GA need to be in written form in order to be valid.

Convocation of the GA

With the New TCC, the authorities empowered for the convocation of the GA have been re-regulated. In accordance with the new system, the auditor does not take part among the authorities that have the power

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* ***Article of April 2011***

to convoke the GA. The New TCC has cleared the doubts in the Turkish Commercial Code ("TCC") about whether the BoD whose term expired may convoke the GA or not. According to the New TCC, even the BoD whose term expired may convoke the GA. In addition, liquidation officers may convoke the GA concerning the subjects related with their duties.

With the New TCC, new dispositions in order to eliminate the problems arising regarding the convocations notified by the minority shareholders are adopted. Pursuant to Article 413/3, the request of convocation and addition of new subjects to the agenda made by the minority shareholders shall be made through the notary public. Therefore, the problems concerning the application to the BoD for the convocation and the date of this convocation are prevented.

Another issue handled by the New TCC is the GA's not being held on time, even though the convocation request of the minority shareholders is accepted by the BoD. In practice, as the GA meeting was held months later, the meeting may not exactly occur at the arranged date. Therefore, the New TCC provided that the GA meeting should be held in forty five days following the acceptance of the request. In case the GA meeting is not held in forty five days, the convocation shall be made by the claimants. In the latter case, minority shareholders are not required to file a lawsuit, and the GA shall be convoked by the claimants.

Pursuant to Article 414 of the New TCC, the announcement concerning the convocation of the GA should be published on the web site of the company, in addition to the Trade Registry Gazette.

GA without Convocation Notice

New TCC adopted a solution to the GA without convocation which was very controversial under TCC, since TCC does not regulate whether the GA without convocation may adopt a valid resolution without the continuation of a hundred per cent participation. As mentioned above, this controversial subject in practice has been resolved by the New TCC. Pursuant to Article 416 of the New TCC, capacity to adopt a resolution of the GA without convocation must be present not only at the beginning of the meeting but also throughout the whole meeting. Therefore, if a

shareholder discontinues attending at the meeting, the GA without convocation will no longer have a capacity to adopt a resolution.

Article 416/2 cleared the doubts concerning the principle of compliance to the GA's agenda. Pursuant to the relevant article, a subject may be added to the agenda by unanimity of votes to the GA without convocation. The New TCC stipulates that the articles of association clauses which are contrary to these will be deemed to be invalid. The reasons for rendering invalid those clauses is that to prevent any illegitimate resolution may be adopted unanimously by the shareholders by virtue of the articles of association.

GA Meetings

Pursuant to Article 407/2 of the New TCC, shareholders and their representatives and also CEOs, at least one member of the BoD, the auditor and the operation auditor shall participate the GA meetings. The New TCC adopted a different system regarding the representative of the Ministry of Industry and Trade ("Ministry"). Participation of the representative of the Ministry to the meetings is mandatory for the companies laid down in Article 333 of the New TCC. For other companies, the cases in which the representative of the Ministry shall participate in the meetings, terms and conditions regarding the authorization of the representatives, duties and competences and also the payment tariff of these representatives will be regulated by a regulation published by the Ministry.

The quorums for ordinary resolutions are not amended by the New TCC. However, different quorums for the amendment of the articles of association are adopted.

Pursuant to the New TCC, the list regarding the participants to GA meetings shall be prepared by the BoD. This list to be prepared by the BoD shall be signed by the president of the BoD and shall be kept at the venue where the GA meeting will be held. This list which is signed by the participants is entitled as "participants list".

The TCC does not regulate the administration method of the GA meetings. However, the New TCC, in Article 419/2, adopted a disposition regulating this subject. According to this article, the BoD shall prepare the

internal regulation of the GA and this internal regulation will be effective following the approval of the GA. Minimum requirements for the internal regulation will be determined by the Ministry. Thus, the meetings will be administrated pursuant to this internal regulation.

Representation of the Shareholder in the GA

The New TCC has introduced a new system regarding the representation in order to prevent possible lack of power situations in the GA. Dispositions regarding collective representation that are beyond the rules of representation in the Code of Obligations are introduced with the New TCC. The system of "proxy" applied in the USA has been introduced, even partially, in the Turkish Company Law. The new system provides comprehensive embodiment regarding individual and collective representation at the meetings.

The representation of the shareholder shall be maintained through the representative of the organ, independent representative, corporate representative and representative of the depositor. The representative of the organ is the representative related to the company and which has been recommended to the shareholders by the company. The representative of the organ is appointed in order to vote in the GA meeting and effectuate other relevant transactions. In case the company shall recommend a representative, it shall recommend another person which is totally independent and neutral for the same position and shall announce these two persons pursuant to the articles of association and publish in the web site of the company. The representative of the organ or the independent representative for this position does not have to be a shareholder.

Another representative introduced by the New TCC is the corporate representative. The corporate representative shall announce a declaration in which it states the member of the BoD or auditor it shall vote for, its recommendations in the subjects concerning the shareholders and shall request from the other shareholders their authorization. The declaration shall contain the rules that the corporate representative has to comply with. The corporate representative is entitled to act and vote, within the limits set by the declaration. Pursuant to Article 428/2 of the New TCC, the BoD shall call the shareholders to declare the corporate representatives

that they suggest, with their identity and communication details. In this invitation of the BoD, it shall also be stated that the persons willing to be corporate representative may also apply.

Finally, the representative of depositor shall be authorized in the cases that the share titles are deposited in order to be kept. As a result of the deposit relation between transferor and transferee, the representative is called as representative of the depositor. The rights to participate in the GA meeting and to vote may be exercised by the representative on the basis of the deposit relation or on the basis of the general or special competence granted by the depositor. The competence may be granted as a general competence while it may also be granted just prior to each GA meeting.

Conclusion

The GA was subject to major amendments by the New TCC, like several other institutions. The reason of these amendments is the necessity to regulate the issues which were being discussed in the doctrine and which were needed in practice and on the other hand, to ensure that the GA is functioning more effectively. Within this scope, the regulations regarding the lack of power and representation of the shareholders in the GA are important. The dispositions of the New TCC regarding GA are, without any doubt, adopted in order to ensure the protection and development of shareholder rights.

Innovations in the New Turkish Commercial Code Concerning Preference Shares *

Prof. Dr. H. Ercüment Erdem

Preference shares are of significant importance, and regulated under special provisions since they provide wider rights to investors compared to ordinary shares. The provisions of the New Turkish Commercial Code ("New TCC") concerning preference shares aim to, on one hand, remedy the current issues that arise under the Turkish Commercial Code ("TCC"), on the other hand, reckoned among the dispositions with a view to improving and strengthening corporate governance principle.

Overview

In joint stock companies, the principle of equal treatment of shareholders and protection of their rights is adopted. Nevertheless, this does not mean that all types of shares will be treated with absolute equality but rather it means the shares that belong to the same category or classification will receive equal treatment. With the contractual provisions inserted to the Articles of Association it is possible that particular shares or group of shareholders may be privileged and given more favorable status than other group of shareholders regarding the nature and content of their rights and duties. As a consequence of such differentiation of shareholding rights the class of shareholding, preference shares- also known as preferred stock- is created which provide wider rights to shareholders compared to ordinary shares. The preferences are granted in favor of shares, and not in favor of persons. Preference rights granted to certain persons have a contractual basis and cannot be construed as privileges.

While the TCC regulates preference shares, it avoids giving the precise definition of the term "preference shares". Article 401 of the TCC stipulates that it is possible to grant preferential rights in favor of certain shares through the articles of association with regards to dividend or distribution of the assets of a company in liquidation, and similar issues.

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* ***Article of May 2011***

As it is illustrated in the Article 401, the TCC prefers to give examples to the preferences that may be granted and does not define the concept of preference shares.

In Article 478/2 of the New TCC, the term preference is defined as *"dividend, liquidation share, priority and voting rights granted in favor of a share, or a shareholding right not provided by law"*. Therefore, a framework is outlined for the definitions that can be given for the preference rights thus different meaning and definitions that could be attributed to the same concept have been prevented. The preference is to grant preemptive rights to a share compared to other shares, or a shareholding right that has not been provided by law. The New TCC added priority right and preference in voting rights to the examples given for preference rights. Under the TCC, even though they were not recognized and listed in the relevant article apparently, these two preference rights were construed and evaluated under the title "similar issues" by the doctrine.

Creation of Preference Shares through the Articles of Association

Pursuant to the New TCC, the preferences may be stipulated by the Articles of Association, or created by the amendment to the Articles of Association. Under Article 401 of the TCC, whether preference shares can be created through the amendment of the Articles of Association was a long debated issue in the doctrine. The New TCC clarified this ambiguous issue and stated that preference shares may be created by the amendment to the Articles of Association. Furthermore, the New TCC emphasized that the preference shares may only be created through the Articles of Association.

Article 421/3 of the New TCC regulates the quorums necessary to constitute an amendment to the Articles of Association concerning the creation of preference shares. Resolutions of amendment of the articles of association concerning the creation of preference shares require the votes of shareholders holding seventy five percent of the shares, or of their representatives. In the event that this quorum is not reached in the first meeting, the same quorum is required in the subsequent meetings.

Provisions Concerning the Preference Shares on Voting

The New TCC regulates the voting rights of preference shares under a special provision. Pursuant to Article 479 of the New TCC, multiple voting preferences may be provided by granting unequal voting rights to the shares of the same nominal value". This option was unanimously accepted by the doctrine. Therefore, the doctrine was reflected to the New TCC. Another option of providing voting preference is granting equal voting rights to the shares of the different nominal value. In this case, the preference is granted in favor of the shares of lower nominal value. However, the New TCC does not recognize this option.

The TCC does not provide any limitation as to the number of votes that can be casted for per share. Whereas the New TCC limits the number of votes attached to the preference shares. Pursuant to Article 479/2 of the New TCC, maximum of fifteen shares confer the right to cast one share.

On the other hand, this limitation has some exceptions.

The limit set with regards to voting preference shares shall not apply if the sound corporate governance principle requires to do so, or in the presence of a valid reason. This provision depicts that the New TCC puts the emphasis on improving and strengthening good and robust corporate governance. Therefore, through the few shares that are held by professional directors, the voting preference rights will ensure the possibility to go beyond the voting power in the family-owned corporations and provide professionalization.

The request concerning the non-application of the limit of voting preference can be appealed against in the commercial court located in the region of registered office of the company. The court should evaluate the corporate project and decide on the non-application of the limitation. The corporate project may only be amended by a court decision. The New TCC regulates that the court may order to withdraw the decision concerning the non-application of the limitation in the event that the corporate project appears as non-applicable, or the valid reason ceases to exist. Therefore, with this innovative provision of new TCC, it is intended to prevent any exercise in bad faith concerning the non-application of the limitation.

Article 479/3 of the New TCC lists the resolutions for which the preference voting right cannot be exercised. These resolutions are the resolution concerning the amendment of the articles of association, appointment of operation auditors and resolutions concerning the relief and claims based on the responsibility of directors. Besides being important resolutions, the aforesaid resolutions may result with the control of some shareholders in the company. This provision of the New TCC aims to prevent the abuse of preference shares by the shareholders who intend gain control over the company.

Representation of Share Groups in the Board of Directors

Even though the right to nominate candidates to the board of directors (BoD) was not recognized by Article 401 of the TCC, it was accepted by the doctrine as a *"preference on similar issues"*. Pursuant to Article 360 of the New TCC, (a) certain share groups, (b) shareholders that form a certain group in terms of their characteristics, and (c) the minority shareholders may be granted a right to be represented in the BoD. With this disposition, the representation right has been reframed in such a way to be an exception to Article 478 of the New TCC, besides being a preference granted in favor of a share. This article grants the representation right in favor of shareholder groups, minority shareholders and share groups. The fact that these groups can be determined is sufficient. The aforesaid right is granted in favor of certain shareholder groups, share groups and minority as a whole, and not to each share. The TCC does not include a similar exemption, but the precedents of the Court of Appeal which have been consistently applied for a long time provide the application of "group preference".

Preference Shareholders Special Committee

Article 454 of the New TCC, resembles to the TCC, regulates that certain resolutions of the general assembly ("GA") that may infringe the rights of preference shareholders shall not be applied unless approved by a resolution adopted in a special meeting held by preference shareholders. Those resolutions are the resolution on the amendment of the articles of association, resolution on the authorization of the BoD concerning the

capital increase and the BoD resolution concerning the capital increase. The aforesaid decisions cannot be applied unless approved by the preference shareholders' special committee ("PSSC").

The New TCC filled several gaps of the TCC. The New TCC clarified that the PSSC shall be summoned to meeting by the BoD. On the other hand, considering the fact that the PSSC may not be summoned to meeting by the BoD even though the relevant period had expired, each preference shareholder is entitled to claim before the competent court to be authorized to summon the committee to meeting.

Article 454/3 of the New TCC regulates the meeting and resolution quorums of the PSSC. The TCC does not regulate these quorums but rather make reference to Article 388, which regulates the meeting and resolution quorums concerning the amendment of the articles of association. The nonexistence of any reference in Article 390 of the TCC to quorums of the PSSC concerning the approval of the resolution on capital increase was a controversial issue under the TCC. The New TCC clarified all these controversial issues.

Pursuant to Article 454/4 of the New TCC, in the event that the preference shareholders or their representatives approved the amendment of the articles of association in the GA meeting, it is not required to hold a PSSC meeting. This subject was discussed by the doctrine, as the TCC did not have any disposition concerning this subject. The New TCC has put an end to these discussions through Article 454/4.

Pursuant to Article 454/7 of the New TCC, an action for annulment can be initiated against the resolutions of the PSSC. The TCC did not have any disposition on this issue, on the other hand, it was accepted by the doctrine that the disposition concerning the annulment of GA resolutions could be applied to the resolutions of the PSSC by analogy. Pursuant to the aforesaid disposition, the BoD may initiate an action for annulment against the resolution of the PSSC within one month from the resolution date before the commercial court located at the place of registered office of the company. The registration of the GA resolution may also be requested from the court. This disposition is expected to prevent the preference shareholders from abusing their rights.

Conclusion

In the New TCC, the preference has been defined as a priority right granted to a share, or a shareholding right that has not been provided by law. With the limitation on the vote cast of the preference share, the discretionary use of this right is aimed to be prevented. On the other hand, there are some exceptions for this principle, and this principle shall not be applied if corporate governance principle requires, or in the presence of a valid reason. Granting of preference in favor of certain share groups is regulated under a separate article, and therefore, the "group preference" concept has been adopted by law. Dispositions concerning the PSSC have been re-organized, and controversial issues have been clarified.

All these new dispositions regulate preference shares in detail, which are significant both in theory and in practice. The New TCC responds to the needs that arise from the practice, and provide legal dispositions concerning controversial issues.

Innovations Concerning Minority Shareholders' Rights in the New Turkish Commercial Code *

Prof. Dr. H. Ercüment Erdem

Minority shareholders rights are of significant importance in companies' constitution, since they provide protection for the value of minority shareholding and the management of company can be apportioned between the majority and minority shareholders by preventing inappropriate exertion of control by majority shareholders. Through the exercise of these rights, conflicts of interest that may arise within the company are settled by establishing the balance between the interests of majority and minority shareholders. The aforesaid factors require the minority rights to be regulated by placing safeguarding measures under special provisions of law.

New Turkish Commercial Code ("New TCC") which takes these factors and the importance of minority rights in company law into consideration, has regulated this institution in parallel with the principle of protection of shareholders. Minority shareholders' rights have been significantly improved and supplementary and wider rights that were not regulated under the Turkish Commercial Code ("TCC") have been added to the list.

Representation of Specific Groups in the Board of Directors

Pursuant to Article 360 of the New TCC, certain class of shareholder groups and minority shareholders are entitled to be represented in the board of directors ("BoD"). The aforesaid article provides that the share groups which are privileged in terms of dividend, voting rights, liquidation share or any of the patrimony rights may be represented in the BoD. In spite of the fact that there weren't any legal provisions in the TCC which enable shareholder groups and minority to be represented in the BoD, the High Court of Appeals had accepted and applied this principle in practice. This principle ruled by the High Court of Appeals has been included in the New TCC and founded on a legal basis belatedly. In order for this provision

* ***Article of June 2011***

to be properly applied, the minority shareholding and its implications should be concretely and precisely defined and distinguished from the other types of shareholders. The fact that the minority was not properly defined will, without any doubt, prevent this provision to be applied with consummate art and accomplish its prospective target. This definition may be realized through share certificate numbers.

Convocation of the General Assembly and Inclusion of a Subject to the Agenda

Article 366 of the TCC provides a minority right with regards to the convocation of the general assembly of the company ("GA") and to the request concerning the inclusion of a subject to the agenda. Pursuant to the aforesaid article, shareholders holding at least ten percent of the share capital are entitled to request the convocation of the GA and inclusion of a subject; they wish to be discussed to the agenda. This percentage ratio may be reduced through the articles of association.

With the New TCC, this article has been adopted with certain amendments. The New TCC defined the concept of minority with different percentages for publicly held and closely held companies. Pursuant to Article 411/1 of the New TCC, shareholders holding at least ten percent of the share capital for closely held companies, and twenty percent for publicly held companies are entitled to request the convocation of the GA, or in case the GA has already been convoked, the inclusion of the subjects they wish to be discussed in the GA to the agenda. Additionally, pursuant to Article 411/3 of the New TCC, the convocation and request of inclusion of a subject to the agenda shall be realized before the notary public. Therefore, the problems concerning whether the BoD was subject to an application for the convocation and the application date have been resolved. In the event that the BoD approves this request, the GA shall be convoked and the meeting shall be held within forty five days, otherwise, the convocation shall be made by the shareholders who requested the convocation of the GA. Therefore, the inconveniences that might arise with regards to the meetings that cannot be held even though the request was approved have been aimed to be prevented.

Article 412 of the New TCC regulates the procedure of application to the court with regards to the cases in which the BoD denies the request of minority shareholders. Unlike the TCC, the New TCC provides that in case the request is not approved within seven business days, the shareholders may also apply to the court. In the event that the courts deem it necessary, a GA meeting shall be held and the court shall appoint a trustee responsible of the agenda and the convocation.

Exceptions of the Principle of Compliance with the Agenda

As is known, "the principle of compliance with the agenda" is applied with regards to the subjects that may be discussed and decided in the GA meetings. According to this principle, the agenda of the GA is determined prior to the GA meeting, in addition, is clarified in the publications and letters of invitation. In principle, the subjects that are not included in the agenda cannot be discussed and decision cannot be taken with respect of the subjects not listed in agenda.

Under the TCC, some of the minority rights were not properly used because of the principle of compliance with the agenda. The New TCC extended the scope of the exceptions of the principle of compliance with the agenda, and therefore, guaranteed that minority shareholding rights would be more efficient.

One of the exceptions mentioned above is the fact that the dismissal of the BoD members is not within the scope of this principle. Pursuant to Article 364 of the New TCC, the GA may dismiss a BoD member based on justified reasons, even if this is not in the agenda.

Another exception exists with regards to the requests of appointment of the special auditor. Pursuant to Article 438 of the New TCC, any shareholder may request the appointment of a special auditor even if this subject is not included in the agenda. Whether this request was within the scope of the principle of compliance with the agenda was a controversial issue under the TCC. Since this exception was not regulated under legal provisions, it failed to be applied properly.

Adjournment of the Deliberations concerning the Financial Tables

Pursuant to Article 420 of the New TCC, deliberations concerning the financial tables and related subjects are adjourned to one month later. The concept of minority shareholding has been defined with different percentages ratio for publicly held and closely held companies. The GA is not required to adopt a resolution upon the request of the minority, and the decision of the chairman is sufficient. With the aforesaid article, the New TCC preserved the principles laid down under Article 377 of the TCC. On the other hand, while Article 377 of the TCC provides the adjournment of the approval of the balance sheet, the New TCC includes the whole financial tables.

Appointment of Special Auditor

Article 428 of the New TCC, in parallel with the TCC, regulates the request concerning the appointment of a special auditor. Pursuant to this article, all shareholders may request the clarification of certain issues through special auditing, even though it is not included in the agenda. In order to file this request, the appointment of a special auditor should be required so that the shareholding rights may be exercised enjoyed, and rights of information and examination should be exhausted. Therefore, the request will not be abused, and the company will not be damaged.

Unlike the TCC, even if the GA approves the request, the special auditor shall be appointed by the court. This provides total neutrality. In the event that the request is denied, a minority right emerges. In the case of denial, shareholders holding at least ten percent of the share capital, or shareholders whose shares have a nominal value equal to at least one million Turkish Liras are entitled to request from the court, within three months, the appointment of a special auditor.

Discharge concerning the Incorporation and Capital Increase

Article 559 of the New TCC regulates the discharge of the incorporators, BoD members and auditors and the capital increase. The aforesaid persons may only be discharged at least four years after the registration of the company. Additionally, in the event that the minority

opposes to the discharge in the GA meeting in which the discharge is deliberated, the GA may not approve the discharge. The minority has been defined as shareholders holding at least ten percent of the share capital for closely held companies, and twenty percent for publicly held companies. The aforesaid disposition is in parallel with Article 310 of the TCC which regulates the same institution.

Termination with Justified Reasons

Article 531 of New TCC regulates a new institution which did not exist under Turkish law. Pursuant to this article, the shareholders holding at least ten percent of the share capital for closely held companies, and twenty percent for publicly held companies may request the termination of the companies in case of existence of any justified reason. The fact that the TCC did not include any provision regarding this issue caused controversial opinions regarding the quality of the aforementioned legal gap. The prevailing opinion in the doctrine and the High Court of Appeals considered the gap as having a negative effect and supported that this concept may not be applied. The New TCC put an end to the discussions by regulating the termination with justified reasons.

The justified reasons are not clearly defined in the relevant article of New TCC. The notions shall be examined in doctrinal opinions and judgments. The fact that the minority rights are permanently breached and prevention of right of information may be accepted as justified reasons. Article 531 of the New TCC is regulated in accordance with the principle that the termination is the last remedy. The court may order squeeze out of the shareholders upon payment of the values of their shares or another convenient solution instead of termination of the company. The convenient solutions will be considered by the courts.

Other Minority Rights Regulated Under the New TCC

A minority right that was not regulated under the TCC has been included in the New TCC. This new minority right is to request issuance of registered share certificates. Pursuant to Article 486/3 of New TCC, registered share certificates shall be issued and distributed to the registered shareholders upon the request of the minority. Accordingly, the adverse

effects in some family-owned companies resulting from the non-issuance of share certificates will be excluded.

We should also emphasize that some resolutions that necessitate higher quorums are classified as negative minority rights by the doctrine; on the other hand, this is a controversial issue under the doctrine.

Conclusion

With the new TCC the effectuation of minority rights shall be facilitated. The dispositions preventing use of rights are modified and some new minority rights are added. Being in accordance with the principle of protection of the shareholder, the minority rights are strengthened and the shareholder democracy is preserved. It is certain that these regulations shall eliminate the risk that the companies become under control of some shareholders and the minority becomes unable to use their rights.

Innovations Concerning the Transfer of Shares in the New Turkish Commercial Code*

Prof. Dr. H. Ercüment Erdem

The dispositions of the New Turkish Commercial Code ("New TCC") concerning share transfer restrictions differ from the Turkish Commercial Code ("TCC"). The Swiss Code of Obligations has a great influence on the preparation stage of the relevant dispositions. In the pre-legislative stage of the Code, the factors; having a similar Company Law with Switzerland and the evidenced success of Swiss Legal System in this field have been taken into consideration on this matter. The possibility for the company to disapprove the registration of the transfer of share to the share ledger without giving any reason has been abrogated with the New TCC. Therefore, the discretionary use of these competences has been prevented.

Principles Concerning the Transfer of Ownership of Bearer Share Certificates and Registered Share Certificates

Pursuant to Article 489 of the New TCC, the basic principle concerning the transfer of ownership of bearer share certificates is that the transfer of the share is only valid with regards to the company and third persons by the transfer of possession of the share. The relevant disposition is identical with the TCC. On the other hand, in the relevant article of the TCC, the term "delivery" was used instead of the term "transfer of possession". The New TCC preferred the latter term in order to describe the concept more clearly.

Concerning the transfer of the registered share certificates, the basic principle is that these shares may be transferred freely. Pursuant to Article 490 of the New TCC, except stated otherwise by legal provisions or the articles of association, registered share certificates may be transferred without any limitation. On the other hand, pursuant to Article 490/2 of the New TCC, the transfer concerning legal transactions is realized by the transfer of possession of the registered share certificate which has

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* ***Article of July 2011***

been endorsed. While Article 416 of the TCC respects the same principle, it does not make any distinction between transfers based on legal transactions and transfers based on legal provisions. This issue caused misinterpretations in the practice. The New TCC has made a distinction between legal transaction and legal provision, and the letter of the law has been corrected.

Share Transfer Restrictions Concerning the Registered Share Certificates

Article 491 of the New TCC regulates the legal restrictions to be applied to the transfer of registered shares. Pursuant to the relevant article, registered shares, which have not been totally paid up, may only be transferred with the approval of the company. This particular case is a share transfer restriction provided by law. However, in the event that the transfer has been realized by means of inheritance, distribution of inheritance, marital property regime between spouses or enforcement procedures, the said rules does not apply. As may be seen, the basic principle adopted by the New TCC is that the shares may be freely transferred. On the other hand, as an exception to this rule, the company is required to give approval concerning the shares, which have not been totally paid up. Therefore, the company will not be faced with shareholders who do not have the sufficient ability to pay. Pursuant to Article 491/2, the company may only refuse to grant its approval in the event that the transferee's ability to pay raises doubts and the security requested by the company is not provided. Consequently, the company may not refuse the approval in case the transferee has sufficient ability to pay or can afford. In the event that the transfer has been realized by means of inheritance, distribution of inheritance, marital property regime between spouses or enforcement procedures, the approval of the company is not required.

Article 492 of the New TCC regulates the restrictions laid down by the articles of association ("contractual share transfer restriction") concerning the transfer of shares. Pursuant to the relevant article, the articles of association may regulate that the registered shares may only be transferred under condition to obtain the company's approval. The said article sets forth the basic rule concerning the restriction of the transfer of shares. The different rules, that shall be applied to the listed and non-

listed shares have been regulated by the subsequent articles of the New TCC.

The New TCC provides qualified quorums concerning the share transfer restrictions realized by the amendment of the articles of association. Pursuant to Article 421/3/c of the New TCC, amendments of the articles of association concerning the transfer restrictions of the registered shares shall be made by the affirmative votes of the shareholders holding at least seventy five percent of the capital, or their representatives. Therefore, amendments of the articles of association concerning the restriction of the transfer of shares will be realized with the participation of a higher majority.

Additionally, the New TCC provides different share transfer restrictions concerning the listed and non-listed registered share certificates.

Share Transfer Restrictions Concerning the Non-Listed Registered Share Certificates

Article 493 of the New TCC regulates the share transfer restrictions to be applied to non-listed registered shares. Pursuant to the said article, the transfer of the relevant shares may be dissent based on an important reason laid down under the articles of association, or by offering to the transferor to purchase the shares on their actual value at the time of application. Therefore, the company may no longer dissent the transfer of share without giving any reason.

The important reasons that may prevent the company from assenting are listed in the second paragraph of the aforesaid article. According to this article, in the event that provisions of the articles of association concerning the composition of the shareholders justify the disapproval with respect to the purpose and scope or economic independence of the company, the company may dissent the transfer of shares.

The second case in which the transfer of shares may be dissent by the company is the offer made by the company to purchase the shares in exchange for their actual value by the company, other shareholders or third persons. Therefore, the company may avoid the transfer of shares that it dissents. This notion is called as *escape clause*

by the doctrine, and plays an important role in order to avoid alienation within the company.

Pursuant to Article 493/3 of the New TCC, in the event that the transferee does not declare that he purchased the shares on his behalf, the company may refuse to register the transfer on the share ledger. This disposition aims to prevent the elimination of share transfer restrictions with fictitious transactions.

Pursuant to Article 493/4 of the New TCC, in the event that the transfer has been realized by means of inheritance, distribution of inheritance, marital property regime between spouses or enforcement procedures, the company may dissent the transfer only by offering to purchase the shares on their actual value. The said disposition is similar to Article 418/4 of the TCC.

The ownership of the shares concerning the cases in which the company disapproves the transfer was controversial under the TCC. There are two theories on this matter: Separation and unification theories.

According to the separation theory, in the event that the company does not approve the transfer and refuses to register the transfer on the share ledger, the transfer is null and void with regards to the company; however, the ownership of the shares passes to the transferee. On the other hand, according to the unification theory, the ownership of the shares does not pass to the transferee. Under the TCC, the majority of Turkish doctrine supported the separation theory. The said theory was subject to criticism since it created an inconvenient system with regards to the ownership of the shares. According to this theory, the shareholder which is the legal owner of the shares was not recognized by the company, or the person recognized as a shareholder by the company was not the legal owner of the shares. This unstable legal status was criticized by the doctrine.

Article 494 of the New TCC regulates that in the event that the company disapproves the transfer of shares, the ownership of the shares and all the rights related thereto shall be borne on the transferor. Consequently, the unification theory was adopted, and criticism made by the doctrine was taken into consideration.

Share Transfer Restrictions Concerning the Listed Registered Share Certificates

Share transfer restrictions concerning the listed registered share certificates are laid down under Article 495 of the New TCC. Pursuant to this article, companies, which provided a limit in the articles of association for the registered shares that can be acquired, may disapprove the recognition of the transferee as a shareholder, in case this limit is exceeded. This limit shall be designated as a certain percentage of the capital. Therefore, the cases such as alienation within the company, the loss of independence of the company and the loss of the company's privileges are prevented. Additionally, like the non-listed registered shares, in the event that the transferee does not declare that he purchased the shares on his behalf, the company may refuse to register the transfer on the share ledger.

Concerning the shares quoted on the stock exchange, the New TCC has made a distinction with regards to the transfer of the rights related to shares between the shares acquired on the stock exchange and out of the stock exchange. Pursuant to Article 497, in case the shares are acquired on the stock exchange, the rights related to the shares shall pass to the transferee with the transfer of shares. As a result, the transfer will be realized in conformity with the stock exchange principles. On the other hand, in case the shares are acquired out of the stock exchange, the relevant rights shall pass to the transferee at the time of the transferee's application to the company for the recognition of his shareholder status.

Pursuant to Article 497/2 of the New TCC, the transferee may not enjoy his rights of participation to the general assembly, right to vote and other rights related to the right to vote until his recognition by the company. On the other hand, the transferee may enjoy his rights related to the patrimony without being recognized by the company. Persons who acquire the shares will be registered to the share ledger as shareholders deprived of the right to vote. Therefore, the publicity of this record is guaranteed. The legal status of the shareholder who was registered to the share ledger has not been clarified and left ambiguous by the New TCC, and this issue will be treated and found interpretation by the jurisprudence and the doctrine.

Article 498 of the New TCC provides an assumption. According to the said article, in the event that the application of the transferee to the company for his recognition as a shareholder is not rejected within twenty days, the transferee deemed to be recognized as a shareholder. The relevant disposition will encourage the company to evaluate the applications within twenty days.

Conclusion

The dispositions of the New TCC concerning the transfer of shares provide significant innovations compared to the TCC. The company is no longer entitled to dissent the transfer without giving any reason. Listed and non-listed registered shares are distinguished from each other, and the transfer of these shares has been regulated under different dispositions. The fact that the New TCC adopted a more advantageous system compared to the TCC is incontestable.

Innovations in the New Turkish Commercial Code Concerning Voting Rights*

Prof. Dr. H. Ercüment Erdem

Voting rights in joint stock companies are of significant importance, since they enable shareholders to participate in the management of the company. Shareholders may have a voice in the activities of the company through the exercise of their voting rights, such as appointment of members to corporate boards, supervision of the said members and exercise of minority rights. Privileges such as right of access to information, convocation of the general assembly and right to demand the annulment of the decisions aim to guarantee that the voting right is exercised more efficiently. The New Turkish Commercial Code ("New TCC") provides different principles than the Turkish Commercial Code ("TCC") with regard to voting rights. Swiss Code of Obligations is taken as basis for the said provisions of the New TCC. New provisions concerning the initiation of the voting right, its exercise and general issues concerning voting rights have been adopted in order to establish shareholders' democracy. In line with these provisions, voting rights now have more effective compliance regime for substantive corporate governance principles.

Exercise of the Voting Right in the General Assembly and its Attachment to the Shareholder

Pursuant to Article 434 of the New TCC, shareholders exercise their voting rights in the General Assembly ("GA"). This provision is similar with Article 360 of the TCC, which includes the same principle. On the other hand, the last sentence of Article 434/1 reserves the provision of GA meetings held via electronic means. As it is possible to attend GA meetings via electronic means pursuant to Article 1527 of the New TCC, the voting right may be exercised via electronic means as well. The relevant article refers to this provision by stating that *"Paragraph five of Article 1527 is reserved."* The exercise of voting rights via electronic means has the same consequences as attending the GA physically, and

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* ***Article of August 2011***

voting at the GA. In order for this provision to be applied, the articles of association shall contain a provision concerning the possibility of holding the GA via electronic means. The alternative concerning the GA via electronic means is an example for the effort of the New TCC with regards to conforming to the technologic innovations. In this way, the companies whose shareholders are not in the same physical environment will be able to organize the GA meetings in a more efficient way.

The New TCC, which made a preference in favor of the attachment of the voting right to the shareholder, adopted a different principle than the TCC in this matter. The principle within the TCC with regards to the voting right is its attachment to the share, and not to the shareholder. Article 373/1 of the TCC regulates that each share certificate grants at least one voting right. Additionally, the statement *"…the number of voting rights granted by share certificates is determined by the articles of association."* in this article means that the voting right is attached to the share itself. Unlike the TCC, the New TCC adopted a system, based on the attachment of the voting right to the shareholder, and not to the share. Article 434/2 of the New TCC includes the statement *"Even though the shareholder holds only one share, he is entitled to at least one voting right."* With this provision, the shareholder is taken as basis in the provisions concerning the voting right. This new rule is an important exception to the rule which provides that the share is the key element of the rights in joint stock companies.

Exercise of The Voting Right in Proportion to the Nominal Value of the Share

Article 373/1 of the TCC states that *"Each share certificate grants at least one voting right."* Because of this statement, it can be asserted that equal shares give equal rights to their holders, without taking into consideration their nominal values. However, as each share may have a different nominal value, it has been defended by the doctrine that voting rights should be in proportion to the nominal value of the shares.

The New TCC, through Article 434, regulated that shareholders would exercise their voting rights in proportion to the total nominal value of the shares they hold. Therefore, the system in the TCC based on the

share has been abandoned, and the system based on the total nominal value of the shares held by a particular shareholder has been adopted. As a result, the principle of taking part in the management in proportion to the capital has been emphasized in the joint stock companies, which are private equity companies.

Principles Concerning the Voting Right Granted in favor of the Shareholder

Pursuant to Article 432/1 of the New TCC, in the event that there is a co-ownership concerning the share, the voting right may only be exercised by a joint representative. This provision is in line with the TCC. Pursuant to Article 432/2 of the New TCC, in the event that the share is subject to usufruct, the voting right shall be exercised by the holder of the usufruct right, except agreed otherwise. However, the usufructuary should act equitably, considering interests of the shareholder. Otherwise he shall be liable to the shareholder. This provision is in line with Article 360/5 of the TCC. New TCC brings a different provision and allows the owner to exercise the voting right with regards to an agreement concluded between the parties.

The New TCC regulates, through Article 434/2, that each shareholder shall hold at least one voting right even if he holds only one share. The principle of *"no shareholder without voting right"* is maintained in New TCC. However, shares without voting rights set forth under Article 14/A of the Capital Markets Law ("CML") are the exception to this rule. Pursuant to CML, joint stock companies may issue shares without voting rights by providing a privilege of dividend under condition to have a provision in the articles of association and they may offer the share certificates representing those shares to the public.

Pursuant to the second sentence of Article 434/2 of the New TCC, number of votes to be granted in favor of the shareholders having more than one share may be limited by the articles of association. Thus, the issue which was controversial under TCC regarding the limitation of voting rights on the basis of shareholder has been clarified. Within this framework, having the majority of shares shall not be equal to having majority of voting rights, and an exception may be adopted by the articles of association.

Emergence of the Voting Right

Pursuant Article 435 of the New TCC, the voting right emerges upon the payment of the minimum amount provided by law or by the articles of association. This provision is a new provision that was not regulated under the TCC. Pursuant to this provision, in line with Article 344/1 of the New TCC, the shareholder acquires the right to vote upon the payment of twenty five percent of the price of the shares subscribed in cash, or the price stipulated under the articles of association, if this price is higher. In the event that a higher price is not stipulated under the articles of association, the payment of twenty five percent is sufficient for the emergence of the voting right.

Provisions Concerning Preference in Voting Rights

Pursuant to Article 478/2 of the New TCC which regulates preference shares, the preference in voting rights is also mentioned among the preferences that may be granted in favor of shareholders. Voting preference shares are regulated separately under Article 479. According to this provision, voting preference may be granted by designating different number of voting rights to the shares having the same nominal value. Therefore, under the New TCC, voting preference may not be granted by designating the same number of voting rights to the shares having different nominal values.

Another innovation provided by the New TCC concerning voting preference shares is the limitation of the voting right that may be granted in favor of a per share. The TCC does not provide any limitation on this matter. Pursuant to Article 479/2 of the New TCC, the maximum number of voting rights granted in favor of per share is limited to fifteen votes.

Additionally, the limit set with regards to voting preference shares shall not be applied in case the corporate governance principle requires, or in the presence of a valid reason. The request to set aside the upper limit of voting preference shall be addressed to the commercial court located at the place of registered office of the company. The court should evaluate the corporate project and decide to set aside the upper limit rule for preference shares. The New TCC regulates that the court may withdraw the decision concerning the omission of the limitation rule in

the event that the corporate project appears as non-applicable, or the valid reason ceases to exist.

Article 479/3 of the New TCC lists the resolutions for which the voting preference right cannot be applied. These resolutions are the resolution concerning the amendment of the articles of association, appointment of operation auditor and resolutions concerning the discharge and claims based on the responsibility of directors. Besides being important resolutions, the aforesaid resolutions may result in some shareholders to gain control over the company. This provision of the New TCC aims to prevent the abuse of preference shares in order to gain control over the company.

Conclusion

New TCC brings important modifications regarding voting rights. The principle of exercise of the voting right in GA is strengthened by including the online GAs within this scope. The voting right is attached to the shareholder and the obligation to grant at least one voting right to each shareholder is regulated. The voting right shall be exercised proportionally to the nominal value of the shares. The emergence of the voting right shall be subject to different rules under the New TCC. Provisions regarding voting preference shares are regulated pursuant to the corporate governance principles.

Innovations in the New Turkish Commercial Code Concerning the Amendments of the Articles of Association - I *

Prof. Dr. H. Ercüment Erdem

In joint stock companies, amendments of the articles of association ("AoA") are of significant importance, since they have a direct effect on the rights of shareholders. Therefore, amendments of the AoA may only be realized through resolutions of General Assembly ("GA"). Additionally, certain amendments of the AoA are realized through qualified quorums. In this way, a more efficient protection is provided concerning the rights of shareholders, and resolutions are adopted by a higher level of participation. Since the amendments of the AoA are closely related to the rights of shareholders, this concept was subject to extensive modifications within the New Turkish Commercial Code ("New TCC").

Essential Principle

Article 452 of the New TCC indicates the essential principle concerning the articles of AoA which may be amended. Pursuant to the said article, the GA may amend all of the articles of the AoA unless otherwise stipulated in the AoA, under condition to comply with the conditions provided by law. On the other hand, pursuant to the second sentence of the same article, acquired rights and unalienable rights are reserved. This provision is in the same direction with the essential principle set forth under Article 385 of the Turkish Commercial Code ("TCC"). However, the New TCC does not provide any definition or list with regards to acquired rights, since the Article 386 of the TCC which provides a definition and a non-exhaustive list of acquired rights was subject to criticism, since the definition was not satisfactory. Therefore, the new provision does not provide a definition, or a list of acquired rights.

Pursuant to the justification of Article 452 of the New TCC, unalienable rights are classified under the category of acquired rights, however, display many characteristics different than the acquired rights. The justification of the relevant article does not give the definition

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* ***Article of September 2011***

concerning acquired rights. The concepts of acquired right and non-alienable right should be clarified by the doctrine.

Quorums concerning the Amendment of the AoA

The amendments of the AoA are regulated under Articles 388 and 389 of the TCC. Pursuant to Article 388/1 of the TCC, in order to modify the articles concerning the nationality of the company, and in order to increase the commitments of the shareholders, a unanimous resolution is required to be adopted.

The meeting quorum on the GA meetings concerning the modification of the purpose and scope and type of the company is the presence of the shareholders holding at least two thirds of the company's capital, or their representatives, pursuant to Article 388/2. In case this quorum is not established in the first meeting, the Board of Directors ("BoD") may convoke the GA for the second time, in order to respect the relevant procedure. The meeting quorum concerning the second meeting is the presence of the shareholders holding at least the half of the capital, or their representatives.

Concerning the GA meetings realized with regards to the amendment of the AoA other than the amendments mentioned above, pursuant to Article 388/3, the presence of the shareholders holding at least the half of the capital or their representatives is required. In the event that this quorum is not established in the first meeting, a second meeting may be held within one month at the latest, under condition to respect the convocation procedure of the GA meetings. The meeting quorum concerning the second meeting is the presence of shareholders holding at least one third of the capital or their representatives. The resolution quorum is the majority of votes present at the meeting.

The New TCC preserved the same regulation in Article 388/2 of the TCC concerning the essential principle with regards to the amendments of the AoA. Pursuant to Article 421/1 of the New TCC, unless regulated otherwise by law or under the AoA, the resolutions of amendment of the AoA shall be realized in the GA meetings in which at least half of the company's capital is represented, with the majority of votes present at the meeting. In the event that the said quorum is not established in the

first meeting, a second meeting may be held within one month at the latest. The meeting quorum for the second meeting is the representation of at least one third of the company's capital at the meeting. Articles of AoA which decrease the quorums, or which provide relative majority for the resolutions are invalid. The New TCC aims at the protection of shareholders while regulating that the quorums may not be decreased.

While the essential principle in the TCC is preserved by the New TCC, a different systematic concerning different kinds of amendment of AoA has been adopted. According to this systematic, pursuant to Article 421/2 of the New TCC, resolutions providing obligations or secondary obligations for the settlement of balance sheet loss, and resolutions concerning the transfer of the registered office abroad shall be adopted by an unanimous resolution of the shareholders holding the entire capital, or their representatives. In this way, the resolutions that require unanimity by Article 388/1 of the TCC have been regulated more clearly, and in more details. Article 421/3 of the New TCC provides a list of the resolutions that may only be adopted by the affirmative votes of shareholders holding at least seventy five percent of the capital, or their representatives. Pursuant to the said article, resolutions concerning the modification of the purpose and scope of the company in whole, issue of preference shares and limitation of transfer of nominative shares may only be adopted by a majority of seventy five percent. The modification of the purpose and scope of the company in whole includes the modifications which result in the abandonment of a field of operation, and the adoption of another one. The enlargement and restriction of the field of operation may not be evaluated within the scope of the said provision. The sub-paragraph b concerns the preference shares issued following the incorporation of the company, and the enlargement of the preferences shall not be included in this provision.

Articles 421/4 regulates that, in the event that the quorums regulated under Article 421/2 and 421/3 cannot be established in the first meeting, the same quorums are required to be established for the following meetings. This regulation provides a better protection for the shareholder rights.

Provisions Concerning the Companies whose Shares are Traded at Stock Exchange

Article 421/5 of the New TCC provides different quorums for the companies whose shares are traded at the stock exchange. The said article makes reference to quorums regulated under Article 418 for the GA meetings held with regards to the amendments of AoA pertaining to capital increase and increase of the limit of registered capital, and resolutions with regards to mergers, acquisitions and conversion. Pursuant to Article 418, the meeting quorum for the said meetings is the presence of shareholders holding at least one forth of the capital, or their representatives. In case this quorum cannot be established in the first meeting, no quorum is required for the second meeting. As per the resolution quorum, this quorum is the majority of votes present at the meeting. It should be noted that the relevant provision shall only be applied to companies whose shares are traded at the stock exchange. This provision aims at the adoption of the resolutions which are difficult to be adopted under qualified majorities.

Suspension of Share Transfer Restriction Provisions

Article 421/6 of the New TCC regulates that the shareholders holding nominative shares who voted against the modification of the field of operation or issue of preference shares shall not be bound by the share transfer restrictions during the six months following the publication of the relevant resolution in the Trade Registry Gazette. The said article enables the shareholders holding nominative shares which fulfill the conditions provided in the article to transfer their shares in the company without being subject to any restriction in the event of modification of the field of operation or issue of preference shares. The resolutions concerning the modification of the field of operation in whole, or issue of preference shares cause significant changes within the company. The fact that the shareholders opposing to these changes continue to hold the company's shares because of share transfer restrictions has many negative effect. Therefore, the share transfer restrictions are suspended during six months. The share transfer restrictions will fall within the scope of the relevant provision are contractual restrictions, and the relevant provision shall not apply to share transfer restrictions provided by law.

The Special Committee of Preference Shareholders

Article 454 of the New TCC regulates the special committee of preference shareholders ("SCPS"). Pursuant to the said article, in case the resolution concerning the amendment of the AoA may infringe the rights of preference shareholders, this resolution may not be applied unless approved by a decision taken in a class meeting to be held by the preference shareholders. Pursuant to Article 454/2 of the New TCC, the BoD shall convene the SCPS within one month at the latest from the date of publication of the GA resolution, otherwise, each preference shareholder may request before the commercial court to convene the SCPS within fifteen days from the last day of the convocation period. Therefore, the BoD is under obligation to convene the SCPS and in the event of non-compliance with this obligation, the preference shareholders are entitled to request the convocation in order to eliminate the omissions concerning the convocation of the SCPS.

Article 454 of the New TCC regulates many subjects with regards to the SCPS which were not regulated under the TCC. Pursuant to Article 454/4 of the New TCC, in the event that the preference shareholders vote in favor of the amendment of the AoA in the GA meeting, it is not required to hold a separate SCPS. Article 454/5 of the New TCC provides that, in the event that the SCPS meeting does not take place even though the SCPS is convoked, the resolution pertaining to the amendment of the AoA shall be deemed to be approved, and as a result, the negative effects that might be caused by the delay of the application of the resolution are prevented.

Special Amendments

The New TCC regulates the amendments of the AoA under the title of special amendments. As the relevant dispositions are quite comprehensive, the dispositions concerning the capital increase and capital decrease will be analyzed in the next month's article in more details.

In this article, we should mention that the capital increase has been regulated under the articles 456 to 473 of the New TCC. Capital increase to be realized through internal funds and conditional capital increase are among the new concepts that have been regulated under the New TCC.

Provisions concerning the capital decrease, on the other hand, are similar with the TCC in general.

Conclusion

The amendments of the AoA have been reformed within the New TCC, in conformity with the necessities that arise in practice. The quorums concerning the amendment of the AoA have been regulated under a different systematic, and in more details. Different quorums have been regulated with regards to certain resolutions adopted by the companies whose shares are traded at stock exchange. The special committee of preference shareholders has been regulated more efficiently, in such a way to correct the inconveniencies. The new provisions provide a more convenient framework concerning the amendments of the AoA, and will ensure a better functioning of the relevant system.

Innovations in the New Turkish Commercial Code Concerning the Amendments of the Articles of Association - II *

Prof. Dr. H. Ercüment Erdem

Provisions concerning the amendment of the articles of association ("AoA") were subject to extensive modifications within the New Turkish Commercial Code ("New TCC"). Some of the provisions concerning the amendment of the AoA were addressed in our article last month. This month, we shall continue our analysis concerning the amendments of the AoA, and we shall especially concentrate on the amendments of the AoA concerning the capital of the company.

Amendments of the AoA Concerning Capital Increase /Equity Raising

Article 456 of the New TCC regulates the general principles concerning capital increase. Pursuant to Article 456/1 of the New TCC, the capital of the company may not be increased unless the cost of the issued shares is fully paid. The relevant provision is similar to the general principle laid down under Article 391 of the Turkish Commercial Code ("TCC"). However, pursuant to the second sentence of Article 456/1, the fact that the amount of called-up share capital, which does not constitute a substantial portion of the issued share capital may not prevent the capital increase. With this new disposition, the obstacles to raise share capital faced by the insignificant amounts of called-up share capital has been overcame, and it is stipulated that the amounts which may be neglected and which are not important in value shall not be a preventive factor on the share capital increase.

Pursuant to Article 456/3 of the New TCC, in the event that the capital increase is not registered within three months from the general assembly ("GA") or board of directors ("BoD") resolution, the resolution and the permission if applicable, shall be invalid. The relevant disposition provides a solution for another need in practice. With the requirement to register the capital increase within a certain period of time, delays resulting from the capital increase have been prevented.

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* ***Article of October 2011***

Article 456/4 of the New TCC makes reference to Article 353 which regulates the annulment lawsuit, and to Articles 354 and 355/1, which regulate the general principles concerning the registration and announcement. Therefore, in the event that the interests of shareholders or public are endangered or infringed in the capital increase by disrespect of legal provisions, an annulment lawsuit may be initiated.

Pursuant to Article 457 of the New TCC, the BoD shall prepare a statement in accordance with the preferred method of capital increase. While this statement is quite similar to the incorporators' statement prepared at the incorporation process, it is of significant importance as it contains some information about the capital increase and it provides that the capital increase is subject to regulatory supervision and control. In the statement, essential terms of the capital increase are stipulated, such as the commitment to pay the increased portion of capital, and the fact that the portion that needs to be paid up is totally paid up.

Article 458 of the New TCC provides that the capital increase shall be audited by the operation auditor. As the capital increase is among the resolutions of significant importance for the company and shareholders, this disposition is quite pivotal suitable to needs.

Capital Increase through Capital Subscription

Article 459 of the New TCC regulates the capital increase through capital subscription. Pursuant to the relevant article, the shares representing all of the increased capital shall be subscribed to authorized shared capital in the AoA or participation covenants. Article 460 of the New TCC regulates the capital increase in registered capital system and regulates an important innovation concerning closely-held joint stock companies. Pursuant to the aforesaid article, in the event that the authority to increase the capital up to the authorized share capital is granted to the BoD in a closely-held joint stock company, the BoD may realize the capital increase within the legal provisions and the AoA. The authority of the BoD may not be more than for five years.

With the New TCC, the preference rights of shareholders are extended with safeguarding provisions. Pursuant to Article 461/2 of the New TCC, the preference right may only be limited or abrogated

in presence of justifiable reasons, and with the positive votes of sixty percent of the capital. The relevant article provides some examples to justifiable reasons, such as public offering, acquisition of the enterprise, parts of enterprise or subsidiaries, and participation of employees to the company. Additionally, pursuant to the relevant article, the BoD shall draft a report and provide the details of the justification of limitation or abrogation of preference rights, the reason for the new shares to be issued with or without premium, and the calculation of the premium. This report is registered and announced. The aim of this report is to inform the shareholders on the relevant issue. The BoD shall define the specifics of the right to acquire new shares in a resolution, and shall give a delay of at least fifteen days in order for the shareholders to exercise the relevant right. This time period shall be convenient in order for this right to be exercised.

Capital Increase from Internal Sources

The New TCC regulates the capital increase from internal sources, which was not within the scope of the TCC, and which was regulated in the tax legislation. Pursuant to Article 462/1 of the New TCC, reserve funds -contingent capital- which are reserved in accordance with the AoA or GA resolution and have not been allocated to a purpose and the portion of freely used legal reserve funds which are permitted by the legislation to be added to balance sheet (such as the reevaluation surplus reserves) and to the capital may be converted into capital, and hence the capital may be increased from internal sources. This article does not provide an exhaustive list of the values that may be converted into capital, and the values that are not specified in the relevant article may be subject to capital increase from internal sources. The capital increase from internal sources is one of the operations subject to control of the operation audit.

Article 462/3 of the New TCC regulates that, in the event that there are funds permitted to be added to the capital by legislation in the balance sheet, the capital may not be increased unless these funds are converted into capital. This disposition aims at preventing the capital increase to be used against the shareholders. Additionally, with the disposition specifying that the shareholders would acquire the shares free of charge automatically after the registration of the capital increase, it has been

clarified that the acquisition would be realized in accordance with law *(ipso iure)*.

Conditional Capital Increase

Another major innovation provided by the New TCC is that it regulates the notion of conditional capital increase ("CCI") which was not regulated under the TCC. The CCI is a type of share capital increase, which aims at the conversion of the creditors of credit instruments such as debentures/bonds into shareholders, and which provides capital to the company. In the CCI, the capital increase is not realized through new capital commitments of the shareholders, but through the exercise of exchange and preemptive rights. Therefore, this type of capital increase is an exception of the principle of the capital to be determined.

Pursuant to Article 463/1 of the New TCC, in order for the CCI to be realized, there should be an explicit article in the AoA, and the GA should adopt a resolution. The article that is required to be included in the AoA is not a general article that covers all the CCIs, but a specific article dedicated to CCI. The article in the AoA which will serve as basis to the CCI includes the details such as the nominal value of the CCI, the number and types of shares and the groups that may exercise the right of exchange or preemptive right. Creditors and employees of the company may exercise the right of exchange or preemptive right.

The right of exchange or the preemptive right regulated under the relevant article of the New TCC is a right creating a new legal status. This means that the holders of the right may exercise their right of exchange or preemptive right by their unilateral declaration of intention, as soon as this declaration is received by the company. The capital shall be increased by the exercise of the right, as soon as the capital commitment is fulfilled.

The New TCC provides a limitation concerning this type of capital increase, which has an exceptional character. Pursuant to Article 464 of the New TCC, the aggregate nominal amount of the increased capital may not exceed half of the issued share capital.

The New TCC provides provisions that safeguard the interests of the shareholders and holders of the right of exchange and preemptive right, in

the application of the notion of CCI. Pursuant to Article 466 of the New TCC, in the event that the certificates including the right of exchange or preemptive right are issued, these certificates should firstly be proposed to current shareholders. Therefore, the current shareholders of the company shall not be deprived of exercising their rights. Additionally, pursuant to Article 467 of the New TCC, the creditors or employees who are entitled to acquire the nominative shares may not be prevented from exercising this right based on the claim that the transfer of these rights has been restricted. On the other hand, this issue may be reserved in the AoA or the offering circular.

Article 468 and the following articles of the New TCC regulate the procedures concerning the exercise of the right of exchange and preemptive right within the scope of the CCI. These rights shall be exercised through a written statement addressed to the company, and a reference shall be made to the relevant article of the AoA. The operation audit shall control whether the issue of the new shares comply with the legislation and the AoA. The BoD shall provide details with regards to the shares that have been issued, and the AoA shall be updated in conformity with the current situation. The relevant modification shall be registered before the trade registry within three months at the latest from the end of the accounting period. Upon the exercise of the right of exchange or preemptive right, the relevant article of the AoA shall be removed from the AoA.

Conclusion

The provisions concerning capital increase have been subject to important modifications with the New TCC. By the requirement to register the resolution pertaining to the capital increase within a defined time period, the delays with regards to the capital increase have been prevented. It has been regulated that the capital increase falls within the scope of the operations that shall be audited by the operation auditor. The capital increase from internal sources has been included in the New TCC. The notion of conditional capital increase which was not regulated under the TCC has been introduced to Turkish law through the New TCC. All these innovations will, without any doubt, provide that the amendments of the AoA concerning capital increase shall be exercised more efficiently.

Innovations in the New Turkish Commercial Code Concerning the Division and Conversion of Companies - I *

Prof. Dr. H. Ercüment Erdem

The New Turkish Commercial Code ("New TCC") has regulated the concept of "division" in detail which was not regulated under the Turkish Commercial Code ("TCC") and which was being conducted under Corporate Tax Law ("CTL") numbered 5520 and Communiqué Regarding Principles of Partial Division of Joint Stock Companies and Limited Liability Companies (published in Official Gazette dated 16.09.2003 and numbered 25231). The division has been regulated in accordance with the provisions of Swiss Federal Act on Fusion, Division, Conversion and Transfer of Assets ("LFus"). Sixth Council Directive 82/891/EEC of 17 December 1982 concerning the division of public limited liability companies was taken as basis for the provisions of the New TCC, similarly to LFus. Therefore, a legal basis has been established for the division, additionally to the tax legislation. The innovations concerning the division in the New TCC shall be examined within two articles since the provisions include detailed regulations.

Types of Division and Valid Divisions

Article 159/1 of the New TCC provides two types of division as partial and complete division. In the complete division -also known as division by acquisition-, all of the assets and liabilities of the company are divided, and transferred to an existing company, or to a new company to be established. The divided company -acquired company- ceases to exist, and its shareholders are transferred to the acquiring -recipient- company.

Partial division is divided into two categories: Partial division and establishment of an affiliate. In the partial division, parts of the assets of the company are transferred to other companies. The shareholders of the divided company are transferred to the acquiring company. The company subject to partial division shall not cease to exist, and continues to subsist with the remaining assets. In the division through the establishment of

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* ***Article of November 2011***

an affiliate, the divided part shall be issued as capital in kind and the divided company acquired the shares of the affiliate company. This type of division is not regulated under LFus, and is considered as the main type of division in the CTL.

Article 160 of the New TCC regulates the valid divisions. Pursuant to this Article, stock corporations and cooperatives may be divided in stock corporations and cooperatives. The invalid divisions may be overcome by the means of conversion.

Protection of the Shares and Rights on the Company

The New TCC makes reference to Article 140 related to mergers, concerning the protection of shares and rights on the company. Pursuant to this Article, principle of continuity of shares is taken into consideration. The shareholding rights of shareholders of the divided company shall be compensated within the corporate structure that emerges after the division. Within this framework, important issues such as the material value of the divided company and distribution of voting rights are taken into consideration.

In the determination of the exchange rate of the shares of shareholders, the shareholders may be paid an equalization payment. The equalization payment aims to avoid the remainders that occur on the evaluation of assets, and is an instrument that facilitates the division. Pursuant to Article 140/2 of the New TCC, the equalization payment may not exceed one tenth of the actual value of shares to be allocated to the shareholders of the divided company.

Symmetrical and Asymmetrical Division

Article 161/2 of the New TCC regulates the symmetrical (where the shareholding ratios are protected) and asymmetrical (where the shareholding ratios are not protected) divisions. In the symmetrical division, shareholders maintain the shareholding ratio that they hold in the divided company.

In the asymmetrical division that facilitates the restructuring process, the shareholders of the divided company are entitled to shareholding

ratios different than their actual shareholding ratio in the acquiring companies, or newly established companies. The shareholders whose shares are diminished in the acquiring or newly established companies acquire more shares in the transferring companies. While it is possible to leave the transferring company by acquiring more shares in the acquiring or newly established companies, it is also possible for the shareholders not to participate in some or all of the acquiring or newly established companies.

Implementation of the Division

Capital decrease in the implementation of the division is regulated under Article 162 of the New TCC. Capital decrease may be necessary in order to avoid the capital loss caused by the divided assets and in order to provide the compliance of the capital with the current situation. The New TCC does not contain any provision concerning the conditions of capital decrease, or the ratio of capital decrease. The necessity of capital decrease shall be determined by the managing body, and shall be audited by the operational auditor.

Article 163 of the New TCC regulates the capital increase in the division. Pursuant to this Article, the acquiring company shall increase its capital in order to protect the shareholder rights of the divided company. The resolution pertaining to capital increase shall be adopted in accordance with the procedures on amendments of the articles of association. Provisions concerning the capital in kind shall not be applied in this case, and the capital may be increased without modifying the authorized stock, even though it is not available in the authorized stock system.

In the event that a new company is established within the division, the relevant provisions of the New TCC shall be applied, except the minimum number of shareholders and the capital in kind. Additionally, pursuant to Article 165 of the New TCC, in the event that there are more than six months between the balance sheet and the execution of the division agreement or the preparation of the division plan, or in the event that important modifications have occurred in the assets of the companies that have been involved in division, an interim balance sheet shall be prepared.

Division Agreement, Division Plan and Division Report

Pursuant to Article 166/1 of the New TCC, in the event that the assets of a company are transferred to an existing company by division, a division agreement - draft terms of division - shall be drafted by the managing bodies of the two companies. Additionally, pursuant to Article 166/2 of the New TCC, in the event that some parts of the assets of the company will be transferred to companies that will be newly established, the managing body should prepare a division plan. These documents shall be prepared in the written form, and approved by the general assembly ("GA"). The obligatory content of these documents is listed under Article 167 of the New TCC, and includes important matters such as the exchange rates of shares, equalization payment, division and allocation of assets. Pursuant to Article 168 of the New TCC, the assets that have not been allocated in the division agreement or division plan shall be allocated to acquiring companies within joint ownership in case of complete division, and shall remain in the transferring company in case of partial division.

Article 169 of the New TCC regulates the division report. The division report shall be prepared, separately or together, by the managing bodies of the companies. The obligatory content of the report is detailed under the second paragraph of this Article. In the event of new establishment, the articles of association of the new company shall be attached to the report. In small sized enterprises, in the event that all shareholders give consent, it is not necessary to prepare a report.

These three documents and the balance sheet that forms a basis for the division are audited pursuant to the reference made by Article 170 of the New TCC to the provisions with regards to mergers. These documents shall be audited by the operational auditor, and the divided companies shall submit all relevant information and document. The operational auditor shall draft an "audit report". In small sized enterprises, in the event that all shareholders give consent, auditing process is not required.

Pursuant to Article 170 of the New TCC that regulates the inspection right of shareholders, agreements, reports and financial tables with regards to division shall be submitted for the inspection of the shareholders two months prior to the GA meeting concerning the division. The exercise

of the inspection right is not required in small sized enterprises upon the approval of all shareholders.

Decision of Division, Protection of Creditors and Liability

Pursuant to Article 173 of the New TCC, after the creditors of the company are provided with securities, the division agreement or division plan shall be submitted to the GA. In order for the resolution to be adopted, for joint stock companies, under condition that the majority of the capital is represented, the resolution shall be adopted with three fourths of the votes present at the GA meeting. In case that the field of operation of the company will be modified by the division, the quorum necessary for the amendments of articles of association shall be met. Concerning asymmetrical divisions, the approval of 90% of the shareholders of the transferring company shall be obtained.

Articles 174 and 175 of the New TCC provide provisions on the protection of creditors. The creditors of the Company shall be called through announcements to notify their receivables and make a request of security before the division. The request of security of creditors shall be met within three months of the publication of announcements. The report of the operational auditor may confirm that it is not required to provide securities.

Liability provisions with regards to division are set forth under Articles 176 and 177 of the New TCC. Pursuant to these Articles, the company, which has been allocated a debt with the division agreement or division plan, is primarily liable. In the event that this company does not perform its obligations, other companies which have been involved in the division shall be liable in the second degree and severally. Companies liable on the second degree may only be pursued on certain conditions. Bankruptcy and the relocation of the registered office abroad are among these conditions. Concerning the personal liability of shareholders, pursuant to the reference made by Article 177, Article 158 of the New TCC shall be applied. Liabilities of shareholders that have arisen before the publication of the resolution on division shall also continue after the division. The liabilities shall be prescribed in three years after the publication of the resolution on division.

Conclusion

The New TCC adopted detailed provisions that meet the current needs with regards to division. The balance between the implementation of the division and the stakeholders has been protected. The *numerus clausus* principle was adopted with regards to valid divisions, and a flexible structure has been provided with symmetrical and asymmetrical divisions, concerning the different circumstances. Therefore, the influence of division in the restructuring process is emphasized. Rights of shareholders have been protected by qualified majorities, and some exception provisions have been provided for small sized enterprises. It is certain that the division concept that has been regulated outside of the scope of tax legislation will operate more efficiently following these reforms.

Innovatıons in the New Turkish Commercial Code Concerning the Division and Conversion of Companies – II *

Prof. Dr. H. Ercüment Erdem

Some of the innovations brought by the New Turkish Commercial Code ("New TCC") have been examined in our previous newsletter article. In our current article, we will continue to analyze the innovations concerning division, additionally; we will handle the reforms brought with regards to conversion of type of companies.

Transfer of Employment Relations

Article 178 of the New TCC regulates the rights of the employees of the companies that are transferred. Pursuant to Article 178/1, in the event that the employee does not make an objection, the employment agreements shall be transferred to the transferee, along with all the rights and obligations. In the event that the employee prefers not to continue to work, the employment agreement shall be terminated at the end of the legal dismissal period. Pursuant to Article 178/3 of the New TCC, the previous employer and the transferee shall be severally liable with regards to the emoluments of the employee that have arisen before the transfer. Employees may request that the said emoluments are guaranteed. Additionally, the shareholders of the transferring company who are liable with regards to the obligations of the company before the division continue to be held severally liable with regards to the obligations that will arise until the termination of the employment agreement.

Finalization of the division

Article 179 of the New TCC regulates the finalization of the division. Pursuant to the said article, the managing body shall request the registration of the resolution for division that has been approved. With regards to partial division, if the capital of the transferring company should be decreased, the amendment to the articles of association with regards to capital decrease shall also be registered.

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* ***Article of December 2011***

The registration of the resolution of division has many effects and consequences. Firstly, the division becomes valid by being registered. On the other hand, universal succession is realized at the moment of registration and the assets and liabilities registered at the inventory are acquired by the transferring company. Finally, with regards to complete division, the transferred company is dissolved by registration.

Article 179 of the New TCC which regulates the finalization of the division provides the registration, however, does not mention the publication of the resolution. On the other hand, the provisions with regards to mergers regulate both registration and publication. At this point, Article 35/3 of the New TCC shall be taken into consideration. Pursuant to the said article, registered matters are also published, unless the law or by-law provides the contrary. As a result, in my opinion, the resolution pertaining to division shall also be published.

Authorization by the Competition Board

Regarding mergers, the provisions of the Act on Protection of Competition (the "Act") are reserved. As it is well known, Article 7 of the Act regulates the mergers and acquisitions, and a communiqué issued in order to implement this article foresees the obligation to obtain the authorization of the Competition Board in order for mergers and acquisitions, exceeding certain determined thresholds, to become valid. Shall the provisions of the Act governing mergers be applicable to divisions? There are no express provisions in the New TCC which foresee that the provisions of the Act shall be reserved regarding divisions. The Justification of the New TCC does not include any explanation with regards to the applicability of the competition rules. I am of the opinion that the provisions of the Act shall be applicable on divisions as well, since the division transaction essentially includes a merger; either a newly incorporated company or a currently existing company shall acquire. Furthermore, in order to refer to a merger transaction on the terms of competition law, the determining factor is not the transfer of shares and assets. The important factor is the change of control of the merging companies. So long as the shareholder structure in an asymmetrical division transaction can be structured in a way resulting in a change of control, the authorization system stipulated under the Act shall be applicable in case of divisions as well.

Conversion of Type

Article 180 of the New TCC sets forth two important principles pertaining to the conversion of type. The first principle is that any company may convert. Pursuant to the second principle, the company converted to a new type is the continuation of the old company.

Pursuant to Article 181 of the New TCC, the conversion of types are regulated on a *numerus clausus* (limited number) principle. As per this article, an equity company may convert to another equity company or to a cooperative society; an unlimited liability company may convert to an equity company or to a cooperative. Equity companies may not convert to an unlimited liability company. Article 182 of the New TCC includes a specific provision in relation to the type conversion of general partnerships and limited partnerships. These companies may continue their operations as one man undertakings, and in such a case, Articles 180 to 190 of the New TCC in relation to conversion of type shall not be applicable.

Article 183 of the New TCC regulates the continuation principle of the partnership shares and rights in merger and division transactions. Pursuant to this principle, shareholders have a right to request the shares and rights of the new company. Furthermore, shareholders may not be squeezed out of a company and the shareholder rights shall not be hindered. For the implementation of this continuation principle, another principle, the principle of equal value, becomes significant. Pursuant to this principle, the value of the shares of a shareholder prior to the conversion of type shall be maintained after the conversion of type. In exchange for shares without voting rights, shares with or without voting rights may be issued. In exchange for shares with privilege rights, shares with an equal value shall be issued, or if the relevant company type is not compatible with privileged shares, an adequate compensation shall be paid. In exchange for usufruct shares, equivalent rights shall be granted or the real value as of the date of preparation of the conversion type shall be paid. In this article, due to lack of reference to Article 140 of the New TCC governing offsetting, offsetting shall not be applicable.

Implementation of Conversion of Type

Given that the conversion of type constitutes a newly establishment transaction, pursuant to Article 184/1 of the New TCC, provisions governing newly establishment shall be applicable to conversion of type, save for provisions regarding the minimum number of shareholders and the subscription of capital in kind. Pursuant to Article 184/2 of the New TCC, similarly to the division procedure, an interim balance sheet shall be prepared if a period longer than six months has passed after the date of the last balance sheets or in case of material changes in assets.

Article 185 of the New TCC regulates the conversion of type plan. The conversion of type plan shall be prepared in writing by the board of directors and shall be approved at the general assembly. The minimum content of the conversion of type plan has been regulated. Article 186 of the New TCC governs the conversion of type report. This report shall include explanations as to the necessity of conversion of type. Such report may be omitted in small scale companies if all shareholders approve it not to be prepared.

It should be noted that there are number of reasons for foreseeing such numerous reports, plans, audit reports and similar documentation. The most important reason is transparency. The second reason is the protection of shareholders and other related persons as well as ensuring public disclosure. The entire system of reporting, planning and auditing is based on these pillars.

Article 187 of the New TCC regulates the auditing of documentation regarding the conversion of type. Pursuant to this article, conversion of type plan, conversion of type report and the balance sheets taken as a basis for the conversion of type are audited by the operation auditor. The company shall be in cooperation with the operation auditor with regards to the provision of necessary documentation. The operation auditor shall assess the conditions of conversion of type, and investigate whether the balance sheets reflect the reality, whether the principle of true and fair view and the protection of shareholder rights are maintained or not. Such auditing may be omitted in small scale companies if all shareholders approve it not to be conducted.

Similarly to the division, the right of examination shall only be granted to shareholders pursuant to Article 188 of the New TCC. However, the

term of examination stipulated hereunder is shorter compared to the right of examination for divisions, as being thirty days only. The documentation in relation to conversion of type shall be provided for the examination of the shareholders thirty days prior to the general assembly meeting where the conversion of type shall be discussed; and the shareholders shall be notified of their right to examination.

Finalizing the Conversion of Type

As the last step of the conversion of type, the conversion of type plan shall be approved at the general assembly of the company, pursuant to Article 189 of the New TCC. The New TCC foresees different and mostly aggravated quorums for different company types. In case of the approval of conversion of type, the resolution pertaining to conversion of type and the articles of association of the new company shall be registered.

Article 190 of the New TCC refers to Article 158 of the New TCC governing the personal liabilities of the shareholders and to Article 178 governing division of the obligations arising from employment contracts.

Common Provisions

Article 191 and the following articles of the New TCC govern the common provisions regarding mergers, division and conversion of type. Article 191 of the New TCC governs the lawsuit regarding the shares and rights of the company. Pursuant to this article, the shareholders of the company may request the determination of a setoff compensation within two months following the publication of the relevant resolution regarding merger, division or conversion of type if they claim that the shares and rights of the company have not been duly protected or the provision for leaving the company was not just. The reason for the time limit foreseen in order to initiate this lawsuit to be kept short is the concern for the transaction security. It would not be appropriate to maintain the possibility of filing a lawsuit against such transactions.

The nature of the setoff, as not being compensation is of significance. There might not be an accrued damage or the damage might be difficult to identify. Through setoff, a balance between the previous shareholder rights and the shareholder rights at the new company shall be achieved.

The court decision shall govern all shareholders within the same situation. The initiation of such a lawsuit shall not affect the validity of the merger, division or conversion of type resolutions.

Article 192 of the New TCC governs the annulment of merger, division and conversion of type resolutions. In case of violation of articles governing such transactions, shareholders who voted against such resolutions who have recorded their objection to the meeting minutes may initiate an annulment lawsuit within two months following the publication of the relevant resolution. The court may choose not to annul the resolution but to grant a rectification period. If the defect is not rectified within the given period, the resolution shall be annulled.

With regards to the liability, pursuant to Article 193 of the New TCC, all persons and operation auditors involved in the merger, division or conversion of type transactions shall be liable of damages incurred as a result of their fault.

Conversion of Type of a Commercial Enterprise

Article 194/2 of the New TCC stipulates that in case of conversion of commercial enterprises to commercial companies, the provisions governing conversion of types shall be applicable by analogy. In case of conversion of commercial companies into commercial enterprises, all shares of the company shall be acquired by the person or persons who will operate the enterprise. The commercial enterprise shall be registered and published in the name of such persons. Persons, operating the commercial enterprise and the previous shareholders of general and limited partnerships shall continue to be liable of the obligations of the company for a period of three years. Furthermore, provisions governing the continuation of general and limited partnerships as one-man undertakings shall be reserved.

Conclusion

Provisions of the New TCC governing division and conversion of type set forth a regulation which aims at providing solutions for current necessities. The protection of a balance between different stakeholders in division reflects to the provisions governing the protection of employees

as well. However, the limited number foreseen for conversion of type, likewise to the division, may result in constraints in practice and may fail to meet certain necessities.

The New TCC introduces new procedures such as the operation auditor and the setoff payment. By foreseeing the possibility to omit the examination, audit and report procedures in small scaled companies, the division and conversion of type transactions are facilitated. Therefore, through specific provisions foreseen for small scaled companies, the restructuring transactions for such companies are facilitated, rendered less expensive and are encouraged. Furthermore, it may be argued that minority rights are protected through aggravated quorums.

As a result of all these changes, without a doubt, the division and conversion of type transactions are systemized, and their effective implementation has been achieved.

Authority to Represent and Bind Joint Stock Companies *

Att. Alper Uzun

The authority to represent and bind joint stock companies is set forth in Articles 317 to 322 of the Turkish Commercial Code (herein after referred to as the "TCC"). The board of directors represents and binds the company pursuant to Article 317 of the TCC.

Article 319 of the TCC regulates that in the articles of association it is possible to determine whether operations related to management and representation can be allocated between the members of the board of directors, and if so, the method concerning this allocation. The authority to represent the company can be granted to at least one member of the board of directors according to the same article.

Moreover, according to the TCC, it is possible to grant authority by the articles of association to the board of directors or to the general assembly to authorize delegates who are not members of the board of directors or directors who are not obliged to be shareholders to represent and to manage all or part of the operations.

Article 321 of the TCC stipulates that authorized persons can effectuate operations and legal transactions limited to the purpose and scope of the company in the name of and on behalf of the company using the company's name.

Additionally, the same article stipulates that, unless otherwise agreed, in order for a document issued in the name of the company to be valid, it should be signed by at least two persons having the authority to represent the company. On the other hand, the signature authority can be granted to one person or to more than two persons, if so stipulated in the articles of association.

In accordance with the mandatory provisions set forth in the TCC, the limitation of representation authority cannot be claimed against *bona fide* third persons. Certainly, if an opposing party knew about the limitations, these limitations become binding for the relevant third person.

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* ***Article of January 2011***

On the other hand, registered and announced limitations concerning the limitation of representation authority as to operations of only the registered office or branch offices or concerning several persons' being able to exercise it jointly, are valid. Moreover, operations effectuated by persons having the authority to represent the company contrary to the articles of association or general assembly resolutions cannot prevent recourse by *bona fide* third persons concerning this operation. Moreover, even if the representatives act contrary to the provisions of the articles of association, if this operation was approved by the company and registered, the provisions concerning the limitation of the authority to represent cannot be raised.

The authority to represent and bind is a subject that we frequently come across in practice.

In the decision of the Court of Appeal, dated 01.02.2010 and numbered 2008/9958 E. – 2010/1008 K., the representation issue was examined:

> *"The representative of the claimant requested and claimed the collection of TRY 10.558 with its default interest on the grounds that his client in Istanbul sold some textile products to C S.A in Mersin and delivered them to the defendant company and that the defendant notified that it delivered them to a person called A instead of the aforementioned company.*
>
> *The representative of the defendant requested dismissal of the claim on the grounds that the claimant did not deliver any such goods to its client.*
>
> *Although a written form is not a validity requirement for carriage contracts, considering the amount of compensation requested by the claimant in the present conflict, the existence of a carriage contract between the parties must be proved by the claimant party by means of documentary evidence. However, even if it is proved that the writings of "3 bags – Tolga - 02.07.2005 at 16.30" on the document submitted by the claimant was really written by Tolga and even if Tolga was an authorized representative of defendant company or an employee authorized to receive goods in the name of the defendant company, the document may be accepted*

as a presumption of written proof. However, no examination or evaluation was offered by the court regarding this issue."

The Draft Turkish Commercial Code[1] ("Draft") stipulates certain amendments regarding the representation of joint stock companies. The Draft enables the separation of management rights and the authority to represent. According to the relevant disposition, it is possible to transfer fully or partially management rights, which include internal relations by the articles of association or by an internal regulation. According to the Draft, the company has the right of recourse against a representative if the representative exceeds his or her authority with a transaction which is contrary to the purpose and scope of the articles of association. In other words, the company is bound by the transactions which do not fall within the field of activity of the company, but the company is entitled to recourse against the representative for the damages caused by the transaction.

1 The Draft Turkish Commercial Code has been approved by the Turkish National Grand Assembly, but has not yet been published in the Official Gazette.

"Group of Companies" (Corporate Group) under the New Turkish Commercial Code*

Att. Berna Aşık Zibel

The Company Law of Turkey is primarily governed by Turkish Commercial Code and provisions regarding group of companies, set forth under the articles 195-209, are one of the most important wide-ranging innovations brought by the new Turkish Commercial Code numbered 6102 ("NCC").

The Fundamental Concept of Group of Companies: Dominance – Control

The "dominance" principle, as per art. 195 of NCC, is the fundamental concept upon which group of companies are emanates from. For us to discuss group of companies and explore it further as per NCC, there needs to be subsistence of minimum two companies in where control of the subsidiary company (dependent company) is ceded to parent company (controlling company) hence a dominance relationship occurs.

The definition of the "dominance" has been established by the doctrine, as "the power to determine and control the investment, operation and finance policies of a company[1]". The power of control in dominance relation can be exercised either directly or indirectly.

In accordance with art. 195/4-5 corporate group is composed of parent company(ies), subsidiary company(ies) and if any, the enterprise on top.

Although NCC does not contain an explicit definition for dominance concept, it implies to exercise of control power of parent companies over subsidiaries as to what dominance relationship may entail within the terms of "control" measure. With the meaning attributed to dominance by art. 195/1 of NCC, implication of dominant power can be classified under

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* ***Article of May 2011***

1 **OKUTAN NILSSON, Gül**; Türk Ticaret Kanunu Tasarısı'na göre Şirketler Topluluğu Hukuku, 1. Baskı, İstanbul, 2009, p. 98.

three headings as dominance through shareholding, dominance through corporate bylaws, and dominance through other ways.

Dominance through shareholding is set forth under three categories as, (i) owning shares with the majority votes, (ii) having the power to elect the number of members which can make resolutions in a management organ and (iii) holding the majority votes individually or with other shareholders through corporate bylaws.

Under the legal ground of art. 195 of NCC, dominance through agreement is signified as the dominance relationship established through dominance agreements within the context of law of obligations. Unlike the shareholders agreements, among shareholders of a company dominance agreements are executed between a dominant, parent (controlling) company and the subsidiary (independent) company. As per art. 198/3, for the dominance agreements to be valid, registration and announcement with the trade registry is necessary.

NCC art. 195/1 does not limit the dominance relationship occurrence to the listed circumstances mentioned above, rather it assumes the existence of dominant position when it is apparent in any way if not with a specific provisions of company bylaws.

In addition to the above, a statutory presumption is set forth under art. 195/2. According to this, when a company owns the majority shares or the shares that procures the power to govern financial and operating policies, the existence of dominance should be assumed unless there is evidence to the contrary.

Notification Obligation, Registration and Announcement

NCC imposes an obligation of notification which is very akin to the notifications regarding the shareholdings above certain thresholds for the public limited liability companies under the Capital Markets laws. In accordance with art. 198 of NCC, in the event that an enterprise, directly or indirectly holds 5, 10, 20, 25, 33, 50, 67, 100 percent of the shares of a company, or its shares fall under such percentages, the enterprise should inform the relevant situation to such company and the relevant authorities within ten days as of the completion of relevant transactions. The

acquisition or disposal of shares at the percentages stated above should be indicated in the annual activity and audit reports under a separate title and should be announced in the website of the company.

As a requirement of transparency principle of good corporate governance an obligation to disclose information imposed on the board of director's members and other executives of the both entities; enterprise and the controlled company.

According to art. 198 of NCC, all rights including the voting rights attached to the relevant shares will be ceased unless and until the registration and announcement obligation is satisfied.

Reporting Obligations, Right of Information and Special Audit

The reporting obligations and right to obtain information regarding the inter-company relations among dominant company, subsidiary company and other group companies are regulated under art. 199 and 200 of NCC. In general, these articles set forth reporting obligations on the subsidiary company's board of directors to the controlling company which will allow the controlling company, the right to obtain information as to the operations and performance of independent companies thus rendering the parent company to evaluate the loss and profit accounts and overall financial standing of the subsidiary companies.

Furthermore, as per art. 207 of NCC, subsidiary company's shareholders have the right of claim before the court for appointment of a special auditor in certain situations according to the opinions of the auditors and special committees.

Abuse of Dominance and the Consequences thereof

Art. 202 of NCC regulates abuse of control by the dominant company in two major categories as; firstly, by means of the transactions performed by the board and secondly by means of an important decision taken by the general assembly. Such abuse inflicts the liability on the dominant company.

Apart from the above reasons, the dominant company has also a liability arising out of trust which was created within the community by virtue of positive reputation, is regulated with art. 209 of NCC.

Liability Arising out of Management

This first category of abuse of control, set forth in art. 202/ 1 of NCC, covers the transactions and actions performed under the authority of the board of directors which may result with a financial loss on the subsidiary company's account that are considered as violation of the duty of care by the board of directors.

According to this, dominant company cannot exercise its dominance power in a way which may give rise to a financial loss in the subsidiary's ledger. The loss concept herein covers causing a potential risks to the company's financial assets or future profitability as well as value depreciation on them. Therefore, not only the actual losses sustained but also potential risks that may arise thereof falls within the definition of loss. Some sample transactions and decisions which can especially lead to this consequence are listed in art. 202/1 of NCC, inducing or dictating the subsidiary company to execute and perform those transactions, without compensating the loss occurred within the preceding fiscal year or entitling a right of claim equal to such loss to the subsidiary company by stating its time and method, is accepted to be unlawful practice. Some of the samples given in the articles are directing the company to conduct legal transactions for transfer or assignment of business, assets, funds, personnel, receivables and debts; to reduce or to transfer its profit; to restrict its property right; to undertake obligations such as suretyship, guarantee; to take decisions which will negatively effect on its productivity or its activities.

In the event that the financial loss occurred is not compensated within the fiscal year or a right of claim equal to such loss is not entitled to the subsidiary company by stating its time and method, the shareholders of the subsidiary company or the creditors may claim the indemnification of the loss of the subsidiary company from the dominant company. If this lawsuit is filed by the shareholders, the judge may, either by demand or by reason, decide the shares of such shareholders to be purchased by the dominant company or may order another expedient remedy that may be reasonable and compatible with the particular circumstances rather than indemnification. The right granted to the shareholders of the subsidiary company to claim the purchase of the shares before the court is an important exit right under the group of companies' provisions.

The liability herein only arises if the duty of care is not satisfied properly. The duty of care criteria herein is the care that is pledged on the board members of an independent company who are dedicated to the company's best interests and expected to act with the due care and attention as a prudent executive under similar circumstances while conducting such transaction. If it is established and proved that such care is given, the board of members can avoid the liability.

It is determined that some articles within the provisions on legal liability regarding the joint stock companies such as joint liability, statute of limitations is applicable to the lawsuit to be filed by shareholders or creditors through analogy.

In the case the dominant enterprise's head office is located outside Turkey; this lawsuit can be filed before the commercial court of the place at which the subsidiary company's head office is located.

Liability Arising out of Important Decisions

The second category, set forth in art. 202/2 of NCC, covers the decisions which are taken by the general assembly of the subsidiary company and in structural and important nature. The primary reason for the unlawfulness herein is that these decisions are taken by use of dominance power while there is no justifiable reason for the subsidiary company which can be clearly understood.[2]

Some sample decisions which are taken by use of dominance power while there is no justifiable, reasonable ground and thus can lead to such unlawfulness are also listed under art. 202/2 of NCC. Those are the decisions such as merger, de-merger, change of type, termination, issuance of securities and decisions regarding amendment of the important articles of association.

In the cases of unlawfulness within the context of this paragraph, the right of action against the dominant company is only granted to the shareholders who votes against the decision and annotate their objections to the minutes and who object to the decisions of the board of directors

2 **OKUTAN NILSSON**, s. 225.

on the same or similar subject in a written form. Those shareholders may claim against the dominant enterprise, the indemnification of their losses or the purchase of their shares at the prices determined as per the code. The statute of limitations for such lawsuit is two years as of the date on which the general assembly decision is taken or the board resolution is announced.

Liability Arising out of Trust

As per art. 209 of NCC, in the case that the reputation of the group reaches to a level which provides trust to the consumers, the dominant company is liable as trustee which stems from this reputation.

The liability set forth herein is against the parties who enter into a commercial relation with the subsidiary company. The transaction entered into by and between the third party and the subsidiary company should be conducted as a result of the use of group reputation effectively and for developing trust especially for this transaction.

The protection of trust herein is not abstract. This is a culpable liability and it should be determined whether the dominant company reputation is used or how it is used in each case.[3] It is necessary to interpret the "use of reputation" in a very narrow way.

Special Situations

Cross-Shareholding

Within the concept of group of companies, besides the means of dominance, the phenomenon of cross-shareholding introduced to the Turkish Law for the first time for the purposes of harmonization of law with the European Union Regulations under art. 197 of NCC. According to this, companies which hold at least one forth of each other's shares are in cross-shareholding situation.

Pursuant to NCC art. 201, the companies, which entered into such cross-shareholding relation wittingly, can only use one forth of their

3 Preamble, art. 209.

shareholding rights including the voting rights attached to those shares subject to cross-shareholding and all other shareholding rights cease. Accordingly, those shares are not taken into account while calculating the meeting and decision quorums. However, this restriction is not applicable in case of subsidiary company's acquisition of parent company shares or both companies' dominance to each other.

Full Dominance

Full dominance is defined as the direct or indirect hundred percent ownership of shares and voting rights of a company (only capital companies) by another company (including partnership companies).

As per art. 203 of NCC, in the case of full dominance, the board of directors of the dominant company may instruct the subsidiary company if it is a requirement of the determined and materialized policies of the group, even if these instructions have the characteristic that can cause financial losses. The organs of the subsidiary company should obey and follow such instruction. However, even in such case, art. 204 of NCC sets forth that the instructions which are clearly beyond the subsidiary company's payment ability or which may jeopardize the existence of the subsidiary company or which may lead the subsidiary company to lose material assets cannot be given.

Given that the board members of the subsidiary company cannot be held responsible to the company or to the shareholders because of their compliance to the instructions given in this context.

As per art. 206 of the NCC, in the case of a financial loss sustained in the subsidiary company's ledger as a result of the fulfillment of instructions given by the dominant company and its executives as per art. 203, unless the loss occurred is compensated within the fiscal year or a right of claim equal to such loss is given to the subsidiary company by stating its time and method, the creditors suffering losses can file an indemnification lawsuit against the dominant company and the members of its board who are responsible for the losses. However, as per this article, the creditor who enters into credit relation by knowing that the loss is not compensated does not have a right of claim.

The Right of Purchase of the Dominant Company

As per art. 208 of NCC, in the event that the minority shareholders prevent the activity of a company, act against the good faith principle, creates a discernible disturbance or act in a heedless way, the dominant company who owns directly or indirectly the ninety percent of the shares and voting rights of the subsidiary company may purchase those shares at the prices determined as per the code. This right will be claimed before the court with an innovative action.

Conclusion

One of the most important characteristics of the group of companies is that the subsidiary company cannot act as an independent entity, and is bound by the instructions of the dominant company in accordance with the group interests. Therefore, NCC precludes the understanding of the subsidiary companies as independent entities and sets forth new elements of the liability. The purpose of these provisions is to procure a balance between the interests of the group companies, dominant company (parent company) and the company which is subject to the control in this group (subsidiary company) and to prevent and remedy the negative effects on the subsidiary company, its shareholders, executives, and in some cases on its creditors arising out of the actions and transactions realized in accordance with instructions given for the group interests.

However, while applying these provisions, it is necessary to refrain from understanding the liability principles abstractly, generalizing those principles and targeting the dominant company in every situation.

Unfair Competition Provisions under New Turkish Commercial Code *

Att. Berna Aşık Zibel

Unfair competition provisions have been set forth under articles 54-63 of the new Turkish Commercial Code numbered 6102 ("NCC").

The currently in force, Turkish Commercial Code, numbered 6762 ("CC") defines unfair competition as abuse of economic competition by way of acts, which are misleading or violating the *bona fide* principle. The definition in NCC also identifies the subjects between whom the unfair competition cases take place. As per this definition, the acts or commercial practices between competitors or providers and customers which are misleading and violating the *bona fide* principle are unfair and against the law. All cases fall under this scope shall be considered as unfair competition. Imitation of another business's products or other trademarks, misleading advertisement for its own products, falsely claim to have veritable qualifications they do not actually have or to use misleading names and signs are cases of unfair competitions. The purpose of these provisions of the law is identified as to ensure fair and uncorrupted competition for the benefit of all the participants of the market. As indicated both in the definition and the purpose, the NCC aims to widen the implementation area of the unfair competition provisions and to preclude the application only between competitors.

Cases of Unfair Competition

Article 55 of the NCC lists the cases of unfair competition under six main titles. However, the unfair competition cases set forth under this article are not *numerus clausus*. Analyzing the cases set forth under the article, we see that list of acts which constitute unfair competition expanded under the provision and as well as sample cases for the protection of competitors, especially cases which are aiming to protect the consumers and public interest are also set forth. Another new aspect is that the article also sets forth acts, which covers use of unfair general

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* ***Article of November 2011***

terms of contracts. The sample acts of unfair competition listed in the article are summarized below:

a. Acts or Practices Violating Bona Fide Principle:

1 To decry others' businesses, business products or activities in a false and misleading way,

2 To make false and misleading statements regarding one's own business, business products or activities,

3 To create a false pretense of having honors, diplomas or awards or using misleading occupation titles or symbols,

4 To create confusion with others' businesses, business products or activities,

5 To compare one's own, business products or prices with others, their business products or prices in a false, misleading, discrediting way,

6 To mislead customers concerning one's own or competitors talents by selling products under supply prices,

7 To mislead customers concerning the real price of the product by way of providing additional products or services,

8 To limit the freedom of choice of the customers with aggressive sale tactics,

9 To mislead customers by concealing the qualifications, benefits, dangers of one's products or activities,

10 Not to indicate the trade name, price or cost information clearly in the advertisements regarding installment sale contracts and similar transactions,

11 Not to indicate the trade name, net amount of credits, total costs, effective annual interests clearly in the advertisements regarding the consumer credits,

12 To use contract formulas which contain false or missing information on the subject, price, payment terms, contract term, and specific rights of the customer of installment sale or consumer credit contracts.

b. Acts or Practices Guide for the Breach or Termination of an Agreement:

   1 To conclude contracts with customers by leading them to breach agreements signed with others,

   2 To try getting advantages to one's own or third parties by proposing unfair benefits to the employees, attorneys or other associates of third parties,

   3 To lead employees, attorneys or other associates to disclose or to get confidential information on production or business,

   4 To lead persons to cancel or terminate sale contracts or consumer credit agreements signed with others for singing of contract.

c. Acts of Unauthorized Benefiting from Others' Business Products:

   1 Unauthorized benefiting from the business products such as offers, calculations or plans which are trusted to them,

   2 Unauthorized benefiting from the business products such as offers, calculations or plans of third parties,

   3 Benefiting from others' work products, which are ready marketing by way of transferring them though technical duplication methods.

d. Unlawful Disclosure of Confidential Information:

e. Violation of Business Terms:

f. Use of General Contract Terms Violating Bona Fide Principle:

   1 Use of general contract terms materially diverging from legal provisions which are applicable directly or through interpretation, or

   2 Use of general contract terms, which includes distribution of rights and obligations materially in contrary to the nature of the agreement.

Legal Actions to be Filed

Article 56 of NCC sets forth the legal actions to be filed in case of unfair competition. These legal actions are as follows:

a. Declaratory Action: This action seeks for determination of unfair competition acts. This action sets forth for the situations where a declaratory judgment is sufficient.
b. Action for Prevention of Unfair Competition: This action aims to stop an unfair competition act. It is regulated for the on-going unfair competition action.
c. Restitution Action: This action is for eliminating the factual situation upon an unfair competition act or if the unfair competition made by false and misleading statements, for correction of those statements. In this action, all negative effects of the unfair competition act in the market shall be eliminated. It is possible to correct false and misleading statement with this action. It does not have a compensatory nature; however it is possible to file this action with a compensatory action.
d. Compensatory Action: This action can be filed both for pecuniary and non-pecuniary damages. With this action, the one who suffer from the unfair competition act will claim for his damages. It requires a fault of the defendant/perpetrator and damages of the plaintiff. In this action, the plaintiff shall prove the fault of the defendant, the amount of the damages and the casual link between the defendant's fault and the damages he suffers. It is not always easy to prove and calculate the scale of the damages. For this reason, article 56/1(e) of the NCC sets forth that *"an amount equal to the benefits the defendant gains as a result of unfair competition act may be judged as the amount of compensation"* . In such case, upon the plaintiff's demand, the court can decide compensation at an amount of the defendant's profits.

As indicated above, it is possible to file a compensatory action for non-pecuniary damages against unfair competition acts. This action could be filed as per article 58 of the Turkish Code of Obligations.

In these cases, the court may rule for the payment of specific amount for damages, condemnation of the act and announcement of the decision

by way of press. The scope and the form of announcement is decided by the court, however in practice, the announcement is made through a daily newspaper.

One of the new aspects of the NCC regarding the legal actions is the clear indication that these legal actions could be filed by customers whose economic benefits are harmed or in danger. In addition, it is also set forth that the first three legal actions indicated above can be filed by the chambers, occupational associations and the non-governmental organizations aiming to provide protection of consumers' economic benefits. So that the law, clearly indicates that these rules are not only set forth for protection of competitors but also, prevent a narrow interpretation by clearly stating that, those legal actions can be filed by the customers and organizations as well as competitors.

Statute of Limitations

The above listed actions should be filed within one year from the date that the act is informed by the plaintiff and in any way within three years as of the occurrence of the act. Article 60 of the NCC also refers to the Penal Code that in case of an act, which is also a crime as per the Penal Code, then the statute of limitation set forth for this crime in the Penal Code shall be applicable for the legal actions as well.

Conclusion

As it is easily understood from the sample cases above, while listing unfair competition act by way of sampling, NCC increase the numbers of the sample cases and also sets forth rules to provide protection for consumers and public interest. This approach expands the applicable area of the unfair competition rules. However, these rules shall not be applied in a way to limit the competition in any market and shall not be interpreted more widely. For this, the principle of bone fide which is the core concept of these rules and the determination of the inconsistency with the bona fide principle is very important.

Entry into Force of the New Turkish Commercial Code

Att. Özgür Kocabaşoğlu

The date of entry into force of the Turkish Commercial Code numbered 6102 published in the Official Gazette dated February 14, 2011 and numbered 27846 (the "New TCC") is determined as July 1, 2012 under its article 1534. Nevertheless, article 1534 of the New TCC and the Act numbered 6103 on the Entry into Force and Application of the Turkish Commercial Code (the "Application Act") foresees different dates for the entry into force of certain provisions. We will concentrate on the entry into force in this this month's Newsletter article, a subject which is significant, both with regards to determining the scope of application of the New TCC as of its date of entry into force and with regards to adaptation periods foreseen for certain provisions.

Provisions in relation to Entry into Force

1. General Rule

The Application Act regulates in its article 2 that both codes shall apply to events, which take place in their respective periods during the time they are in force. Pursuant to this article, events that take place prior to the entry into force of the New TCC, their legal consequences, and the legal acts, their binding nature and legal consequences shall be governed by the Turkish Commercial Code numbered 6762 (the "Current TCC") in force at the time such event or legal act take place. The justification of the Application Act provides certain examples in order to exemplify this rule. A liquidated company, erased from the registry during the application period of the Current TCC, may not benefit from the additional liquidation procedures introduced by article 557 of the New TCC. Furthermore, whether a person becomes a shareholder of a company following a share transfer or not shall be determined pursuant to the provisions of the code in force as of the share transfer date.

Events and legal acts that take place after the entry into force of the New TCC or that take place prior to the entry into force but have not borne any legal consequences until after such date shall be subject to

the provisions of the New TCC. This rule is of a mandatory nature, as a result of which, parties to a transaction may not arbitrarily choose the application of the provisions of the Current TCC or the New TCC to such transaction.

As per article 2/a/2 of the Application Act, in case a judge decides to apply the provisions of the Current TCC in a decision rendered after the entry into force of the New TCC, such decision shall provide a justification in relation to the choice of law.

2. Vested Rights and Statutory Relations

The entry into force of the New TCC is significant with regards to vested rights. Pursuant to articles 4 and 5 of the Application Code, events, which have not yet entitled any rights as of the entry into force of the New TCC, shall be subject to the provisions of the New TCC. Therefore, dilatory rights or expected rights shall be governed by the New TCC as of the entry into force date of the code. Vested rights, arising from agreements shall be preserved.

On the contrary, statutory statutes and rights shall not be preserved. Article 3 of the Application Act states that provisions of the New TCC shall apply to statutory relations immediately as of the entry into force date, which are completely independent from vested rights. Liability regime, statutes, right to file a lawsuit, minority rights and similar statutory provisions fall within the scope of this article. The justification of this article provides for certain examples such as the partners of a limited liability company no longer being managers *per se* since the self-management rule is no longer applicable under the New TCC, and the partners no longer exercising their audit rights given that independent auditing is foreseen for limited liability companies.

3. Prescription and Statutory Periods

Duration of the prescription and statutory periods which commenced prior to the entry into force of the New TCC shall be subject to the provisions of the Current TCC. Nevertheless, other aspects in relation to the calculation of the periods, such as interruption and discontinuation, shall be governed by the provisions of the New TCC as of its entry into force.

4. References to the Provisions of the Current TCC

In case of references made in legislation or any agreement to the provisions of the Current TCC, such references shall be deemed to be made to the respective provisions of the New TCC corresponding to the provisions in the Current TCC. Nevertheless, if the New TCC does not include any corresponding provisions, the judges shall apply common law, if such common law does not exist they shall act on the basis of how they would have legislated on the relevant issue if they were the legislative body.

Special Provisions

Under this chapter, the entry into force governed by the Application Act of certain provisions, which are significantly important for equity companies shall be analyzed.

1. Turkish Accounting Standards and Audit

Pursuant to article 1534 of the New TCC, articles in relation to the Turkish Accounting Standards applicable to large scaled companies, their affiliates and subsidiaries falling within the scope of consolidation and group companies, companies traded on stock exchange or other organized markets, intermediary institutions, portfolio management companies and other undertakings falling within the scope of consolidation, banks, insurance and reinsurance companies and pension companies; and specific Turkish Accounting Standards for other companies and merchants shall enter into force on July 1, 2013.

Provisions with regards to auditing of joint stock companies shall enter into force on July 1, 2013.

2. Ultra Vires

Article 125 of the New TCC has abolished the *ultra vires* which limited the competence of the company. Therefore, transactions that do not fall within the scope of activities of a company shall bind the company. Such transactions shall not bind the company only if the third person party to the transaction knows or may know that such transaction

does not fall within the scope of activities of the company. Pursuant to article 15 of the Application Act, the provision in relation to abolishing the *ultra vires* rule shall immediately be applicable as of the entry into force date; therefore, provisions in the articles of association delimiting the competence of a company to the scope of activities will be deemed unwritten as of the entry into force of the New TCC.

3. Group Companies

Group companies are regulated for the first time by the New TCC. Pursuant to article 202 of the New TCC, the controlling company shall not exercise its control over the subsidiary company without compensating the damage to be incurred by such subsidiary. In case damage is incurred by the subsidiary as a result of exercise of control, such loss shall be compensated within two years.

Shall controlling companies be obliged to compensate losses incurred by the subsidiary deriving from exercise of control during the period in which the Current TCC is in force? Pursuant to article 18 of the Application Code, in case a loss is incurred as of July 1, 2012 as a result of exercise of control shall be compensated until July 1, 2014. Failure of such compensation shall result in the possibility to file certain lawsuits foreseen with respect to group companies as of July 1, 2014.

4. Cross-Shareholding

Article 197 of the New TCC introduces a new provision in relation to cross shareholding of companies stating that if two companies both hold 25% of the shares of the other company, the shareholding rights of the company causing such cross-shareholding (the company acquiring 25% of the shares of a company who holds 25% of its shares) shall be decreased to 1/4th. The Application Code regulates in its article 19 that the provision in relation to decreasing the voting rights shall come into effect on July 1, 2014, whereas all other provisions with regards to cross-shareholding shall immediately come into force. However, provisions governing cross-shareholding of the New TCC shall not be applicable in case of subsidiary company's acquisition of parent company shares or both companies' dominance to each other.

5. Minimum Capital and Articles of Association

Joint stock companies and limited liability companies shall comply with the provisions of the New TCC governing minimum capital within 3 years following the publication date of the code (on February 14, 2014). Otherwise, the company shall be deemed dissolved. The Ministry of Science, Industry and Technology (formerly called the Ministry of Industry and Commerce) may extend this period twice for one year each.

Joint stock companies and limited liability companies shall adapt their articles to the relevant provisions of the New TCC within 18 months following its publication date (on July 14, 2012). Failure of such adaptation shall result in the application of the provisions of the New TCC instead of the provisions of the articles. The Ministry of Science, Industry and Technology may extend this period only once for one more year.

Pursuant to articles 20 and 22 of the Application Code, quorums required for amending the articles of association shall not apply to amendments in order for such adaptation.

6. One Man Company

All companies whose number of shareholders decreased to one shall notify the information of such unique shareholder through the notary public the board of directors in joint stock companies and managers in limited liability companies within 15 days following the entry into force date of the New TCC. This person shall be registered pursuant to the articles 338 and 574 of the New TCC. Unless these procedures are followed, liabilities specified in the relevant articles shall arise.

7. Prohibition of Indebtedness of a Shareholder to the Company

Pursuant to the New TCC, shareholders may not be indebted to their company unless they are merchants and the relevant arms-length transaction complies with the conditions of similar transactions. In case a shareholder is indebted to a company during the period of the Current TCC, which is in violation with this provision, such debts must be paid in cash to the company as of July 1, 2015. Failure to comply with the relevant

article 24 of the Application Act, creditors of a company may directly request such shareholders to pay their receivables from the company.

8. Board of Directors and Managers

Board members and managers currently on duty shall continue their post until the term for which they were elected. Real person representatives of legal entities shall resign from being a member of the board of directors until October 1, 2012. In such a case, either the legal entity shall nominate itself as a member for the empty slot or another person shall be elected as a board member.

9. Quorums

Pursuant to article 26 of the Application Act, unless the references made to the Current TCC in the articles regarding quorums are not amended within 6 months following the entry into force of the New TCC, they shall be deemed made to the relevant articles of the New TCC. General assemblies convened in order to adapt such quorums within this 6 month period shall be subject to the quorums determined under the Current TCC. If the quorums are regulated under the articles without referring to the Current TCC, quorums higher than those set forth under the New TCC shall continue to be applicable. However, the mandatory article 421 of the New TCC shall be applicable if the specified quorums are lower than those set forth under the New TCC.

10. Voting Rights and Privileges of Shares and Transfer Restrictions

Articles 434 and 435 of the New TCC with regards to granting voting rights proportional to the nominal value of shares, the voting right becoming existent upon the payment of the subscribed capital and the maximum limit for voting rights shall come into effect on July 14, 2012.

Article 479/3 of the New TCC stipulating where the privilege of voting rights may not be exercised shall come into effect on February 14, 2012. Unless the relevant provision in the articles of association is adapted to the New TCC within this period, such provisions shall be deemed invalid and all voting right privileges shall cease to exist.

Privileges granted at least 1 year prior to the promulgation of the New TCC with respect to the representation of a shareholder in the board of directors shall be preserved as a vested right, even if such privilege exceeds the limits set forth under the New TCC.

Article 493 of the New TCC regulates that registered shares may freely be transferred. The articles of association may require the shares to be transferred solely if the company approves such transfer or grant the board of directors the right to refrain from registering the share transfer into the share ledger of the company upon valid important clause. In order to refrain from registering a transfer to the share ledgers, the scope of activities or financial independence of the company must require such refraining. Pursuant to article 28 of the Application Act, relevant provisions of the articles of association shall be amended in order to comply with the New TCC until July 1, 2013. Otherwise, provisions in violation of article 409 of the New TCC shall immediately become invalid.

Conclusion

The New TCC has amended numerous provisions and introduced numerous systems. Therefore, in order for merchants and companies to adapt to such provisions, certain interim adaptation periods have been foreseen and the question on which events and legal acts fall within the scope of the Current TCC and the New TCC has been clarified. As a general rule accepted, all events and legal acts shall be subject to the code in effect as of the date such event or act take place.

The Turkish Accounting Standards and independent auditing shall come into force one year after the entry into force of the New TCC. Any damage resulting from exercise of control of a dominant company prior to July 1, 2012 shall be compensated until July 1, 2014, as regulated under the group company related provisions. Articles of the companies shall be adapted to the new code until July 14, 20012 and the companies shall comply with the minimum capital requirements latest until February 14, 2014. Furthermore, share transfer restrictions foreseen in the articles must be adapted to the New TCC until July 1, 2013. Noncompliance with such provisions may result in grave consequences from the invalidity of the relevant provision in the articles of the association, liability of a company to the dissolution of the company.

CAPITAL MARKETS LAW

Serial: I, No: 40 "The Communiqué on Principals Regarding Registration and Sales of Shares with the Capital Markets Board" Has Been Amended *

Att. Nilay Çelebi

The Capital Markets Board of Turkey ("Board") has amended the "The Communiqué on Principals Regarding Registration and Sales of Shares with the Board, Serial: I, No: 40" ("Communiqué"). The communiqué Serial: I, No: 43 amending the Communiqué has been announced in the Official Gazette numbered 27960, on June 10, 2011.

It should be noted that under the Capital Markets Law of Turkey shares to be offered to the public are required to register with the Board and if the number of shareholders exceed 250, the shares of a corporation deemed to be offered to the public or floating on the stock market automatically. The Communiqué regulates the principles regarding the registration of shares which the companies deemed as public because of the number of shareholders exceeding 250, registration of shares with the Board that the companies already held or issued through capital increase, as well as the public offering and sale of such shares. The Communiqué also sets forth the principles regarding sale to the qualified investment managers or financial advisers, and private placement of shares of the public companies and the companies which will be listed on the secondary market- emerging companies market ("ECM"), pre-placement, offering circular in short all principles regarding the public offering.

As mentioned above the Communiqué has been amended by the communiqué Serial: I, No: 43 and you may find below the new principles set out after such amendment.

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* ***Article of June 2011***

The title of Article 8 which regulates the shares registered with Capital Markets Board but not being traded in the Istanbul Stock Exchange ("ISE") has been replaced with a new title as "Proceedings to be carried out to allow eligibility for shares to be listed in the Stock Exchange as trading shares".

Article 8/1 has also been amended and with the new stipulation; the companies traded on the secondary market -ECM have been included in the article therefore the shares listed in the ECM can be converted to enable them eligible for admission to be listed on the Main Market -ISE whereas the shares not listed in the ECM are not qualified to be traded on the ISE.

Following the amendment, the private placement in the relevant market of the ISE can be completed / sold within 3 business days after the announcement of such sales. However it must be emphasized the sales executed by the Turkish Privatization Administration will be excluded from this rule of period.

Moreover, 3 business day period rule also shall not apply for wholesales carried out on the relevant market of the ISE. Therefore, such shares shall be qualified as trading shares in the ISE at the time the wholesale carried out.

Article 13 which regulates the principles regarding the private placement has been amended.

The companies of which shares are being traded in the ISE and the companies of which shares shall be traded in the ECM are required to carry out the private placement through capital contribution in the relevant market of the ISE. Shares subject to these proceedings can be issued as non- trading or trading in the ISE without being subject to article 8, on the discretion of such companies. In order to sell the shares purchased by the investors which are non-trading shares in the ISE through private placement by capital contribution or through the sale of existing shares in the relevant market of the ISE, shall be converted to enable them to be traded in the ISE in accordance with article 8 as explained above.

Article 17 which regulates the announcement and registration of the offering circular has been also amended. With the new provision the

offering circular shall be announced on the web site of the companies and on the Public Disclosure Platform for the companies traded in the ISE within 5 business days following the application to the Board. In other words, the 2 business day period has been extended to 5 business day period. Furthermore, the word ‘draft’ used before the ‘offering circular’ has been carved out from article.

The Communiqué on Principals Regarding Registration of Debt Securities with the Capital Markets Board and Sales of Debt Securities *

Att. Nilay Çelebi

Preamble

Registration with the Capital Markets Board ("CMB") and sales of debt securities such as bonds and commercial paper are regulated under the Communiqué on Principals Regarding Registration of the Debt Securities with the CMB and Sale of Debt Securities Serial: II, No: 22 ("Communiqué"). Please find a brief summary of the regulations and general information with respect to the registration of debt securities with the CMB and the sale of these debt securities in accordance with the Communiqué.

Regulations in the Communiqué

Debt securities means bonds; bonds convertible into shares; convertible bonds; commercial paper; gold, silver, platinum bonds; bank bonds, and other capital markets instruments to be approved by the CMB as debt securities which are either registered or bearer instruments, or promissory notes that are issued and sold by the issuers as the debtor for registration with the CMB in accordance with the Communiqué.

Registration with the CMB

The issuers must register debt securities with the CMB in accordance with the regulations in the Communiqué. The issuer must adopt a general assembly decision for the issuance of debt securities. The authority to resolve the issuance of debt securities can be assigned to the board of directors through a provision in the articles of association. General provisions with respect to the amount, type, maturity and interest of the debt securities to be issued must be stated in the decision of general assembly.

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* ***Article of February 2011***

The application for the registration with the CMB must be made within one (1) year starting from the date of such corporate decision. Please note that debt securities registered with the CMB can be sold in a different maturity structure and with a different interest ratio within this one (1) year period.

If the sale of debt securities which are already registered is cancelled, this matter must promptly be notified to the CMB. The debt securities which are discarded for sale or which are not sold, can be offered for sale by obtaining a CMB opinion within one (1) year from the registration.

Application to CMB for registration

An application for the registration of debt securities with the CMB must be made to the CMB with relevant documents. An application concerning whether the debt securities to be offered to the public can be traded in the relevant market of the stock exchange is required to be made to the Istanbul Stock Exchange.

A prospectus and a circular must be prepared if the debt securities will be sold by way of a public offering.

The CMB reviews and finalizes the applications made with respect to the registration of the debt securities. A registration document must be prepared with respect to the registered debt securities, and the issuance and sale operations cannot be made without such a registration document.

The CMB may, at its discretion, request from the issuer that the liabilities arising from the debt securities be guaranteed by a local bank or a third party.

Types of Debt Securities

Debt securities may be sold by way of a public offering or by a private placement without a public offering. The type of the debt securities to be registered, bearer instruments, or promissory notes must be stated in the prospectus and the circular.

Sale of Debt Securities by a Private Placement or to Qualified Investors [1]

An offer made only to or directed at qualified investors or a private placement does not require the production of a prospectus and a circular. In case of a private placement, the number of persons who would buy the debt securities cannot exceed 100 during and after the registration stage with the CMB.

Debt securities can be sold to or directed at qualified investors by a private placement or by soliciting them for the sale. In such case, there is no limit in the number of persons. In other words, the limit which is supposed not to exceed 100 is not required herein.

Issuance Limits

Pursuant to the Council of Ministers decision announced in the Official Gazette on 03.09.2009 and numbered 27338 [2], the total amount of the debt securities to be issued by publicly-held companies must not exceed ten (10) times the total amount of equity shown on its annual financial statement for the last accounting period after the statement's preparation in accordance with the capital markets legislation, an audit by an independent auditor, and approval by the general assembly.

The total amount of the debt securities to be issued by non-public companies must not exceed six (6) times the total amount of equity shown on its annual financial statement for the last accounting period after the statement's preparation in accordance with the capital markets legislation, an audit by an independent auditor, and approval by the general assembly.

The total amount of the debt securities to be offered to public cannot exceed half of the general issuance limit calculated above.

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1 Qualified investors are local and foreign investment trusts, pension funds, investment funds, brokerage houses, banks, insurance companies, portfolio management companies, mortgage finance institutions, pension and aid unions, trusts, funds that were established in accordance with temporary article 20 of the Social Insurance Law numbered 506, organizations, investors that are determined as similar to the aforementioned institutions by the CMB and real/legal persons holding Turkish lira or/and foreign exchange or capital markets instruments in the amount of at least TRY 1 million as of the date of issuance.

2 Decision dated 03.08.2009 and numbered 2009/15344.

Requirement to Use Intermediary Institution

The sale of the debt securities offered to the public and the payment of principal, interest and similar obligations must be conducted through intermediary institutions (banks and brokerage houses).

Prospectus, Registration and Announcement

A prospectus must include any information that may impact the decisions of the investors, including but not limited to the financial status of the issuer, risks, and information required by law and by the CMB. Following the registration of the debt securities to be sold by way of a public offering with CMB, the approved prospectus must be registered with the trade registry where the issuer is registered and published in the Turkish Trade Registry Gazette ("TTRG") within fifteen (15) days from the date of the registration document. Such registration in the trade registry and announcement of the prospectus must also be announced on the issuer's web site and Public Disclosure Platform.

Sale Period and Commencement Date of Maturity

The sale period of the debt securities to be offered to the public cannot be less than two (2) business days and not more than six (6) business days. However, the bank bonds to be offered to the public can be sold during the maturity period of the bonds. The CMB may, at its discretion, extend the sale period for such debt securities with reasonable grounds.

The day on which the debt securities are deposited to the investors account will be deemed the commencement date of the maturity.

Notification to the CMB of Results of the Sale

The intermediary institution or the issuer will, within six (6) business days from the last date of the sale period of the debt securities, submit to the CMB (i) the TTRG where the prospectus was announced; copies of any gazette where the circular was announced (if any); written publishing instruments where the commercials were announced; the details of the buyers of such debt securities; the amount of their purchase; documents showing their capital, administrative and commercial relationship with

the issuer (if any); and the document to be obtained from the Central Registry Agency with respect to the results of the sales.

Bonds (Maturity, Payout, Early Payout etc)

The maturity can be determined freely provided that it is not less than one (1) year. The principal of the bonds can be paid all at once on the maturity date or in installments during the duration period. Bonds with whole or partial early payouts can be issued based on the needs and demands of the issuers and buyers. The payout plan for the bonds to be offered to the public must be shown in the circular and on the web site of the issuer. The principals of aforementioned matter will be identified in the prospectus.

Convertible Bonds *

Att. Nilay Çelebi

General

Convertible bonds are fixed income instruments that the companies may use for raising funds. They grant the investor the right to convert the bonds into a fixed number of shares of the issuer under some conditions at the option of investor. They are partially capital market instruments with a fixed yield and partially a stock. The Convertible bonds are hybrid security with debt (bond) - and equity-like (shares of stock) features and are in between bonds and share certificates and provide the investor with a upside potential of the underlying equity. When the share price goes up then the value of the bond goes up, if the share price goes down then the value of the bond goes down.

The Convertibles provide the investor with the benefit of debt instrument that pay fixed coupons and can be redeemed at maturity at a pre-determined price. Convertible bonds are addressed to the investors that wish to benefit from the high yield of the stock market but do not wish to face with the risk of the volatility movements in such markets. They provide to the investors, the guarantee of payment of the principal amount of the bonds on the maturity and the equity yield of the stock when converted. The convertible bond issuer has the flexibility in pricing and may raise fund with lower costs due to the fact that the right of conversion with a fixed yield is given to the investors.

The interest rate of the convertible bonds is lower because the holder can convert such bonds into shares of common stock in the issuing company. The investors agree in these lower interest rates because of the potential raise in the value of the shares of the issuing company.

Convertible bonds are one of the prominent financial products that are traded in the security markets in Turkey and regulated under the Communiqué on Principals Regarding Registration of the Debt Securities with the CMB and Sale of Debt Securities Serial: II, No: 22 (“Communiqué”).

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* ***Article of April 2011***

World

The convertible bond market in the USA and Japan are of primary global importance.

- USA: convertible bonds are highly important in the US market. Domestic investors have tended to be most active within US convertibles.
- Japan: In Japan, the convertible bond market is more regulated than other financial markets.
- Europe: Convertible bonds have lately become increasingly important. Compared to other global markets, European convertible bonds tend to be of high quality and have high standards.
- Canada: Most of the Canadian convertible bond market consists of unsecured sub-investment grade bonds with high yields and has the issuer's risk of default.

Communiqué Serial II, No 22

The maturity date of the convertible bonds is fixed with the minimum of one year term. The conversion period of convertible bonds begins after one year from the date of issue and usually ends on the maturity.

In the cases of a public offering of convertible bonds, the shares of the issuer must be listed and traded in the stock exchange or any other organized security market.

The exercise of conversion right is subject to the extend of the right and benefits of the issuing company and current shareholders of the issuer.

The convertible bonds, in whole or in part, may be converted into shares in accordance with the redemption plan, demand of the issuer or demand of the bond holder.

From the issuer’s aspect the convertible bonds can also be “callable” (may have the call option). This means that the issuing company may give the bondholders the right to convert such bonds into shares.

This option is actually deemed as an investor risk.

The shares that represent the increased capital that will be converted into convertible bonds shall be allocated to the bond holders before any

and all preemptive rights including the ones granted to the shareholders of the issuer under article 394 of the Turkish Commercial Law.

The interests accrued until the date of conversion shall be paid in cash, to the bond holders. The expenses arising from such conversion shall be borne on the issuer.

The right of conversion shall be cancelled, if the bond holder does not use its right to convert the bond despite of the fulfillment of the issuer's obligations. In such case the bond holders are entitled to have the principal amount of the bond and the accrued interest.

Share Repurchase (Buybacks) or Pledge of Shares *

Att. Nilay Çelebi

Preamble

The new Turkish Commercial Code ("New TCC"), which will enter into force in 01.07.2012 accepts new provision regarding share repurchase -also known as share buybacks-, which means repurchasing of or pledging of its own shares by the companies. The Capital Markets Board of Turkey ("Board") amended its resolution 'Principles Regarding the repurchasing or Accepting as a Pledge of its Own Shares by the Companies Traded in Istanbul Stock Exchange' on 11.08.2011 numbered 26/767 ("Resolution").

Article 379 of the New TCC

According to article 379 of the New TCC, a company cannot repurchase its own shares as well as accept as a pledge exceeding the 10% of the outstanding and issued capital. This provision also applies to the third persons who purchase its own shares as well as accept as a pledge on behalf of the companies.

Within the limit of the foregoing, the board of directors shall be authorized by the general assembly for the execution of the transaction to repurchase or pledge of the shares. This authorization can be valid for five (5) years. The number of the shares and percentage of share capital to be purchased or pledged shall be stated, the total nominal value and the maximum and minimum threshold of the amount to be paid in consideration for the issued shares shall be determined in the authorization.

The equity component, after deducting the amount to be paid in consideration for the shares shall at least equal to the amount paid-in/ issued share capital and reserved funds not to be distributed in accordance with the law and articles of association of companies.

It should be also noted that, only the fully paid-in shares could be purchased.

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* ***Article of August 2011***

The foregoing shall also be applicable for the parent company in case of a purchase of shares of its subsidiary.

Article 379 of the New TCC also states that the Board shall make necessary regulations for the companies traded in Istanbul Stock Exchange ("ISE") with respect to the transparency and payment rules. The Board has made necessary amendments in the Resolution accordingly.

Amendments to the Resolution

Not only the intermediary institutions and investment companies but all companies traded in the ISE are included to the Resolution for the principles regarding the repurchasing or pledging of own shares by the company.

The total amount of the shares to be repurchased (including the shares purchased before) cannot exceed the 10% of the outstanding and issued capital. The threshold of 20% has been reduced to 10% in accordance with the New TCC.

The equity component after deducting the amount to be paid to the shares shall at least equal to the amount paid-in/issued share capital and reserved funds not to be distributed in accordance with the law and articles of association of companies.

For the repurchasing transaction in the ISE, the rule of only one intermediary institution to be used for each transaction day by the companies has been eliminated.

The shares owned by the company and the parent company shares purchased from the fixed assets under consolidation cannot be taken into consideration for the calculation of the general meeting quorum. The repurchased shares, do not grant any shareholding rights. The voting rights, attached to the shares of parent company, which are purchased by the companies under consolidation, cannot be used.

For the transactions of the repurchasing of the shares; the rule of information disclosure that had to be made prior to 2 days of the transaction, in relation to the intermediary institution and its commissions, has been abolished by the Resolution.

General Provisions of the Resolution

Summary of the provisions of the Resolution which have not been amended:

(i) Repurchase transactions can be effectuated by the board of directors within the framework of repurchase programme which is approved by the general assembly and within the limits of the authority granted for 18 months at the most.

(ii) The shares to be repurchased shall be able to be traded in the ISE and the transactions shall be effectuated in the ISE.

(iii) Repurchase order cannot be issued within last 15 minutes of opening session and first session; and first and last 15 minutes of the second session. The price order may not be higher than the present price proposals or the last sale price. The total amount of shares which will be repurchased in one day by the companies may not be more than 25% of the average of the daily transaction amount within last three months. These rules shall be applied additionally to the rules stipulated by the ISE.

(iv) Holding period for repurchased shares and unpaid shares acquired within the framework of abovementioned shares may be freely determined by the company provided however such period cannot exceed 3 years. The shares which are not disposed within this period shall be redeemed by way of capital decrease.

(v) The repurchased shares shall be added to the balance sheet as a figure for deduction within the framework of Turkish Accounting Standards no. 32 and necessary explanations shall be added in the footnotes of the financial statement. The revenues and losses resulting from disposal of the abovementioned shares cannot be related to the income statement.

(vi) Regarding repurchase transactions;

- Board of directors of the companies shall draft a repurchase programme including the purpose of the repurchase, the resources and total amount of the fund reserved for repurchase, maximum number of share to be repurchased, maximum and minimum prices, authorised persons for repurchases (including

legal entities and their representatives), authorisation period to be requested from the general assembly and date of the general assembly in which the authorisation shall be voted for and a summary of the last completed repurchase programme and this programme shall be published on the web site of the company 15 days prior to the general assembly and therefore shall be announced to the public.

- In case the programme is amended in the general assembly, the amended programme shall be announced to the public on the next business day and shall be simultaneously published on the web site of the company.
- The company shall disclose each transaction in scope of repurchase programme including nominal value of the shares subject to transaction, transaction price, its ratio in the share capital, the privileges of these shares and the date of the transaction within the business day following the date of the transaction.
- The company shall disclose including each of the redeemed and owned shares, maximum and average repurchase price, the cost of repurchase, total amount of the repurchased shares, its ratio in the share capital, the privileges of these shares and the date of the transaction within 5 business days following the last day of the programme. This information shall be submitted to the shareholders in the first general assembly.
- In case the programme has been amended by the general assembly, such amendments as well as the reasons for the amendments shall be announced to the public.

(vii) The repurchase shares may be disposed only by the way of sale in the stock exchange and following the end of the repurchase programme. The unpaid shares acquired with the repurchased shares shall be subject to the same principles.

(viii) Each sale transaction effectuated in case of disposal of the repurchased shares including nominal price of the shares, transaction price, its ratio in the share capital, privileges and

transaction date shall be announced to the public by the company within the business day following the transaction date.

(ix) Within the periods following repurchase transaction until the relevant shares are disposed, the unit share value for investment partnerships shall be calculated on the basis of share amount which is in circulation to be stated as the difference between total shares and the repurchased shares.

(x) In case of existence of insider information the announcement of which was postponed by the company or existence of material situations, no transaction of sale and purchase may be effectuated.

(xi) The board of directors may make a repurchase without the authorisation of the general assembly with reasonable reasons. For such repurchases;

- The repurchase transaction, its reasons and purposes, share amount and maximum price to be paid shall be announced to the public by the company 2 business days prior to beginning of repurchase transaction.
- The effectuated repurchases shall be announced to the public including nominal price of the repurchased, transaction price, its ratio in the share capital, its privileges and transaction date within the business day following the transaction date.
- The board of directors shall inform the general assembly regarding the reason and purpose of the repurchases, transaction dates of the repurchased shares, nominal price, transaction price, cost of the repurchase, its ratio in the share capital and the privileges of the shares.

(xii) Any repurchase transaction may not be effectuated until the end of capital increase transactions as of the date of general assembly resolution regarding capital increase for the companies having principal capital system and as of board of directors resolution in companies having registered capital system.

Conclusion

In accordance with the above the companies traded in the ISE should follow the Resolution in order to purchase or accept shares as a pledge. With the amendments to the Resolution the harmony with the provisions under the New TCC has been provided and therefore all the confusion has been eliminated.

Corporate Governance *

Att. Nilay Çelebi

Preamble

Capital Markets Board of Turkey ("CMB") prepared recommendatory rules and principles for privately and government-owned companies and especially public companies with the Corporate Governance Rules ("Rules") published in 2003. Such Regulatory Framework has been prepared and published for the companies that become prominent in the developing, changing Turkish markets and that catches foreign investors' attention in order to help them to establish and realize a management insight that contributes them to continue their business within international standards and to establish an equal, transparent, accountable and responsible management insight and the free entrance into international finance sources

Such Principles and Rules have been inserted to the capital markets regulation and adopted by many companies from 2003 to date. However, even though such Rules have been adopted by many companies, and significantly seen in the financial sector, the application of them has not been a compulsory requirement and has remained as a voluntary directive practice.

In order to reinforce wider application of the Rules as a legal requirement, "*to force the abidance with the corporate governance rules of the public companies traded in the stock exchange and which are in the group, determined by itself by taking into account of the ratios, number and quality of the investors, index, trading density within a specific time to, in whole or in part, in order to determine and announce the corporate governance rules and help the remedy of the investment market"* has been embedded to the authorities of CMB with the Statutory Decree No: 654 announced at the Additional Official Gazette dated 11.10.2011, No: 28081 ("Statutory Decree No: 654").

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* ***Article of October 2011***

In line with this, the Rules have been converted into a communiqué by the CMB by taking into account of domestic and global financial developments with the authority granted to it by this Statutory Decree No: 654.

"The Communiqué Regarding the Designation and Application of Corporate Governance Rules, Serial: IV, No: 54' ("Communiqué") has been published announced at the Additional Official Gazette dated 11.10.2011.

Rules Introduced By the Communiqué

The Rules for the public companies who shall take them as bases for the determination of their structure and process in relation to their corporate governance have been inserted into the Communiqué.

According to article 5 of the Communiqué, the public companies traded in Istanbul Stock Exchange ("ISE") 30 Index excluding the banks therein, shall be obliged to apply the articles 3.2.1, 3.2.4, 3.4.3, 3.4.14, 3.6 and 4.7 under Section I (Shareholders) of the Rules and articles 3.3.1, 3.3.4, 3.3.5 and 3.3.6 under Section IV (Board of Directors). In our opinion, such mandatory articles shall be reflected to the articles of association of relevant companies.

The companies traded in the ISE and which do not fall within the scope of preceding paragraph may determine their structure and process related with their corporate governance in accordance with the Rules and by considering their business and type.

According to article 6 of the Communiqué, the companies traded in the ISE shall disclose in the annual report whether the Rules have been complied or not; the reasons of noncompliance on the basis of "comply or explain" principle (if any); the conflict of interest which may arise in case of noncomply and whether the company is planning to change its corporate governance principles in accordance with the Rules.

The form and minimum requirements with respect to the disclosure in the annual report shall be determined by the CMB.

According to the enforceability provision of the Communiqué, the Communiqué shall be enforceable on the date of the announcement and

shall apply to the actions that started before and continues at the time of announcement.

The Mandatory Provisions of the Rules in Section I (Shareholders)

The companies traded in the ISE 30 Index (excluding banks) are obliged to apply the following principles:

Pursuant of article 3.2.1., the announcement of the general assembly meeting shall be made at least 3 weeks prior to the meeting and shall be made to reach all shareholders and with every possible communication equipment including electronic communication; the procedures of the relevant legislation shall be reserved. In our opinion, announcement may be made via web site and by sending electronic mail to the e-mail accounts of the shareholders. In addition, short message service may be used for the announcement to the shareholders.

According to article 3.2.4., following matters shall also be noted to in the general assembly meeting announcement to be made on the web site of the company besides the ones to be announced and disclosed in accordance with the relevant legislation.

i. Total amount of share capital and voting rights of the shareholders to reflect the ownership structure of the company at the time of disclosure and privileged share group and their shares and vote rights, if any,

ii. Changes in the management and business organization of the company or its subsidiaries or affiliates realized in the past financial period or planned to be realized within the next financial period, the reasons of such changes, annual reports for the last 3 financial period of the parties involved in the organizational changes and annual financial statements and pro forma financial statements.

iii. The reasons of dismissal, changes or appointment of board members if such has been stated in the general assembly meeting minute and the names of the nominees and their resumes shall be noted. In order to apply this, the names and resumes of the nominee; his/her previous duties within last 10 years and reasons

of leave; whether they have the independency criteria and other matters that may reflect to the company in case of appointment shall be informed to the company by the shareholders nominating the new members within 1 week from the date of announcement of the general assembly meeting, for the announcement to public.

Pursuant to article 3.4.3., if the general assembly have consented to the transactions between the company and the board member(s) and consented to the member(s) to work in the business competing with the company then such board member(s) shall inform the general assembly of their actions regarding the said transactions between the company and him and competing business.

According to 3.4.14., the remuneration principles of the board members and directors shall be in writing and the shareholders shall be given the opportunity to give their opinion. Remuneration principles to be prepared shall be announced in the web site of the company and shall be submitted to the shareholders by a separate article to be noted in the general assembly meeting minute.

According to article 3.6., the articles of association of the company shall be amended to include the participation of the shareholders in to the following decisions: any spin off or share exchange resulting a change in the capital or management structure of the company, sale/purchase, rental or donation of tangible /intangible assets in the significant amount, granting security such as suretyship and establishment of mortgage. The parties and related persons involved in such transactions cannot participate to the decisions in the general assembly. The board of directors' decision with respect to such matters shall not be realized without the consent of the general assembly until a provision with respect to the matters described in the preceding paragraph has been inserted to the articles of association.

In accordance with article 4.7., if mutual subsidiary relationship between companies also brings control relationship then the companies with a mutual subsidiary relationship shall refrain to vote in the general assembly of the other and shall disclose such to the public provided however it is mandatory to do so such as to meet the quorum.

The Mandatory Provisions of the Rules in Section IV (Board of Directors)

The companies traded in the ISE 30 Index (excluding banks) are obliged to apply the following principles:

Pursuant to article 3.3.1., at least 1/3 of the members of board of directors shall be independent board members. The fractions shall be completed to the following number.

Pursuant to article 3.3.4., a member who served for 6 years in the board of directors cannot be appointed as the independent board member.

According to article 3.3.5., a member with the following criteria shall be deemed as an 'independent board member':

i. No employment, capital or commercial relationship, direct or indirect, shall have been formed between the company, a person related with the company or with the legal entities having a management or capital interest by the shareholders holding 5% (direct or indirect) in the company and the member or any spouse or persons with blood or affinity relationship (to the third degree) for the last 5 years,

ii. Shall not have been appointed to the board for the representation of a share group,

iii. Shall not have been employed in the firms conducting the business and organization of the company, in whole or in part, especially audit firms or consulting firms, and shall not have served as a director in such companies for the last 5 years,

iv. Shall not have been employed in the independent audit firm or shall not have been involved in the auditing service for the last 5 years.

v. Shall not have been employed in the companies who supply significant services or products to the company and shall not have served as a director in such companies for the last 5 years,

vi. Any spouse or persons with blood or affinity relationship (to the third degree) shall not be a director to the company, and shall not be a shareholder of the company holding more than 5% of

the company's share capital or shall not hold the control of the management whatsoever,

vii. Shall not have been paid other than the remuneration and attendance fee; if the member is also a shareholder because of its being a board member, such member shall not hold more than 1 % of the issued share capital and such shares shall not be privileged (this provision is not in harmony with the new Turkish Commercial Code because the board members are no longer obliged to be a shareholder under the new Turkish Commercial Code).

Member(s) who do(es) not meet the above criteria may be temporarily appointed as the independent board member for a term of maximum 1 year provided there is a valid ground of such appointment and with the consent of CMB.

According to article 3.3.6., independent board members shall submit a representation letter to the board of directors regarding his independency at the time of his nomination in accordance with the legislation, articles of association and criteria described above.

The board of directors shall evaluate the independency of the member nominated for the 'independent board member' seat in the board and shall report to the general assembly of its evaluation. The general assembly decision with respect to the appointment of 'independent board member' to the board shall be announced in the web site of the company alongside with the reasons and the report of the board of directors.

In case the nominee for the 'independent board member' in the board nevermore has been appointed against the negative votes of the shareholders representing the 1/20 of the share capital of the company then CMB shall evaluate and decide whether such nominee meets the independency criteria.

Conclusion

The provisions under the Communiqué are fundamental and necessary; and an important step for the companies to abide with the corporate governance rules. However it should be noted that, the mandatory provisions for the companies traded in the ISE 30 Index (excluding banks) may lead to problems in the practice.

COMPETITION LAW

New Guidelines for Mergers and Acquisitions *

Att. Zeynep Tuncer

The Guidelines for Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions (the "Guidelines") which was published in the official website of the Competition Authority on June 27, 2011, was prepared with a view to facilitate the enforcement of the Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (the "Communiqué No. 2010/4").

Legal Grounds in the Preparation of the Guidelines

Article 7 entitled "Mergers and Acquisitions" of the Act No. 4054 on the Protection of Competition (the "Competition Act") prohibits operations of merger or acquisition which would create a dominant position or strengthen a dominant position and result in significant lessening of competition in a market for certain goods or services within the whole or a part of the country. The same article states that the Competition Board (the "Board") shall declare, *via* communiqués the types of mergers and acquisitions which have to be notified to the Board and for which permission has to be obtained in order for them to become legally valid.

The Board, in compliance with this article, first issued the Communiqué No. 1997/1 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board (the "Communiqué No. 1997/1"), which foresaw the market share threshold system; and subsequently, the Communiqué No. 2010/4 which provides the turnover threshold system to replace the market share threshold system.

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* ***Article of August 2011***

The Communiqué No. 2010/4, in addition to the turnover threshold system, also defines the notion of "ancillary restraints" which was not found in the Communiqué No. 1997/1. The New Communiqué clarifies also the notion of "undertakings concerned", a very important notion for mergers. The notion of "ancillary restraints" is regulated under Paragraph 5 of Article 13 of the Communiqué No. 2010/4. As per this Article, authorization granted by the Board concerning the relevant merger and acquisition shall also cover those restraints which are directly related and necessary for the implementation of the operation. The notion of "undertaking concerned" is defined under Article 4 of Communiqué No. 2010/4. In accordance with this Article, "undertaking concerned" means the merging persons, direct participants or economic units in merger operations and acquiring or acquired persons or economic units in acquisition operations.

The above-stated notions, which are newly included in the Communiqué No. 2010/4, should be explained through a guideline as in European Union Law in order for the Communiqué No. 2010/4 to be correctly understood and implemented. Within this framework, the Guidelines was prepared and the above-stated notions were defined and exemplified. The said notions are as follows:

Undertaking Concerned

The Guidelines defined the undertaking concerned separately for mergers and acquisitions. Indeed, in operations of acquisition, the undertakings concerned are individually each of the merging persons or economic units.

As for operations of merger, the undertakings concerned are all the undertakings in both the acquiring and the acquired party. Furthermore, the definition of an undertaking concerned might be different depending on the structure of control in acquisitions. The said situations are as follows:

Acquisition of Full Control. In such case, the undertakings concerned are the acquiring undertaking and the undertaking to be acquired. If the undertakings are within a group, the undertakings concerned are the acquiring firm and the undertaking to be acquired.

Partial Acquisition. In such case, the undertakings concerned are the acquiring undertaking and the part to be acquired in the transferring firm.

Transition from Joint Control to Full Control. In the change of joint control to full control the undertakings concerned are the acquiring shareholder and the joint venture company.

Acquisition of Joint Control. In such case, the undertakings concerned may differ depending on the situations listed below:

- In case a new joint venture is established, each of the shareholders who will have a say in the joint control is regarded as an undertaking concerned. The newly established joint venture is not regarded as an undertaking concerned, as it does not yet have any turnover;
- In case one or more undertakings acquire another company so as to establish joint control, each of the undertakings to have joint control after the operation and the acquired company are regarded as undertakings concerned;
- Acquisition of a company in order to share its assets within a short period of time is regarded as an acquisition of full control individually over the related parts of the acquired company by each of the acquirers; and not as the acquisition of joint control over the company as a whole. In such case, the undertakings concerned are the acquiring companies and different parts that are acquired in each operation.

Change of the Shareholders Controlling the Joint Venture. In such case, the undertakings concerned are all the previous and new shareholders who will have joint control due to the structural change in the control and the joint venture itself.

Acquisition of Control by the Joint Venture. In such case, the undertakings concerned may differ depending on different hypothesis:

- Where a joint venture acquires the control of another company, the joint venture *per se* and each of the parent and each of the parent companies may be considered as an undertaking concerned;
- In case the acquisition is realized by a full-function joint venture, the undertakings concerned are the joint venture and the company acquired;

- In case the joint venture is used as an instrument in an acquisition by the parent companies, the parent companies are considered as the undertakings concerned, and not the joint venture.

Break-up of Joint Venture. In such case, the undertakings concerned may differ depending mainly to two situations:

- When the parent companies break up the joint venture, split the assets and gain full control over the assets they obtain, the undertakings concerned for each operation are the acquiring parent and the asset acquired;
- When two or more companies exchange economic units, each transfer of control is independently considered as an acquisition of full control. In this situation, the undertakings concerned are the acquiring companies and the economic units acquired.

Acquisition of Control by Real Persons. In such case, the undertakings concerned are the acquiring real person and the economic unit acquired.

Turnover

Pursuant to Article 7 entitled "Mergers or Acquisitions Subject to Authorization" of the Communiqué 2010/4, in case (i) total turnovers of the parties to the relevant operation in Turkey exceed TRY one hundred million, and turnovers of at least two of the parties of the operation in Turkey individually exceed TRY thirty million; or (ii) global turnover of one of the parties of the operation exceeds TRY five hundred million, and at least one of the remaining parties of the operation has a turnover in Turkey exceeding TRY five million, the authorization of the Board is required.

In calculating whether the turnovers stated above are exceeded or not, the turnovers of the undertaking concerned as well as all relevant persons and economic units - that are connected to it - are taken into account. According to Article 8 of the Communiqué No. 2010/4 entitled "Calculation of turnover threshold", the total turnover of the below stated undertakings, persons and economic units are considered:

a) *Undertaking concerned;*

b) *Persons or economic units in which the undertaking concerned;*

- ***1-*** *holds more than half of the capital or commercial assets, or*
- ***2-*** *holds the power to exercise more than half of the voting rights, or*
- ***3-*** *holds the power to appoint more than half of the members of the board of supervisors, board of directors or the bodies authorized to represent the undertaking, or*
- ***4-*** *holds the power to manage operations;*

c) *Persons or economic units which hold the rights and powers listed in (b) over the undertaking concerned;*

d) *Persons or economic units over which those listed in (c) hold the rights and powers listed in (b);*

e) *Persons or economic units over which those listed in (a) – (d) jointly hold the rights and powers listed in (b).*

In addition, in an operation of acquisition, only the turnover of the transferred part is taken into account with respect to the transferring party.

Concerning joint ventures, double counting should be avoided when the turnovers of the parties of the operation are calculated. Therefore, when the joint venture is regarded as an undertaking concerned beside the parent company, the turnover of the parent company will be calculated without the turnover of the joint venture to be acquired and the turnover of the joint venture will be calculated without the turnover of the parent company.

Article 7 of the Communiqué No. 2010/4 also foresees a possibility of exemption from the notification obligation. As per the said provision, even though the thresholds listed above are exceeded, the authorization of the Board shall not be required for operations without any affected market.

The definition of the "affected market" is given under Article 5 of the Notification Form Concerning Mergers and Acquisitions. In accordance with this article, the relevant product markets that might be affected by the transaction to be notified and where,

- Two or more of the parties are commercially active in the same product market (horizontal relationship);
- At least one of the parties is commercially active in the downstream or upstream market of any product market in which another party operates in (vertical relationship)

constitute the affected markets. Therefore, "affected market" shall be understood as "relevant product market".

Therefore, the fact that there is a relevant product market where the activities of the parties overlap horizontally or vertically is sufficient to fulfill the condition of the existence of an affected market provided that at least one party operates in Turkey. Moreover, if none of the parties operates in Turkey with respect to the relevant product markets where the activities of the parties overlap horizontally and vertically, it can be said that there is not an affected market.

All markets that are likely to be affected by the transaction shall be taken into consideration in the assessment of an affected market. Accordingly, all activities of undertakings will be taken into consideration. In acquisitions, however, assessment shall be made considering only the area of activity of the company to be acquired.

Ancillary Restraints

Ancillary restraints are those which are directly related to the concentration and which are necessary for the implementation of the transaction and in order to fully achieve the efficiencies expected from the concentration.

For the restraints to be directly related, it is not sufficient for them to be implemented within the same scope or time period with the concentration operation; in addition, they have to be closely related economically to the main operation and they have to be envisaged for a smooth transition to the new structure to be formed following the concentration.

The criterion of necessity, on the other hand, may be fulfilled in case the relevant restraint is obligatory for the implementation of the concentration or in case of a significant increase in uncertainty and costs of the main transaction in the absence of the restraint. In determining

whether a restraint is necessary, the duration and scope of the restraint shall be taken into consideration, in addition to its nature. On the other hand, the restraint with the least restriction on competition must be preferred among alternative restraints that serve to attain the same goal.

Conclusion

The Guidelines, in order to well-determine whether or not an operation of merger or acquisition is submitted to the authorization of the Board, gives detailed information on the calculation of the turnover threshold and the definition of the concerned undertakings.

Nevertheless, if there is not any operation of merger or acquisition falling within the scope of the Communiqué No. 2010/4, there is no need to determine if the turnover thresholds are exceeded. As a matter of fact, in such case, the operation is not submitted to authorization.

Therefore, it would have been more appropriate if first the notions of "mergers and acquisitions" and "permanent change in control" stated in Article 5 of the Communiqué No. 2010/4 were analyzed by the Guidelines.

Guidelines Project on Commitments and Conditional Authorization – I *

Att. Zeynep Tuncer

The Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board [1] ("the Communiqué") which entered into force on January 1st, 2011, brought a legal basis to the commitment and conditional authorization institution. Therefore, the possibility of eliminating the competition concerns which may arise out of operations of mergers and acquisitions *via* the submission of commitments was granted to the parties, and the possibility of giving a conditional authorization was granted to the Competition Board ("the Board").

Following the publication of the Communiqué, the Guidelines Project on Remedies Acceptable by the Competition Authority in Merger / Acquisition Operations [2] ("the Guidelines Project") was prepared and submitted for public comment on February 7, 2011, by being published on the official website of the Competition Authority.

The Guidelines Project, like the Commission notice on remedies acceptable under Council Regulation [3] ("the Notice") still in force in the European Union, regulates the general principles of commitments, their characteristics, and the conditions and methods for their execution without eliminating case-by-case examination.

The characteristics of commitments and the different kinds of commitments, as well as their submission to the Board and the sanctions in case of breach are examined within our Newsletter this month.

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* ***Article of February 2011***

1 Official Gazette, 07.10.2010, 27722.

2 To reach the Guidelines Project, see: http://www.rekabet.gov.tr/dosyalar/images/file/BD-Cozumlerine_Iliskin_Kilavuz_Taslagi.pdf.

3 Official Journal of the European Union, 2008/C – 267/01.

Characteristics of Commitments

The Guidelines Project foresees an important number of characteristics for commitments:

Commitments are to be submitted voluntarily by the parties of the operation. The Guidelines Project regulates that only the parties of the operation may submit commitments and that the Board may not unilaterally impose a condition or modify the commitments submitted by the parties. Within this scope, if the Board is convinced that an operation of concentration [4] may cause competition concerns in the relevant market, the Board will ask the parties to submit commitments which may eliminate these competition concerns in lieu of directly rejecting the operation. Nevertheless, the Board may not oblige the parties to submit commitments, and the parties are totally free to submit or not submit commitments.

This regulation, which is in conformity with the Notice, is felicitous in two points. First of all, it will be easier to reach the objective set by the Guidelines Project. Indeed, by reason of the parties' deep knowledge of the operation, only the parties may submit the best commitments in conformity with the operation of concentration. Furthermore, the Board's behaviour was standardized. Henceforth, the Board will not be able to give conditional decisions even though no commitments were submitted by the parties [5].

Commitments must be proportional. The principle of proportionality represents another reason for the parties' need to submit commitments. Indeed, since the Board is not as well as informed as the parties on the operation, it may impose a disproportionate commitment on them. The Guidelines Project, like the Notice, only refers to the principle of proportionality but does not define this principle. Thus, the definition of the principle of proportionality will also be included within the Guidelines Project.

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4 The term "concentration" is used in the Guidelines Project instead of "mergers and acquisitions" and it is stated that the term "concentration" includes mergers and acquisitions and full-functional joint-ventures.

5 There are a lot of conditional decisions given by the Board although no commitments were submitted by the parties: Metro / Migros Decision, 19.03.1998, 57/424-52; POAŞ Decision, 18.02.1999, 99-8/66-23, Glaxo Wellcome / SmithKline Decision, 03.08.2000; 00-29/308-175; Toros Tarım / Sümer Holding Decision, 21.02.2008; 08-16/189-62 and Doğan Gazetecilik / Vatan Gazetesi Decision, 10.03.2008; 08-23/237-75.

The principle of proportionality will be understood as not going beyond what is necessary for the realization of the objectives of the Guidelines Project. In other words, this principle means that, if there is more than one commitment, the least troublesome will be chosen, and equilibrium will be established between the concerns and the objectives.

Commitments will be efficient and implementable. Commitments [6] submitted by the parties must be efficient. In other words, the commitments will *"eliminate sustainably and without any doubt"* the competition concerns which may arise from the operation of concentration. In addition, the commitments must be implementable within the shortest time. Otherwise, in case of any modification in the conditions of the market or in case of the realization of an extraordinary or unexpected situation, commitments will lose their objective and will be insufficient to eliminate the competition concerns.

In order for the Board to determine whether the commitments fulfill these conditions, the parties must also submit to the Board, in addition to the commitments, detailed information on the content and implementation of the commitments and indicate how they will eliminate competition concerns. Nonetheless, the Board will not base its analysis only by using the information submitted by the parties. As a matter of fact, the Board will also analyze elements such as the place of the parties and their competitors in the market, the implementation of the commitments by the parties efficiently and in due time within the conditions of the market.

Accordingly, the obligation to submit commitments which may eliminate competition concerns arising from an operation is the responsibility of the parties, and the analysis of these commitments is the responsibility of the Board.

There is no doubt that this regulation parallel to the Notice is very felicitous. However, in order to easily reach the objectives set by the Guidelines Project, the following amendments must be realized:

- As with the Notice, the "review clause" must also be included within the Guidelines Project. This clause gives the parties

6 The term "remedy proposition" is used within the Guidelines Project in lieu of "commitment". However, the term "commitment" will be used in our article.

the possibility of modifying their commitments in case of an extraordinary situation such as a modification in the conditions of the market. In this way, the Board, in lieu of directly rejecting the operation, will re-analyze the operation of concentration within the revised commitments.

- In order for the Board to realize a correct analysis and to give a decision profitable for the economy, it is necessary to mention that documents and information provided by the parties must be accurate. As a matter of fact, the information and documents to be provided by the parties represent the keystone of the commitment and conditional authorization institution.
- A determined period of time must be provided for the implementation of the commitments. Otherwise, the commitment may be implemented in a longer time which will cause a result contrary to the expected result.

Kinds of Commitments

The different kinds of commitments will be analyzed in detail in our next Newsletter. However, general basic information may be given this month on the different kinds of commitments.

The Guidelines Project, in the same way as the Notice, states that commitments may be structural and behavioural. Structural commitments mean commitments which cause a modification in the structure of the undertaking such as a divestiture. This kind of commitment necessitates short-term control because it may be implemented instantly. As for behavioural commitments, they are related to the future market behaviour of the parties. These commitments, contrary to structural commitments, necessitate long-term control because they may be implemented within a long period a time.

Although the Guidelines Project states that both structural and behavioural commitments may be submitted, it stipulates that behavioural commitments may be implemented *de facto* in the absence of a structural commitment. As per the Guidelines Project, behavioural commitments may be accepted if they may reach an efficiency level comparable to a

structural commitment and if there is no structural commitment having an equivalent effect.

However, behavioural commitments may be as efficient as structural commitments. For that reason, the condition of the absence of a structural commitment will not be provided for the implementation of behavioural commitments. The principle of proportionality also necessitates that a behavioural commitment be implemented if it is sufficient to reach the expected objective. Indeed, behavioural commitments are nearly always the least troublesome and most economical in comparison with structural commitments. For that reason, it is necessary to modify the Guidelines Project and to disconnect the acceptance of behavioural commitments from the absence of structural commitments.

Submission of Commitments to the Board

The Guidelines Project states that commitments may be submitted with the notification or after the notification during the preliminary or the final examination phase. In the notification form annexed to the Communiqué, a special part was separate for commitments. [7]

Submission of Commitments in the Preliminary Examination Phase. The Guidelines Project states that commitments may be accepted in the preliminary examination phase on condition that competition concerns may be readily identifiable and easily remedied and that the commitments submitted in order to eliminate these competition concerns are clear and evident. In this sense, substantive and implementing commitments entered into by the parties must be submitted in full and in detail and signed by a duly authorised person. Furthermore, the parties must, by reason of the time limitation, submit the commitments on time to the Board.

Even if this regulation is parallel to the Notice, the Guidelines Project does not state that both the competition concerns arising out of the operation of concentration and the commitments submitted in order to eliminate these competition concerns must be so clear that a deep examination is not needed. However, the non-necessity of a deep

7 Commitments may be submitted under point 11.5 of the notification form. See fn. 1.

examination represents the basis of the preliminary examination. For that reason, this point must also be clearly included in the Guidelines Project.

Submission of Commitments in the Final Examination Phase. The Guidelines Project states that commitments may be submitted with the written pleas related to the final examination report at the latest and that, by reason of the duration of the final examination, the commitments may also be developed in the second written pleas on condition that they have been submitted at the beginning of the final examination.

Commitments submitted in this phase are, in principle, pending until the final decision of the Board. Nevertheless, if the professional person empowered to analyze the commitments reach the conclusion that the commitments are sufficient to eliminate the competition concerns before the ending of the final examination report, he or she may submit the commitments to the Board's agenda along with the report prepared by the same authorized person.

As can be observed, the final decision related to commitments may be given before the final report in this phase. Therefore, the parties must also in this phase give full and fair information in order for the commitments to be examined without any loss of time. However, this point is not indicated in the Guidelines Project. Moreover, the Guidelines Project does not indicate how the commitments are to be submitted to the Board. Nonetheless, the commitments must be submitted to the Board in this phase after being signed by a duly authorized person. For that reason, all points mentioned above must either be listed in this part too or be referred to in the preliminary examination phase.

Distinction between Condition and Obligation and Sanctions for their Breach

The Guidelines Project, as with the Notice, states that condition and obligation have different meanings but, in lieu of giving their definitions, it explains these notions *via* examples. As a matter of fact, the Guidelines Project sets forth that the divestiture of a business unit is a condition and that the appointment of a divestiture trustee is an obligation. Nevertheless, it is necessary that these notions be defined within the Guidelines Project. Within this scope, it must be included within the Guidelines Project that a condition

means the requirements determined in relation with the commitments submitted by the parties and that obligation means the implementing steps / methods which are necessary to achieve the requirements.

The Guidelines Project also determines the sanctions for breach of the conditions and the obligations. Within this context, the Guidelines Project states that for breach of a condition, the conditional authorization decision will be automatically nullified and that, in case of breach of an obligation, an administrative fine will be levied on the parties.

The regulation of this point within the Guidelines Project is very felicitous. Indeed, the confusion existing in the Notice for the case of breach of the obligation was not reported in the Guidelines Project, and a determined sanction was foreseen for that situation.

Conclusion

The Guidelines Project constitutes a kind of road map for the operations of concentration. For that reason, in order for the objective of the Guidelines Project to be reached, it would be better if the material amendments mentioned above are also taken into consideration.

Additionally, with a view for the Guidelines Project to be useful and comprehensible, some amendments related to the form of the Guidelines Project should be made. The proposed amendments at first glance are as follows:

- If the amendments noted above are made, these amendments should be regulated under different articles and a title should be given to each article;
- Unnecessary repetitions should be removed and the plan of the Guidelines Project should be re-determined;
- Additionally, similar to the Notice, reference should be made to prior Board decisions. In this way, the comprehension of the Board's practice will be easier;
- The notion of "proposition of remedy" should be replaced by the notion of "commitment". As a matter of fact, the Guidelines Project regulates that the parties behave in a certain way and not that they bring forward a proposal.

Guidelines Projects on Commitments and Conditional Authorization - II *

Att. Zeynep Tuncer

In our last monthly Newsletter, the first part of the Guidelines Project on Remedies Acceptable by the Competition Authority in Merger / Acquisition Operations [1] ("the Guidelines Project") which was submitted for public comment by being published in the official website of the Competition Authority on February 7, 2011, was examined. Within this scope, the characteristics of commitments and the different types of commitments, as well as their submission to the Competition Board ("Board") and the sanctions in case of breach were examined. [2]

In our Newsletter this month, the different types of commitments stated in the Guidelines Project, their implementation, and their monitoring are analyzed in detail.

Types of Commitments

The Guidelines Project, like the Commission Notice on remedies acceptable under Council Regulation [3] ("the Notice"), mentions three types of commitments. However, parties are not limited by these commitments. As a matter of fact, they may also submit other commitments which may completely eliminate the competition concerns in the relevant market arising out of a concentration operation. [4]

The kinds of commitments set forth in the Guidelines Project are as follows:

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* ***Article of March 2011***

1 To reach the Guidelines Project, see: http://www.rekabet.gov.tr/dosyalar/images/file/BD-Cozumlerine_Iliskin_Kilavuz_Taslagi.pdf.

2 To reach our last month Newsletter, see: http://www.erdem-erdem.av.tr/newsletter.php?katid=12110&id=14673&main_kat=14668&yil=.

3 Official Journal of the European Union, 2008/C – 267/01.

4 The term "concentration" is used in the Guidelines Project instead of "mergers and acquisitions" and it is stated that the term "concentration" includes mergers and acquisitions and full-functional joint-ventures.

Divestiture of a Business. The Guidelines Project states that

- the whole divestiture of a viable stand-alone business in a market or
- the grouping of various assets and/or the taking out of certain of these assets ("carve-out") from an existing viable stand-alone business in a market

represent the most effective commitment to eliminate the competition concerns arising out of a concentration operation. For that reason, this kind of commitment is regulated in detail within the Guidelines Project.

The commitment related to the divestiture of a business may be acceptable if the business to be divested can continue to exist by competing effectively with the merged entity on a lasting basis and if it can be independent of the parties of the concentration, which means without needing any cooperation from them. For that reason, the financial resources of a potential purchaser are not taken into consideration in examining the commitment.

The following elements will be included in the commitment in order that the Board may appreciate the commitment:

Scope of the Business to be Divested. The Guidelines Project states that the content of the business to be divested must be well-defined and detailed. Within this scope, the content of the divestiture will include, with regards to the characteristics of each transaction, the tangible assets related to production, distribution or sale and also to the personnel or the current agreements on goods or services in order to ensure competitiveness of the business. In addition to these assets, intangible assets may also be included. The most important point concerning intangible assets is that the divesting parties must waive all their rights concerning these assets and that these assets will, once transferred to a suitable purchaser, immediately acquire a competitive and viable aspect. Indeed, as also mentioned above, what is important is that the business is a business capable of existing alone, which means a business which competes effectively with the merging parties and operates independently of them.

Non-reacquisition Condition. The Guidelines Project sets forth that in order to maintain the structural effect of the commitment the

commitments have to foresee that the parties of the operation of the concentration cannot subsequently acquire influence over the whole or parts of the divested business.

Suitable Purchaser. A suitable purchaser is the key aspect of divestiture since the divested business may only maintain effective competition through a suitable purchaser. Therefore, the suitable purchaser should be independent of the parties and should have the financial resources, information, and eagerness necessary in order to compete with the parties and other competitors within the market sector of the business which is taken over. In addition, the suitable purchaser should not cause any delay on the realization of commitments and cause new competition issues. These conditions set forth concerning the suitable purchaser are, without any doubt, general conditions, and other conditions that the suitable purchaser should fulfill may be required with regards to the characteristics of each transaction.

Removal of Links with Competitors. The Guidelines Project sets forth that the commitment to remove any links between the Parties or competitors may be used in cases where these links contribute to competition concerns.

The Guidelines Project, as stated in the Notice, regulates the removal of links between the Parties by means of exemplification. Within this framework, it enumerates the transfer of minority shares, the elimination of cross-directing structures, or the termination of agreements concluded between competitors.

Other Non-Divestiture Remedies. The Guidelines Project, similarly to the Notice, sets forth three commitments other than the divestiture commitment:

Behavioral Commitments. The Guidelines Project sets forth that the behavioral commitments may only be accepted if it is impossible to implement a structural commitment. However, as is analyzed in our Newsletter of February 2011, behavioral commitments can be as effective as structural commitments. Therefore, the implementation of behavioral commitments cannot be conditioned on the non-availability of the structural commitment.

Granting of Access. The Guidelines Project sets forth that if the competition problems that occur as a result of a concentration operation cause foreclosure, the Parties may grant access to the key information such as infrastructure, networks, know-how, patents, or other intellectual property rights which will have the same effect as a structural commitment. Additionally, the Guidelines Project underlines that the commitments should include monitoring methods and devices, so that these commitments can be easily monitored.

Termination of Long-term Exclusive Agreements. Concentrations can cause existing contractual arrangements to be inimical to effective competition. This is in particularly true for exclusive long-term agreements. Therefore, the Guidelines Project regulates that the parties to the transaction may present the termination of these agreements as a commitment to the Board.[5] The Guidelines Project also obliges the parties to represent that the foreclosure effect is de facto removed.

Conditions that the Implementation of Commitments are Subject to. The Guidelines Project brings detailed dispositions on the implementation of commitment pertaining to the divestiture of business, and general dispositions on the implementation of the other commitments.

The relevant dispositions are as follows:

The Implementation of a Commitment Regarding Divestiture of a Business. The implementation of this commitment contains several phases.

Determination of a Suitable Purchaser. This phase contains two phases: the phase of the conclusion of a final agreement and the phase of finalization of divestiture.

The first phase, which is the conclusion of the final agreement, also contains two sub-phases. The first sub-phase entitled as "the period while the parties look for a suitable purchaser" should be completed within six months. If the parties do not succeed, the second sub-phase begins. In this period, a divestiture trustee obtains the mandate to divest the business

5 Even the Guidelines Project stipulates annulment of exclusive agreements for a long time, the title of the section is "Remedies Including Modification of Exclusive Agreements for Long Time".

at no minimum price and should find a suitable purchaser within three months.

Approval of the Purchaser and Purchase Agreement. The Board approves the purchaser and the purchase agreement.

The Board, while assessing the purchaser, considers the reasoned proposal of parties and the divestiture trustee and also the business plan of the proposed purchaser. Within this framework, the Board takes into consideration whether the purchaser has the necessary financial resources and can obtain all necessary approvals from the relevant regulatory authorities.

The Board assesses also the purchase agreement and all other agreements concluded between parties and purchaser. In this framework, the Board assesses whether these agreements comply with the commitments or not.

The Obligations of the Parties in the Interim Period. Certain obligations regarding an "interim period" are set forth by the Guidelines Project for the parties. This interim period is the phase between the conditional clearance decision and the divestiture of a business to a suitable purchaser. The obligations are as follows:

- ***Steps for a Carve-Out.*** Divestiture of a business needs to be carved-out from the remaining businesses because the divested business has to stand alone in the market. In this framework, it is necessary to allocate the assets and the personnel to the divested business. The Guidelines Project also regulates that a divestiture trustee has to monitor this period and inform the Board in writing.
- ***Interim Preservation of the Divested Business.*** It is the parties' responsibility in the interim period to preserve the competitive potential of the business to be divested. In this regard, the parties are obliged to preserve all values regarding the divested business by acting wisely and by avoiding any kind of act which may result in a negative effect on the divested business.
- ***Specific Obligations of the Parties.*** The Guidelines Project stipulates that the commitments should foresee that potential purchasers can carry out a due diligence exercise. It also stipulates

that the parties and the divestiture trustee must inform the Board periodically and that the divestiture trustee must submit a final report to the Competition Board at the time of closing.

Divestiture Trustee. The divestiture trustee oversees the procedure on behalf of the Board. Because of this, the trustee is appointed by the parties and submitted for the approval of the Board within the shortest possible time following the conditional clearance decision of the Board. This time cannot be more than thirty days unless there is just cause for lateness. The parties will bear all the costs of the divestiture trustee regarding the processes of the divestiture.

The divestiture trustee will oversee the independent preservation of the business in the interim period and its transfer to a suitable purchaser under the conditions stated in the commitment.

The role of the divestiture trustee is terminated upon the submission of the document approving the closing of the divestiture procedure after the commitment is completely and correctly implemented.

Implementation of Commitments other than Divestiture. The Guidelines Project stipulates that the dispositions regarding divestiture commitment are to be taken into consideration for other commitments, if applicable.

The Guidelines Project, being in conformity with the Communication, stipulates also the grounds for arbitration, which will ensure implementation of the commitments by the market actors themselves and allow for the settlement of disputes between the parties and third persons in the phases of appointment of a trustee to oversee implementation of the behavioral commitments and implementation of the commitments.

Conclusion

The Guidelines Project enables *ex post* protection of competition instead of *ex ante* protection. Due to this fact, it must include all possible cases in practice and regulate in details the control of the commitments.

Legislative Steps in the Fast Moving Consumer Goods Retail Sector *

Att. Zeynep Tuncer

The Fast Moving Consumer Goods (hereinafter referred to as "FMCG") Retail Sector has progressed a lot in recent years through minor acquisitions. These minor acquisitions, also known as *creeping acquisitions,* are slow-going / unobtrusive acquisitions. As a matter of fact, in that sector, a conglomerate, in lieu of acquiring another conglomerate, acquires several small scale enterprises, such as grocers. Nevertheless, these acquisitions are not subject to the authorization of the Competition Board (hereinafter to be referred to as the "Board" or the "CB") because they do not exceed the thresholds set forth in the Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board [1] (hereinafter referred to as the "Communiqué No. 2010/4"). Therefore, conglomerates increased their market share by expanding chain stores almost in every major cities and get more and more empowered whereas small scale enterprises weakened in the meantime as a result of strong competition and left to face disappearance from the market.

The Board, in order to analyze this substantial structural transformation in the retail sector and propose appropriate solutions to the matter, conducted last year a comprehensive sector examination study and threw a sharp relief into the retail industry by the "Retailing of Turkish Fast Moving Consumer Goods Sector Examination Preliminary Report" [2] (hereinafter referred to as the "Preliminary Report") on April 18, 2011 by publishing it in CB's official website.

In addition to the above-stated intended aspiration, there is also no doubt that the process of harmonization of the laws akin to the European Union Laws, particularly the recent novelties and amendments made in

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* ***Article of May 2011***

1 To consult the Communiqué, see the following link: http://www.rekabet.gov.tr/dosyalar/teblig/teblig83.pdf.

2 To consult the Preliminary Report, see the following link: http://www.rekabet.gov.tr/dosyalar/images/file/Perakende_Sektor_Arastirmasi_genis_Ozet_.pdf.

the legislation of European countries were important targets to accomplish within this sector examination study and subsequently concluded report conducted by the Board.

Findings and proposals stated in the Preliminary Report are explained below.

Turkish FMCG Retail Market

The FMCG Retail Market enlarged significantly and made progress since the 1990s in Turkey. However this progress is not as evident as that in the European countries. As a matter of fact, the shares of organized retail in the retailing FMCG has increased only TRY 20 billion: total trade which was TRY 72 billion in 2004 has exceeded TRY 93 billion in 2009. While the weight of organized retail was around 30% in 2004, it surpassed 43% in 2009. These numbers are relatively inferior to the figures s of the European countries.

As for the concentration rates in the retailing of FMCG, they are still very low when compared to those in European countries. The total market shares of the four largest retailers (hereinafter referred to as "CR4") are 91% in Sweden, 68% in UK, 67% in Germany, 65% in France, 50% in Hungary and 20% in Italy, while it is 14% in Turkey. CR4 concentration rate within organized retail in Turkey is 32%.

Buyer Power in the FMCG Sector

One of the paramount competition concerns posed in the present FMCG sector is the difference of economic power level in between the supplier and the distributor such as purchasing, bargaining and managerial power. Indeed, with the development of this sector, the distributors or distribution groups have vigorous economic powers and impose their prosperous commercial conditions to producers, suppliers or providers.

The main obstacles encountered on the buyer power in the Turkish FMCG Retail market are as follows:

- Fees are demanded from the suppliers under various names such as listing fees, shelf fees, demo area fees (such as gondolas, pallets, shelf position placement in accordance with traffic within the

store), insert fees, electricity fees, participation in the promotion fees related to consumers, staff requests, free / taste good, store opening fees, anniversary fees and end-of-year discount.

- Payment terms are not fully respected within payments to be made by retailers to suppliers. In food production contracts, the payment term which is usually determined as 60-90 days is extended up to 130 days in practice. However, this problem is expected to be remedied with the relevant provisions introduced by the New Turkish Code of Commerce [3] (hereinafter referred to as the "New TCC"). As a matter of fact, the New TCC introduces a limitation of sixty days for payment periods in commercial relationships in order to protect creditors' interests.
- Total share of private label products in total shares are remarkably low in comparison with the shares in European countries. Indeed, this share is equal to 54% in Switzerland, 47% in England, 40% in Spain, 31% in Austria and 13% in Italy while this share is just equal to 8% in Turkey. However, this particular share segment is growing fast in Turkey and as a consequence of this incremental expansion; suppliers sometimes face problems in finding shelf space for their branded products.

Proposals for FMCG Sector

The Board, in the Preliminary Report, made some proposals with a view to overcome the above-mentioned (possible) problems by being inspired by the different regulations existing in different countries.

Reduction of Turnover Thresholds for Concentration. The Board, on the basis of the above-stated minor acquisitions, proposed to reduce the turnover thresholds concerning the notification of concentration specifically for the retailing of FMCG and refers as example to France where turnover thresholds were reduced by 50% specifically for the retailing of FMCG.

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3 The New TCC was published in the Official Gazette dated 14.02.2011 and numbered 27846. To consult the New TCC, see the following link: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2011/02/20110214.htm&main=http://www.resmigazete.gov.tr/eskiler/2011/02/20110214.htm.

In reality, it is aimed, through this proposal, to prevent the distortion of competition because minor acquisitions do not reach the thresholds stated in the Communiqué No. 2010/4 which entered into force of January 1st, 2011

Code of Conduct and Ombudsman System. The Board, by taking as example England, foresaw that an ethical set of conduct is established with the participation of the parties of the dispute at hand, and this is later implemented under the supervision of an independent referee (ombudsman). However, the Board did not delineate and clarify as to the content and binding power of this code of conduct.

Forwarding of the Supplier – Retailer Agreements to the Competition Authority on an Annual Basis. The Board, by referring to the Norwegian Competition Authority, proposed, that supplier – retailer agreements are regularly notified to the Competition Authority. Nevertheless, this will only apply in terms of retailers over a certain size regarding product groups for which purchasing power is determined to be high. The expected benefit is to make the agreement transparent and eliminate unfair practices.

Analysis on the Preliminary Report

Even though the Turkish FMCG retail market has been a market in rapid progression during the last years, it is not well developed as the same level as European Countries. As a matter of fact, in comparison with Europe, the figures are noticeably lower. As also mentioned above, the CR4 are 91% in Sweden, 68% in UK, 67% in Germany, 65% in France, 50% in Hungary and 20% in Italy, while it is 14% in Turkey.

For that reason, even if it is not an urgent requisite that the FMCG sector is immediately regulated, it is important that legislative works are being commenced to be made as of now and the future developments in that sector are taken into consideration.

Within this scope, different legislation shall be analysed. Nevertheless, the legislation analysis shall not be limited to only France, England and Norway. Indeed, some problems still exist even in these broad and modern legislations. Moreover, the structure of the FMCG Retail Market is different in these countries and in Turkey. This is why the identical

legislation should not be wholly integrated in Turkish Law and notable, distinctive features and own characteristics of Turkish Retail Market must be borne in mind.

Conclusion

The FMCG Retail Sector has progressed a lot in the past years. Thus, competition shall gradually start to be regulated in that sector. Within this framework, it is correct to examine this sector first then asking the opinion of undertakings.

Nevertheless, the legislation to be prepared for this sector shall be in full conformity with the Turkish FMCG retail market and shall create equilibrium between the interests of both suppliers and retailers. Furthermore, the application of this legislation to all undertakings shall be ensured irrespective of their sizes.

The Protocol pertaining to the Cooperation between the Information and Communication Technologies Authority and Competition Authority *

Att. Naciye Yılmaz

The Protocol pertaining to the Cooperation between the Information and Communication Technologies Authority and Competition Authority ("Protocol") has been signed on November 2, 2011 between the Competition Authority and the Information and Communication Technologies Authority ("ICTA"), and entered into force by the date of signature.

Purpose of the Protocol

Pursuant to the Article 3, which is entitled as *"purpose"*, the purpose of this Protocol is, "*to determine the procedures and the principles on duties and competences of the parties regarding the establishment, development and protection of the competition in electronic communications sector, to prevent the enterprises to make applications before these two authorities by the purpose of obtaining favorable decisions, to have a joint approach regarding interpretation of relevant legislation and notions and to assure taking decisions with regards to cooperation and information sharing*".

This Protocol aims to provide cooperation between ICTA and Competition Authority and to prevent the forum shopping method that the undertakings use from time to time for the purpose of obtaining favorable decisions. Even though ICTA has duties and competences arising from the Law on Electronic Communications and similarly Competition Authority has duties and competences arising from the Act on the Protection of Competition, these two authorities have not reached an agreement regarding how to share these duties and competences.

Hence, this Protocol intends to establish an efficient cooperation by *"information sharing"*, *"opinion receiving"* and *"coordination and cooperation"*.

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* ***Article of November 2011***

The Scope of the Protocol

Pursuant to the Article 4 of the Protocol, scope of this Protocol is establishment of the principles and procedures regarding decisions and legal operations on determination, regulation and control pertaining to establishment, development and protection of the competition on the electronic communication market within the boundaries of the Republic of Turkey.

The Principles of Cooperation

Cooperation between the authorities is provided by exchange of information and receiving opinion according to provisions of the Protocol.

Sharing Information

Pursuant to the Article 6 of the Protocol, authority conducting an examination, a research or an investigation may request to access to the necessary documents, held or stored by the other authority. Information and documents requested shall be transmitted to other authority with regards to the principle of high level of confidentiality of the investigation and the principle of the protection of business trade secret. These documents and information shall be evaluated in this scope by receiving authority and shall be used limited with their purpose.

Receiving opinion

Exchange of opinions between authorities is already regulated by the Electronic Communications Act. This Protocol also regulates that authorities may receive opinions regarding examinations to be conducted and decisions to be taken related to the electronic communications market. Moreover, regulatory operations shall also be considered by these authorities.

For the market analysis to be carried out by ICTA, ICTA shall receive the opinion of the Competition Authority. Additionally, ICTA may request opinion of the Competition Authority for infringement of competition occurred on the electronic communications market.

While exchanging opinions between the authorities, maintaining confidentiality is essential. Moreover, sharing authority shall not disclose its opinion until the final decision of the receiving authority.

Exchange of opinions related to mergers and acquisitions shall be immediately made.

Principles regarding Cooperation

Pursuant to the Article 8 which is entitled as *"coordination and cooperation"* of the Protocol, principles to be taken into consideration for the cooperation between the authorities are as follows:

- In case that an application which is made to one of these authorities, is not within the competences of the relevant authority and in case that this application is in scope of the competences of the other authority, the application may be transmitted to other authority. Similarly, any subject considered as important on electronic communications market by one of these authorities may be transmitted *ex officio* to other authority.
- ICTA may transmit applications regarding abuse of dominant position to the Competition Authority.
- Competition Authority may transmit applications regarding abuse of dominant position to ICTA while subject of the application is related to the Electronic Communications Act and relevant legislation.
- Competition Authority may request the opinion of ICTA while the application is related to the abuse of dominant position on electronic communications market.

Conclusion

Consequently, Protocol signed between ICTA and Competition Authority clearly aims at building the cooperation between these two authorities. However, considering that the Protocol is not binding for these authorities, we have to wait for the results of compliance to the provisions of the Protocol and efficient cooperation and if both of the authorities shall or shall not promptly apply the provisions of this Protocol.

Competition Authority Sanctioned Zeeijang Longhseng Group Co Ltd to an Administrative Fine due to Realization of an Acquisition without Obtaining the Necessary Authorization *

Att. Begüm Taner Huntürk

The authorization for an acquisition is demanded through a notification registered on 17 May 2011 to the Authority's records for transfer of the 62,4 % of the capital of Kiri Holding Singapore Private Limited ("Kiri Singapore"), and thus the transfer of Dystar Colours Distribution Gmbh's ("Dystar") control to the Zhejiang Longsheng Group Co. Ltd ("Longsheng").

Longsheng wants to enlarge his business with penetrating into the dye market and by having operations in the areas where it has no or very limited activity by converting a convertible bond, purchased in January 2010, into the shares in order to be a shareholder of Kiri Singapore.

Kiri Dyes & Chemicals Ltd. ("Kiri India") agreed to acquire the assets that constitute Dystar from the German liquidation authority through the agency of the holding company that is considered as an acquisition instrument. The Turkish Competition Authority authorized this transaction by its decision dated 12.01.2010 and numbered 10-04/49-24. However, in January 2010, Kiri India determined that it has no sufficient funds to complete the acquisition process, therefore in order to complete the transaction, it applied to Longsheng. By this application Longsheng has acquired through a Convertible Standby Bond Agreement dated 31.01.2010, Capital Stipulation and Shareholding Agreement, an ordinary share, a convertible bond and a set of rights by the board of directors and by the general assembly of Kiri Singapore through its wholly-owned subsidiary Well Prospering Limited.

In accordance with the Convertible Standby Bond Agreement, Longsheng has acquired the right to convert the aforesaid bond into the new ordinary shares of Kiri Singapore in 5 years 6 days. Due to the agreement, Longsheng obtained the right to convert the bond completely or partly in order to acquire a part of the total and paid-up capital of Kiri Singapore.

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* ***Article of August 2011***

It is stated in the notification form that, Longsheng would acquire the control of Kiri Singapore, thus the control of Dystar from Kiri India and it would have the exclusive control over the enterprise with the transaction expected to be completed after obtaining the necessary permissions from relevant competition authorities.

Relevant Market

The Authority defined the relevant product markets as "reactive dyes", "acid dye", "disperse dye" and "metaphenylenediamin"; it defined the relevant geographical market as "Turkey".

The Nature of the Transaction Subject to the Notification

Longsheng has acquired a part of the shares of Kiri Singapore by the transaction subject to the notification and by utilizing the convertible bond that it acquired in accordance with the convertible Standby Bond Agreement. It is stated within the frame of the information and documents in the case that the control would be held by Longsheng after it converted its convertible bond into the shares of Kiri Singapore in order to acquire the shares of Kiri Singapore.

Pursuant to the transaction subject to the notification, it is defined as an acquisition within the context of the Communiqué numbered 2010/4. On the other hand, as stated in article 7 of the Communiqué the transaction is subject to the permission as the limit of endorsement exceeded.

Nevertheless, when it is considered that the increase of assignee enterprise's market share after the transaction is not sufficient to become a dominant player in the market; the competitors is still able to compete with the entity that emerges after the transaction; the parameters in the -affected by the transaction- market is determined by the global dynamics; there is no obstacle to enter the affected market and potential competitors are able to create competitive pressure in the market, it is come to the conclusion that, within the frame of article 7 of The Act on the Protection of Competition ("Competition Act"), as there will be no consequence of generating or consolidating a dominant player in the market and by this way no consequence of reducing the competition in the market, there will be no inconvenience to allow the transaction.

Evaluations Regarding Notification of the Acquisition

It is necessary to examine that whether the rights, relevant to general assembly and board of directors obtained by Longsheng due to the Convertible Standby Bond Agreement and Capital Stipulation and Shareholding Agreement, enable the transfer of the control of Kiri Singapore to Longsheng on the date of conclusion of the agreement 31.01.2010.

It is stipulated in the article 9 of the Convertible Standby Bond Agreement, the board of directors, which has the authority to take resolutions in all the matters relevant to the company, shall consist of 5 members of which three shall be appointed by Longsheng and two shall be appointed by Kiri India. With this context, three out of five members of Kiri Singapore have been appointed by Longsheng.

In the same article of the Agreement, the decision quorum of the board is stipulated as simple majority. It is also stipulated that the chairman of the board shall be a member appointed by Longsheng and in case of a tie on the votes, the chairman has the right to vote again.

The meeting quorum for the Board meetings shall be the presence of two members of the Board of Directors appointed by Longsheng and if the quorum is not provided in the first meeting then it shall be the present board members in the second meeting providing that at least one member appointed by Longsheng is present in the meeting.

In the article 9.15 of the Convertible Standby Bond Agreement, it is stipulated that the members of the board of directors shall be authorized to take resolutions in some matters only if all Directors of Longsheng approve it.

The guidelines to the general assembly are stipulated under the article 10 of the Convertible Standby Bond Agreement. According to this the meeting quorum of the general assembly shall be the presence of two shareholders and as long as Longsheng maintains its shareholding, one of these shareholders will be Longsheng.

The decision quorum of the general assembly is stipulated as simple majority; however the approval of Longsheng is deemed to be

an obligatory condition before the resolutions taken "in the matters in respect of the shareholders".

Among the "matters in respect of the shareholder" listed in the article 10.5 of the article;

- to amend the capital of Kiri Singapore or its affiliates,
- becoming shareholder of persons excluding the people allowed by the Agreement,
- amendment in the Articles of Association of Kiri Singapore or one of its affiliates,
- to conclude, to amend or to dissolve an agreement between Kiri Singapore or its affiliates and any shareholder or any person related parties.
- to commence to be traded at the stock exchange of the shares of the Kiri Singapore or one of its affiliates.
- and any other likewise decision is stipulated.

It is understood that, within the frame of the articles of the Convertible Standby Bond Agreement, as of the conclusion date of the Agreement, which is 01.02.2010, Longsheng has acquired the control of Kiri Singapore, hence of Dystar.

The acquisition transaction, which had to be notified to our Authority on the date of the conclusion 01.02.2010, is actually notified on 02.03.2011.

As per paragraph 16 (b) and (d) of the Competition Act, in case that takeovers which are subject to permission are performed without the permission of Commission, it has been judged that administrative fine in proportion to once per thousand of the annual gross income which develops at the end of the fiscal year prior to the decision and is determined by the Commission shall be imposed. In this respect, it has been concluded that the transferee side, Zhejiang Longsheng Group Co. Ltd, shall be imposed with an administrative fine in proportion to once per thousand of its turnover as of the date of 31.12.2010.

Conclusion

In the light of the examinations conducted by the Competition Board, it is apparent that the relevant acquisition is a transaction which is subject to authorization pursuant to Communiqué No: 2010/4 and the notification has been made after the realization of the transaction. In this framework, the decision of the Competition Board imposing a monetary fine is appropriate.

Heavy Fines for Banking Cartel! *

Att. Zeynep Tuncer

The Competition Board (the "Board"), in its decision dated 07.03.2011 and numbered 11-13/243-78 [1], decided that Akbank T.A.S. ("Akbank"), Denizbank A.S. ("Denizbank"), Finans Bank A.S. ("Finans Bank"), Turkiye Garanti Bankasi A.S. ("Garanti Bankasi"), Turkiye Halk Bankasi A.S. ("Halk Bank"), Turkiye Is Bankasi A.S. ("Is Bankasi"), Turkiye Vakiflar Bankasi T.A.O. ("Vakiflar Bankasi") and Yapi ve Kredi Bankasi A.S. ("Yapi ve Kredi Bankasi") which are active in the banking sector have respectively infringed Article 4 of the Act No. 4054 on the Protection of the Competition (the "Competition Act") by making an agreement and thus, imposed heavy administrative fines on them.

Competition Infringement Allegations

Two allegations for competition infringements were made against the banks, which initiated a comprehensive investigation. The first allegation consists of the participation of banks to a "gentleman's agreement" implemented in their business operations since 2001 in regards to direct deposit of salaries/wages to employees' bank accounts and thereupon, promotional offers by banks so as to trigger their consumer banking business. Within this agreement, the participant banks decided that (1) promotions will not be granted to private companies, (2) other banks will not make proposals to institutions which protocols are still in force, (3) even if proposals have already been made to those institutions, they will be withdrawn and (4) if a promotion has already been granted to an institution which has a protocol with another bank, the promotion will be registered as damage.

As per the second allegation, it consists of the determination and fixation of the amount of promotional offer bid made by Akbank, Denizbank, Finans Bank, Garanti Bankasi, Is Bankasi and Yapi ve Kredi

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* ***Article of October 2011***

1 The investigation started on August 2009. The motivated decision was published in the official website of the Competition Authority on September 5, 2011. To consult the decision, see the following link: http://www.rekabet.gov.tr/dosyalar/kararlar/karar4179.pdf.

Bankasi to be submitted within Eregli Demir ve Celik Fabrikalari T.A.S.'s ("Erdemir") 2005 Wage Payment Tender.

Wage / Promotion System

Pursuant to the current legislation in force, private institutions are obliged to procure direct deposit of wages disbursement service from banks. As for public institutions, they get this service for a period between two and five years from banks which make the most appropriate -cost-effective and convenient- proposals within the wage disbursement tender.

Procurement of such service is an important revenue stream for banks to strive for growth in their retail banking division. Indeed, banks may generate income by way of depositing the wages- usually allowing around 1 – 2 days wage standby period in their Deposit Funds. By cross-selling other ancillary services and financial products to the payees, the banks may boost their incremental profits significantly. Hence, banks make promotion offers to employer institutions to be able to streamline wider banking services as means of electronic wages disbursement services. Nevertheless, the amount of the promotions offered to consumers varies from institution to institution. As a matter of fact, banks determine and measure the amount of the promotion on the basis of the profit margin that they will derive from the employer institution.

Relevant Market

Relevant Product Market. The Board determined the relevant product market as the "personal (high street banking) banking services" market. Indeed, the banking sector principally provides brokerage services on transfer of funds between account owners and investors. Within this scope, wage payments made by institutions correspond to an important resource for banks.

Furthermore, banks have also the possibility to reach a large number of customer portfolio through direct deposit wage payments system. As a matter of fact, a bank which reaches an agreement with an institution, first of all, cross-sells a bank card to the institution's employees in connection with their deposit accounts and then commercializes personal banking products such as credit card, consumer credit loans/ car finance/ housing

credits. Even though the clients may get these services from other banks, they may find the products more attractive and get better deals from the provider banks which make their wages payment due to customers' habitudes, also privileges granted by banks such as cheaper interest rates on consumer credits or interest free credit cards and lower transaction cost for the fund transfer to other banks.

As seen, the interest of both parties' - the clients and the banks - is not based on only electronically transferred wages system but also include all other retail or personal banking services.

Relevant Geographical Market. The Board determined the relevant geographical market as "Turkey" by taking into account that banking services are provided country-wide.

Evaluation of the Allegations

Prohibition to Grant Promotions to Private Companies. The banks acquire the possibility to find a multitude of clients / funds to cross-sell their personal banking products by offering promotions to private companies. Therefore, it is not wrong to ascertain that the promotion offers by banks to institutions constitutes the main competition instrument among banks.

However, the Board, on the basis of the documents and information obtained within the investigation, stated that banks have agreed not to grant promotions to private companies in 2001 and that this agreement was actively implemented until 2009. Consequently, the agreement between banks is considered to be in contradiction with competition rules since it eliminates the basic competition instrument among them.

Prohibition to Make Offers to Companies Which Are Parties of a Protocol. Banks, taking into account the amount of the promotion that they will offer to institutions, enter into protocols with them for a period, which will be beneficial to them. Thus, the early termination of the protocols may result in damage for the banks. Thence, banks may apply different solutions in order to prevent the early termination of the protocols. Nonetheless, these solutions must not limit / restrict institutions' rights of choice and violate competitions rules. Otherwise, the Competition Act will be infringed.

The Board, throughout the investigation process conducted against the banks, found strong evidences suggesting that banks, as a result of the "gentleman's agreement", have limited institutions' service procurement alternatives by the nonearly termination of the protocols and that this has resulted in the exclusivity of the banks. Moreover, the Board also found important indications presenting that, as a result of the "gentleman's agreement", the competition between banks was also restrained. Indeed, by reason of this agreement, the amount of the promotions does not increase in favor of consumers, thus a bank that works more actively than others may not propose a higher and better promotional offers and win more tenders, which led distortion of competition.

The Board, in order to confirm the strong evidences and indications that it has found, also analyzed respectively the particular cases; Erdemir Tender, THY Tenders, Mugla Municipality Tender and the Viransehir Public Hospital Tender.

Erdemir Tender. Erdemir has entered into a protocol for direct deposit of wages to its employees respectively with Is Bankasi, Akbank, Halkbank, Pamukbank, TEB, Tekfenbank, Sekerbank, Denizbank, HSBC and Yapi ve Kredi Bankasi for the period of 01.08.2003 – 31.07.2005. When the protocols were about to reach its end, Erdemir has asked new proposals from the banks.

The Board, on the basis of the documents and information obtained throughout the investigation, determined that the banks have made a consensus to offer fixed amount of promotion and made their proposals on this amount within Erdemir 2005 Wages Tender.

The Board has also determined that similar behaviors have also been observed among banks within the aforementioned tenders where the banks colluded to set the amount of offering bid. For instance, within the Mugla Municipality Tender, banks, as a result of the "gentleman's agreement", have not offered proposals to the consumers to choose from, thus the tender was again won by Yapi ve Kredi Bankasi. Similarly, Garanti Bankasi has withdrawn its proposal within the Viransehir Public Hospital Tender, thus the tender was won by Is Bankasi.

The Board, in the light of all the examinations that it has made, concluded that the "gentleman's agreement" made among the banks is an

anti-competitive agreement contrary to Article 4 of the Competition Act, which dismantles the free market professedly.

Exemption Evaluation

The Board determined that the "gentleman's agreement" concluded among banks cannot benefit from individual exemption since none of the conditions laid down under Article 5 of the Competition Act is fulfilled. As a matter of fact, the "gentleman's agreement" only procures financial benefits to banks, which mitigates several costs such as transaction costs arising during the tender process.

Additionally, the Board also stated that this agreement does not procure any advantages to the consumers and that the competition restriction resulting from this agreement is not proportional. Indeed, the banks compensate or minimize their damages through high penal clauses set forth in their protocols.

Prescription Period Evaluation

The Board determined that both Pamukbank and Halkbank took part to the act subject to investigation between 2001 – 2002 but could not find any document presenting that they continued to be part of this act between 2002 – 2005. For that reason, the Board analyzed the prescription period and decided, in line with the *"lex mitior"* rule which foresees that in penal law, provisions in favor of the suspected shall be applied, that the prescription period of 5 years set forth in the Competition Act shall be taken into account in lieu of the prescription period of 8 years stated in the Misdemeanor Law No. 5237. Thus, the Competition Board, by considering that the prescription period has ended, concluded that Pamukbank and Halkbank may not be subject to an administrative fine.

Administrative Fine

Pursuant to Article 16 of the Competition Act, parties which infringe competition rules shall be imposed a fine of one per thousand of their annual gross revenues acquired by the end of the financial year preceding Board's decision. As for Article 5/1 (b) of the Regulation on Fines to Apply in Cases of Agreements, Concerted Practice and Decisions Limited

Competition, and Abuse of Dominant Position (the "Regulation"), an administrative fine between five thousand and three percent of the annual gross revenues will be imposed on the parties which infringe competition rules and commit "other violations".

The Board, in the light of the above-stated legislations and by considering that services related to wage payments constitute a minor part of banks' activities, thus a minor part within banks' revenues, decided to take as basis, the gross revenues of the banks gained from personal banking and calculated the fines on those revenues in lieu of considering banks' 2011 gross revenues. Furthermore, the Board determined the method for calculating basic amount of the fines on the basis of the rates set forth in the Regulation and also took into account the upwards and downwards adjustment to reflect the aggravating and mitigating factors stated in the Regulation. Thus, the Board imposed the administrative fines by calculating in different rates and amounts for each banks.

Dissenting opinions

The arguments alleged in the dissenting opinions may be regrouped as follows:

Existence of Competition Infringement. It is stated that there are not any infringement of competition since banks' costs are in reality higher than the stated in the decision (for instance ATM installation or card printing costs), also the consumers benefit from banks' financial services practice, competition still exists in the relevant product market, banks' practice results from the need of the banking sector and other similar situations.

Non-Exemption. It is stated that the banks' acts are within the scope of individual exemptions, thus, there is no need to impose a fine for them.

Calculation of Administrative Fine. It is stated that the Board should have taken into consideration banks' 2010 gross revenues and not the gross revenues of the banks only gained from personal banking.

Application of the Regulation. It is stated that the Board should not have applied the Regulation because the Regulation is contrary to law since it states the minimum and maximum limit of administrative fines.

Conclusion

The decision of the Board is an important decision concerning the banking sector. As a matter of fact, even though the banking sector is a particular sector, it is a sector submitted to competition rules. Within this framework, the Board examined the "gentleman's agreement" concluded between banks and determined that it constitutes a violation of competition. Despite the dissenting opinions, we strongly think that the "gentleman's agreement" violates competition rules and lessens the competition substantially. Indeed, the Competition Act states that there should be limitation of competition in the relevant product market. As the "gentleman's agreement" may prevent a bank from proposing higher promotion and win more tenders with its hard work than the others, the competition between banks is limited.

Moreover, we do not think that the "gentleman's agreement" may benefit from individual exemption, neither. As a matter of fact, no advantage was indicated by banks within the investigation in favor of consumers and, in addition, the competition is restrained in the relevant product market more than what it is compulsory since banks compensate or minimize their damages through high penal clauses set forth in their protocols.

Nevertheless, we disagree with Board's decision concerning the method in calculation of the administrative fines imposed on the banks. Indeed, the Board rather than taking into consideration banks' 2010 gross revenues, only considers the gross revenues of the banks gained from personal banking. The Board's decision may be criticized since, on the one hand, it is contrary to the objective of competition law and policies, and on the other hand, it causes inequality and obvious disparity with undertakings imposed by a fine on their gross revenues. There is also no doubt that this situation represents an apparent unfairness on consumers. Nevertheless, in lieu of violation of the law, it would be better to review or possibly overhaul the Regulation.

The Competition Board Evaluated the Allegations of Abuse of a Dominant Position Against Fer Mas Oto Ticaret A.Ş. by not Providing Spare Parts Requested by a Private Service *

Att. Begüm Taner Huntürk

The Parties and the Allegations

The complainant is a private service company providing services for Ferrari, Maserati, Aston Martin, and Porsche vehicles. Fer Mas Oto Ticaret A.Ş: ("Fer Mas") is the sole distributor of Ferrari vehicles and their spare parts, and is their sole authorized service provider in Turkey.

The complainant alleged that they tried to purchase spare parts for these brands from Fer Mas, However, their requests were refused by Fer Mas without any just cause, and this situation caused the complainant private service to suffer damages which cannot be overcome.

Moreover, the complainant alleged that Fer Mas has infringed the Competition Act and also the Block Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector ("Communiqué").

Relevant Market

The relevant product market was determined to be the "after-sales spare parts, maintenance, and repair services market of Ferrari and Maserati vehicles".

The relevant geographic market was determined to be "Turkey".

Evaluations

Within the Scope of the Communiqué

The Competition Board states that the Communiqué aims to prevent the restriction of competition between authorized services and private services. It is additionally stated that one of the main aims of the Communiqué is to enable private services to be an alternative source

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* ***Article of January 2011***

for consumers. The Communiqué tries to ease access by private services to the technical knowledge and equipment required for maintenance and repair services. Therefore, agreements containing clauses restricting the sales of spare parts to private services, which are to use these parts for the maintenance and repair of motor vehicles, cannot benefit from the block exemption pursuant to Art. 5 of the Communiqué.

Notwithstanding the above, the CB also stated that in order for a restriction to be evaluated within the scope of the Communiqué, there needs to be an existing vertical agreement between the parties. In this case, there is no vertical agreement.

Within the Scope of the Competition Act

The CB stated that the subject of the complaint is the act of refusing to provide goods by an undertaking in a dominant position. The CB is of the opinion that the act in question can also be considered refusing to enter into an agreement. The CB stated that these two concepts can be substituted for each other. The CB also stated that Fer Mas is hypothetically in a dominant positon.

The CB set forth these determinations:

- Freedom of contract is a constitutional right under Turkish law
- Any restriction on freedom of contract must be made in a very careful way, and it must be reasoned in detail.
- The restrictions of contract between an undertaking in a dominant position and its competitor/s may increase competition in the short term. However, it must be taken into consideration that in the long term this may even decrease competition.

The CB stated that under only two conditions can an obligation to make sales be imposed on an undertaking in a dominant position: (a) the undertaking seeking to buy goods from the undertaking in a dominant position must be one of its consistent buyers, or (b) the undertaking in a dominant position must own the fundamental resource required for another undertaking to carry out its activities

The CB listed the cumulative conditions for evaluating a refusal to provide goods as an infringement of competition as follows:

- The necessity of the goods in question: In other words, the undertaking should have no alternative source from which to obtain such goods and the goodsmust be essential for its activities.
- Prevention of effective competition
- No objective reason for the refusal
- Damage to consumers

In light of the above determinations, the CB evaluated the complaint and, first of all, stated that the spare parts which Fer Mas refused to sell to the private service do not constitute a necessity for the private service to provide proper services to its clients. In light of the investigations and interviews made, it is understood that Fer Mas is not the only resource from which to obtain the mentioned spare parts. Thus, other private services provided spare parts from different channels. The CB also determined that it is not possible for Fer Mas to prevent effective competition within the relevant market since there are alternative ways to obtain provide the spare parts. Moreover, the CB stated that there is an objective reason for refusing to provide goods: the lack of a commercial agreement on the price of the goods. Finally, the CB stated that they are of the opinion that there is no resulting damage to consumers.

Since the conditions mentioned above are cumulative, the absence of even one condition would be sufficient to not consider the act in question a restriction of competition. However, the CB decided that none of these conditions existed. Therefore, the CB decided not to initiate a further investigation and rejected the complaint.

Competition Board Granted an Individual Exemption to the "Partnership Agreement", "Cargo Agreement" and "Transatlantic Joint Venture Agreement" Signed between Air France KLM S.A. and Alitalia-Compagnia Aera Italiana S.p.A.*

Att. Begüm Taner Huntürk

Alitalia-Compagnia Aera Italiana S.p.A ("AZ"), made a notification to the Competition Board ("Board") and demanded the exemption of the agreements signed within the frame of the cooperation envisaged by itself and Air France KLM S.A. ("AFKL"), Societe Air France S.A. ("AF"), KLM Airline Dutch B.V. ("KLM"), Delta Air Lines Inc. ("Delta").

Agreements Subject to Notification

There are three agreements subject to notification:

1. Partnership Agreement signed between AZ and AFKL on 12. 01.2009, which is to be gradually implemented across the country,
2. Cargo Agreement, which is based on the Partnership Agreement Art 16, signed on 22.06.2010 on one side by AZ and on the other side by AF and KLM, who are the companies under the control of AFKL,
3. Transatlantic Joint Venture Agreement signed on 05.07.2010 between AZ, AFKL and Delta, in order to include AZ into the Transatlantic Joint Venture.

Pursuant to Art.8 of the Partnership Agreement, AZ shall be included in the Europe leg of the AF-KLM transatlantic joint venture. The Original Transatlantic Joint Venture Agreement established a joint venture between AFKL and Delta in the fields of code sharing, tariffs and capacity, allocation of slots, passenger sales, marketing, pricing, income management and frequently flying passenger programs for the transatlantic routes from Europe (including Turkey) to America and vice versa, including the connected traffic. The inclusion of AZ in this joint

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* ***Article of September 2011***

venture enables the passengers, who regularly travel from Italy to North America or over Italy from North America, to benefit from the advantages provided by the joint venture. The Board is in the opinion that from this point of view, the actual content of the joint venture is not altered by the inclusion of AZ.

Furthermore, pursuant to Art.16 of the Partnership Agreement, it is envisaged that AFKL and AZ shall enter into an agreement providing for the mutual cooperation for the cargo operations. According to the Cargo Agreement, AFKL shall be responsible from the marketing, sales and pricing of the cargo capacity in the AZ passenger aircrafts where the services are provided by AZ and which flies in the international and intercontinental routes. Turkey shall be among the countries where AFKL shall be the commercial representative of AZ, since AZ passenger aircrafts provide service in Turkey.

Relevant Market

The Board defined the relevant product markets as "*the market for transportation of passengers by scheduled flights*" and "the market for air-cargo transportation".

The relevant geographic market for the transportation of passengers by scheduled flights market is defined as "Istanbul-Amsterdam", "Istanbul-Paris", "Istanbul-Roma", "Istanbul-Miami", "Istanbul-Atlanta", "Istanbul-New York", "Turkey-South America", "Turkey-Africa" and "Turkey-Asia" routes and for air-cargo transportation market it is defined as "Turkey-North America" route.

Evaluation of the Individual Exemption

Pursuant to Art.4 of the Act No: 4054 ("Competition Act") "*Agreements … between undertakings, … which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited*." The Board determined that AFKL–Delta and AZ, who are undertakings in terms of the application of the Competition Act, are rival competitors in the herein determined relevant markets for the transportation of passengers by scheduled flights and air cargo transportation.

In this scope, the Board stated that the provisions regulated under Art.2 of the Partnership Agreement with the headings of "Management of the Partnership" and "Cooperation Fields" are restrictive in nature for competition. Thus, the above referred provisions states that the distribution, qualification programs, products, pricing, income planning, sales and marketing activities of airlines who are in a competing position to be coordinated and the same to be realized for the cargo services.

Partnership Agreement also provides the inclusion of AZ in the joint venture and the cooperation in cargo operations.

Pursuant to Art.14 of the Partnership Agreement, a set of rules is introduced for the cooperation of AFKL and AZ in their sales organizations and policies.

The Board stated that in order to grant an individual exemption to the relevant agreements, which are in nature restricting competition, the two affirmative and two negative conditions stated within Art. 5 of the Competition Act should be both satisfied. Thus, the Board evaluated each condition.

Providing New Developments and Improvements, or Economic or Technical Development in the Production or Distribution of Goods and in the Delivery of Services

The Board stated that the system, which envisages the unification of networks in order to gain myriad betterment and advantages in terms of traffic, geographical distribution and market share to the airlines in alliance, also increases the concentration by the unification of traffic volume within the said networks. The basic mechanism herein is determined as structuring of a suitable network for central and hub-spoke system. In this case, it is ascertained that the improvements made for the feeder spokes enable the flights to be made without delays, increase enplanement numbers by flying aircrafts with a larger seating capacity in the feeder spokes and hence reduce overhead costs for per passenger.

Another advantage can be seen in the stage of entrance into a new market. Thereby, by the courtesy of alliances, the airlines may enhance their networks without the need for increasing the number of destinations

they give service to. This is usually realized through code sharing agreements.

It is also emphasized that another significant issue is related to the tariffs and flight frequencies. The main products in the airline industry are tariffs and flight frequencies, which are the determinant factors for passengers to choose a specific airline company. In this case, the alliances are the most suitable instrument for providing a rise in the flight frequency. Serving to larger number of routes shall make the airline company more attractive and preferable for all passengers.

The Board reached to the conclusion that the first affirmative condition of the exemption is satisfied by taking into consideration the results of the cooperation on the notification issue, by providing the airlines more global service network, an significant increase in the flight options to offer to the consumers, an important cost efficiency key for the economics of scope and concentration.

Consumers' Benefit

Pursuant to Art.4 of Competition Act, in order for a restrictive agreement being exempted, the above mentioned improvements should be reflected to the consumers in such a way that will help to improve their interest and confidence to purchase. In this stage, the Board stated that usually the decrease in the level of prices is evaluated as the benefit of the consumers. However, Board also stated that other conditions such as efficient services after sale, increase of product variety, the easy accessibility for consumers to obtain the products, the availability for the long term supply of products can also be evaluated within the terms of consumer benefits.

One of the most important benefits of alliances and cooperation of airlines for the consumers appears in the volume and quality of services. In comparison of alliance and non-alliance airlines' output, it was analyzed that the member-partner- airline companies are able to utilize their services without any interruption in a better comfort and also significant rise appears in the number of their routes where the services are provided.

Moreover, the marketing promotion for rewarding flight points gained from any member of alliance can be converted into a ticket within the broad alliance network is regarded as an important advantage and inducement for the passengers.

On the other hand, the increase in the connected services capacity also enables the services to be provided in an uninterrupted way. Continuous-non-stop-journeys can only be achieved by the coordination of the flight tariffs together with the coordination of baggage and ground handling services provided in relevant airports.

The Board is also in the opinion that the efficiency mechanism strengthened by the economics of scope and concentration which are created by the alliances, is reflected to the consumers as low ticket prices.

Pursuant to the Board's opinion in this frame, the efficiencies brought by the alliance practices shall be duly reflected to the consumers and thereby, high number of consumers would be reachable.

Allowing Competition for Significant Part of the Relevant Market

The Board has separately evaluated this condition for the two relevant product markets.

Concerning the market for transportation of passengers by scheduled flights, first of all it is stated that the main indicators for the elimination of competition in a route are defined as the decrease in the frequency of the flights, the increase in the prices arising out of the established market power and the increase of exists from the relevant market.

At this point, the Board made individual examinations for each route defined under the relevant product market and as conclusion determined that the frequency of the flights would not decrease, in case of any increase in the ticket prices; consumers shall tend to choose other airline companies and no increase in the exits from the market is expected. In the light of these evaluations, the Board decided that the competition is not eliminated in a significant part of a relevant market.

As for the air-cargo transportation market, the Board is the opinion that the inclusion of AZ in the AFKL Delta alliance shall not have a negative effect on the competitive structure in terms of its total market share.

Allowing Competition to the Extent that is Necessary for Achieving the Aims Mentioned Herein Above

As envisaged in Art. 5 of the Competition Act, it is required that in order to achieve the aims and meet the set targets, the competition should not be restricted more than necessary.

The fundamental aims of the alliance in subject of the notification are (i) to decrease the service prices by providing cost efficiencies through economics of scope and concentration that would be achieved with the alliance, and (ii) to deliver services with quality by means of the synergy and effective information transmission between the parties.

In an attempt to examine these aims, we may ascertain that both measures are highly likely to increase the preference of consumers to select the service of member airline companies. At this point, the Board evaluated that if there are less restrictive ways to achieve these aims.

The main issues, which have restrictive elements, in this case are the coordination of tariffs and capacity between the parties, the coordination of price arrangement and income management and the coordination of frequent flyer programs.

The Board decided that the competition is not restricted more than necessary, taking into consideration that the above-mentioned issues have outcomes for the benefit of the consumers.

Conclusion and Evaluations

The Board decided to grant individual exemption to the agreements subject to notification.

To this end by taken into consideration the recent investigations and sectoral examinations, it would be acknowledged that the aviation sector is one of the sectors under the scrutiny of the Board that is focused on meticulously, for the sake of protection of competition. Alliance in subject is achieved by global and intercontinental factors in the relevant market. From this point of view, it is vitally important for the maintenance and protection of the competition in the aviation market in general. Thus, the decision of the Board in this case is notable.

Commission Opens Antitrust Proceedings against European Cement Manufacturers *

Att. Dr. Meltem Küçükayhan Aşcıoğlu

The European Commission has launched an antitrust investigation concerning cement producers of Member States in relation to their suspected anticompetitive practices in Austria, Belgium, the Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, Spain, and the UK.

Facts

The Commission has opened an investigation into a number of cement companies active in the EU. The companies are suspected of illegal price fixing, market participation and restriction of importation and exportation. The Commission did not identify any company by name during the investigation. [1]

Preliminary Assessment and Investigation

The Commission has directed a preliminary assessment to several cement producers regarding their suspected market practices and arrived at the conclusion that such practices will be pursued in an investigation. The Commission's inspections have also been carried out at the premises of companies in several Member States such as Germany, France, UK, Belgium, the Netherlands, Italy, Luxembourg, and Spain. [2] The Commission officials, accompanied by their national counterparts from relevant National Competition Authorities, carried out unannounced inspections at the premises of companies active in the cement and related products market in several Member States on November 4-5, 2008.

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* ***Article of January 2011***

1 Cemex had already been named as one of the companies concerned. The French group Lafarge and the Swiss cement company Holcim were also confirmed to be part of investigation. HeidelbergCement and Dyckerhoff were also confirmed to be among the suspects.

2 The fact that the European Commission carries out such inspections does not mean that the companies are guilty of anti-competitive behavior nor does it prejudge the outcome of the investigation itself.

Similar actions were taken at the premises of undertakings active in the cement and related products market in Spain on September 22-23, 2009.

Precedent Commission Practice of Cement Market

The cement market has always been one of the sectors most scrutinized by the Commission. For instance, the Commission, in its decisions of 1994 decided to fine the European Cement Association (Cembureau), 8 national cement associations, and 33 European cement producers for violation of Article 85 (new article 101) of the EC Treaty, including their participation in a general market sharing agreement, transnational restrictive practices, and restrictive practices relating to exportation.

The conclusion of long inspections and investigations carried out by the Commission is the observation that a number of large European manufacturers monitored exports and export forecasts, compared supply and demand on internal and export markets, and exchanged information on prices by means of the information and coordination bodies that they set up, such as the European Cement Export Committee (ECEC) and the European Export Policy Committee (EPC). These companies also entered into restrictive practices in relation to white cement exporters. In fact, the Commission pronounced a total fine of 248 million ECU [3].

The national competition authorities of Member States, such as the Turkish Competition Board, have executed several competition investigations concerning this sector [4].

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3 The European Currency Unit was a basket of the currencies of the European Community member states, used as the unit of account of the Community before being replaced by the EURO on January 1, 1999, at parity.

4 The German and Polish competition authorities fined cartel agreements in the cement market in 2003 and 2009, respectively. The French Competition Authority fined anti-competitive practices in the said market in 2007. The Turkish Competition Board fined similar practices by Turkish cement producers in 2005 (Decision numbered 05-05/42-17 and dated January 13, 2005), 2004 (Decision numbered 04-77/1109-278 and dated December 2, 2004) and 2002 (Decision numbered 02-06/51-24 and dated February 1, 2002) respectively. The Turkish Competition Authority recently opened an investigation against 10 cement producers active in the eastern part of the Turkish Republic, namely Kars Çimento, Aşkale Çimento, Yurt Çimento, Limak Çimento, Elazığ Altınova Çimento, Çimko Çimento, Çimsa Çimento, Adana Çimento, KÇS Kahramanmaraş Çimento and Mardin Çimento.

The Course of Investigation and Conclusion

The legal base of the procedural step taken by the Commission is Article 11(6) of Council Regulation No 1/2003 on the consequences of the initiation of the proceedings [5] and article 2(1) of Commission Regulation No 773/2004 on the power of the Commission to initiate proceedings with a view to adopting at a later stage a final decision on the substance of the case.

The Commission intends to investigate possible import/export restrictions, market sharing, and price coordination practices of the cement producers, in the markets for cement and related products. The Commission will also examine the consequences of such practices in the European Economic Area (EEA), including restrictions on imports into the EEA from countries outside the EEA in the markets for cement and related products.

In terms of procedure, it should be underlined that the initiation of an antitrust proceeding does not signify that the Commission has conclusive proof of the infringement. The proceeding only means that the Commission will start an in-depth investigation of the matter [6].

5 The initiation of proceedings relieves the competition authorities of the Member States of their authority to apply the competition rules laid down in Articles 101 and 102 of the Treaty.

6 There is no legal deadline to complete inquiries into anticompetitive conduct. The duration of the investigation will depend on several factors, including the complexity of the case, the co-operation of the companies with the Commission, and the exercise of their rights of defense.

Conditional Authorization to the Formation of a Joint Venture *

Att. Zeynep Tuncer

The European Commission (the "Commission") has cleared, in accordance with the Council Regulation (EC) numbered 139/2004 and dated 20 January 2004 on the control of concentrations between undertakings [1] (the "Regulation No. 139/2004"), the formation of a joint venture combining the existing styrene monomer, polystyrene and acrylonitrile–butadiene-styrene ("ABS") businesses of both INEOS and BASF (the "Parties").

Nevertheless, the authorization decision of the Commission is subject to certain conditions as per the Commission notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004 dated 22 October 2008 and numbered C267/1 [2] (the "Notice").

The Press Release related to that decision was published on June 1st, 2011 on the official website of the Commission [3]. The details of the decision are stated below.

Parties to Transaction

The parties to transaction subject to conditional authorization are BASF of Germany and INEOS of Switzerland.

BASF is the world's largest chemical company. It is mainly operating its business activities in the supply of chemicals, crude oil and natural gas, including specialty chemicals, plastics, performance products, functional solutions and agricultural solutions.

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* ***Article of June 2011***

1 The Regulation No. 139/2004 was published in the Official Journal of the European Union dated 20.01.2004 and numbered L 24. To consult the Regulation, see the following link: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0139:EN:NOT.

2 To consult the Notice, see the following link: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:267:0001:0027:EN:PDF.

3 To consult the Press Release, see the following link: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/672&format=HTML&aged=0&language=EN&guiLanguage=en.

As for INEOS, it is a conglomerate that produces a range of chemicals including petrochemicals, specialty chemicals and oil products.

Transaction

BASF and INEOS decided to form a joint venture in order to combine their existing styrene monomer, polystyrene and ABS businesses, together with certain minor related products.

The ABS, principal component of the transaction, is an extremely important chemical product because it is used in a variety of applications including, for instance, refrigerator door caps, vacuum cleaner components, washing machine panels, computer keyboards and housings, dashboard components and steering wheel covers.

Relevant Market

The Commission, by taking into consideration the chemical product ABS, principal component of the proposed transaction, determined that the relevant product market was the market for ABS.

Commission's Investigation

The Commission carried out an investigation on the proposed transaction upon its notification on April 7, 2011. However, the Commission concluded that the proposed transaction will create a very strong player in the market for ABS where concentration is already high.

Thus, the Commission asked the Parties to submit commitments pursuant to the Notice with a view to remedy to its concerns. As a matter of fact, the last sentence of Article 4 of the Notice states, by making a reference to Article 2(4) of the Regulation No. 139/2004 [4], that commitments may also be submitted for the formation of a joint venture.

Commitments Submitted by the Parties

BASF and INEOS decided, in order to remedy the Commission's concerns, to submit structural commitments which are considered as

4 See fn. 2.

"preferable" within the Notice [5]. Within this scope, the Parties offered to divest part of INEOS' ABS production business thus reducing the overlap.

Conditional Authorization Decision

Following the submission of commitments by the Parties, the Commission carried out a new investigation which showed that:

- the divested businesses would be viable and
- the commitments would resolve all identified competition concerns.

In other words, the investigation revealed that the proposed transaction would not significantly modify the structure of the majority of the relevant markets, as a number of credible and significant competitors would continue to exercise a competitive constraint on the joint venture.

Thus, the Commission authorized the proposed transaction based on the condition of divestment of activities in the ABS sector.

Conclusion

This Commission's decision is a very important and landmark decision because it shows *de facto* the application of the Notice to the formation of a joint venture although the Notice is generally applied to transfer or acquisition of shares.

This decision also represents an excellent example for Turkey which recently integrated full-function joint ventures in the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board No. 2010/4 [6] and which is still in the phase of preparation of a Guideline on Commitments and Conditional Authorization [7].

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5 This is stated in Article 15 of the Notice. To consult the Notice, see fn. 2.

6 The Communiqué was published in the Official Gazette dated October 7, 2010 and numbered 27222 and entered into force on January 1st, 2011. To consult the Communiqué, see the following link: http://www.rekabet.gov.tr/dosyalar/teblig/teblig83.pdf.

7 To consult the Guideline Project on Commitment and Authorization, see the following link: http://www.rekabet.gov.tr/dosyalar/images/file/BD-Cozumlerine_Iliskin_Kilavuz_Taslagi.pdf.

ENERGY LAW

Amendment to the Regulation on Eligible Consumers*

Att. Özgür Kocabaşoğlu

Article 6 of the Regulation on Eligible Consumers in the Electricity Market ("the Regulation"), published in the Official Gazette numbered 24866 of 04.09.2002, was amended by the Regulation on the Amendment of the Regulation on Eligible Consumers in the Electricity Market which was published in the Official Gazette numbered 27840 of 08.02.2011.

New issues were added to Article 6 titled, "Informing the eligible consumers and keeping the records".

Pursuant to Article 5 of the Regulation, the consumers providing the following requirements will be accepted as "Eligible Consumers".

a) the consumers connected directly to the transmission line,

b) the consumers whose total consumption of electricity in the previous calendar year exceeds the eligible consumer limit (the eligible consumer limit stated by the Energy Market Regulation Authority ("EMRA") for 2011 is 30.000 kWh per year. This amount, in terms of cash, is approximately TRY 796 per month and TRY 9550 per year),

c) the consumers whose total consumption of electricity in the current year exceeds the eligible consumer limit,

d) the legal persons possessing auto producer licenses whose total consumption of electricity, including the amount that consumed from its own production, exceeds the eligible consumer limit,

e) the consumers whose total consumption of electricity in the previous calendar year does not exceed the eligible consumer

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* ***Article of February 2011***

limit but who have undertaken to the relevant legal person possessing the distribution license that they will exceed the eligible consumer limit in the current year and whose consumption amount calculated considering the transmission power or agreement power in transmission agreements or subscription agreements exceeds the eligible consumer limit,

f) the new consumers who have undertaken to the relevant legal person possessing the distribution license that they will exceed the eligible consumer limit in the current year and whose consumption amount calculated considering the transmission power or agreement power in transmission agreements or subscription agreements exceeds the eligible consumer limit,

If the consumption amount of those eligible consumers within the scope of phrases (e) and (f) of the first sub-paragraph is less than the eligible consumer limit on the date of application, they cannot benefit from the eligible consumers' rights for the 12 months following the determination of this fact notwithstanding the consumption amounts. They must purchase electricity and/or capacity within the framework of the relevant provisions."

With a new provision added to Article 6 of the Regulation, legal persons possessing distribution licenses are obliged to publish regularly on their web site the updated list of the consumers that are in their area of license and whose total consumption amount of electricity exceeds the eligible consumer limit. This obligation will continue until all the consumers become eligible consumers.

Pursuant to the amendment in Article 6 of the Regulation, "*in case of a request by the eligible consumers, a document presenting the quality of eligible consumers will be issued by;*

a) TEİAŞ to the consumers connected directly to the transmission line,

b) the distribution companies to the consumers who are within their area and who provide electricity and/or capacity from the

distribution system, including the total amount that they consumed in the previous calendar year,

c) *in case of a concentration of requests, the distribution companies operating in the distribution area where the city in which the tax registry of the legal persons that will conclude a bilateral agreement with a new supplier is found, including the total amount that they consumed in previous calendar year.*

TEİAŞ or the legal persons possessing distribution licenses are obliged to respond to these requests within ten business days following the application date. This period will be twenty business days in case of a concentration of requests."

"Except for cases of concentrations of requests, provided that they are requested during registration to the Market Financial Conciliation Center, the originals or certified copies of the invoices related to the previous calendar year will be deemed to be the documents confirming the status of eligible consumers."

With the sub-paragraph below added to Article 8 of the Regulation, the suppliers are entitled to an important authorization. According to this amendment, in case of default by the eligible consumers connected to transmission line of payments stipulated in bilateral agreements, the electricity of the consumer will be cut off by the legal person possessing the transmission license according to the framework of relevant legislation upon the written request of the supplier and if the consumer cannot prove the payment. The consumer must prove payment to get the electricity connected. If payment is proven, electricity service must be resumed within two days.

Article 9 of the Regulation is totally modified, and TEİAŞ is obliged to release to public opinion by publishing on its web site the annual electricity consumption amount of the consumers connected directly to the transmission line (in the basis of consumer), total amount of electricity consumed in the areas of legal persons possessing distribution licenses, the total amount of electricity consumed by the eligible consumers and the total amount of electricity consumed by the consumers who have not used their option to choose their supplier even if they have exceeded the eligible consumer limit.

By an addition to the provisional articles of the Regulation (provisional article 4), it is provided that during the transitional period stated in provisional article 9 of the Act the change of supplier requests of the consumers providing electricity from the distribution companies possessing retail sale licenses will enter into force on January 1, April 1, July 1 and October 1.

As a result, the modifications are related to problems in practice, and the sanction of cutting off the electricity of the eligible consumers who have not fulfilled their payment obligations was introduced in order to cover the gaps in practice.

The Amendments to the Electricity Market Licensing Regulation *

Att. Özgür Kocabaşoğlu

The Administrative Regulation on the Amendment of the Electricity Market Licensing Regulation ("The Regulation") published in the Official Gazette with the number 27896 on 05.04.2011 and entered into force as of the date of its publishing. The amendments set forth by this Regulation are as follows:

Transfer of Generation and Auto Production Licenses

Pursuant to the Regulation, the legal entities who are the holder of generation and auto production licenses are allowed to transfer their rights and obligations to their successor legal entities through the takeover or spin-off. In this framework, the successor legal entity will obtain a license which maintains the consecutive effect of the former one. However, if the shareholding structure of the legal entities has been restructured by virtue of a share transfer, the licensing application will be rejected under the stipulation introduced by the Regulation. The approval of the Energy Market Regulatory Authority ("EMRA") is mandatory for this transfer.

Payment of 1% of License Fee to EMRA's Account in Advance

According to article 8 of the Regulation, an upfront payment of 1% of the license fee to the statutory Authority, EMRA, imposed on the license applicants in order to process the licensing application. Following the payment of 1% of the license fee sum into EMRA's account and submission of payment confirmation document to the EMRA, the evaluation process for license application will commence.

The Amendments to Minimum Capital Requirements

According to article 10 of the Regulation, while minimum capital of a company for the generation license shall be equal to an amount which

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* ***Article of April 2011***

corresponds to the 20% of the total investment amount set forth by the EMRA, for the distribution license applications, the relevant minimum capital shall be equal to an amount which corresponds to the 15% of the transfer or sale price of the distribution zone.

The minimum capital of the company shall be 2 million TRY for the wholesale license applications, 1 million TRY for the retail sale license applications and 200.000 TRY if the applications are only for the purpose of performing retail sale services for each distribution zone.

However, in the event that a prevailing license holder applies for a new license, the minimum capital requirement of the company shall be figured out by aggregating the total amount of capitals allocated for each licenses which are pending provisional license with EMRA and approved license by EMRA.

Collection of 1% of License Fee Regarding License Applications for Power Generation Stations Based on Use of Domestic Natural Resources and Renewable Energy Resources

The license applicants for establishment of a power generation stations based on use of domestic natural resources and renewable energy resources will be liable to pay only 1% of the prescribed fee for standard license applications. Moreover, it is also laid down that annual license fee will not be collected from the power generation stations based on use of domestic natural resources and renewable energy resources in the initial first 8 years following the completion date of necessary facilities specified.

The Amendment to License Variation Applications by the License Holder

According to article 13 of the Regulation, for the variations on licenses to be approved upon request of license holder, unless other period of time is indicated explicitly by EMRA, the variation of license will be effectuated upon the submission of payment confirmation document for license variation fee which is required to be made within 30 days following the notification of affirmative decision of EMRA; in addition to the consummation of other obligations demanded for the variation

of license. In case of non performance of the aforesaid obligations, the request for the variation of the license shall be deemed to be rejected.

Obligation of Generation License Holders to Submit Progress Reports

Generation license holders are obliged to submit two progress reports regarding their activities effectuated until the completion date in a year: first one shall be submitted in July and second one shall be submitted in January. The content and structure of progress reports will be determined by EMRA.

Amendment Regarding Legal Entities that Provisional Approval is Not Granted within the Scope of License

Legal entities that EMRA did not grant a provisional approval for their power stations, may request the termination of their licenses by a written application which may be made within 1 month from the effective date of this Regulation. In that case, the letters of guarantee will be returned if these legal entities waive their right to resource utilization which is the ground of their licenses. This disposition also encompasses to the legal entities whose generation licenses are approved by EMRA.

Environmental Impact Assessment

Legal entities which had obtained a generation license before the effective date of this Regulation and legal entities which have not applied to EMRA for the decision to be taken within the scope of Environmental Impact Assessment Regulation are obliged to apply to EMRA for the relevant decision within 60 days following the effective date of this Regulation.

Regulation on the Unlicensed Electricity Generation *

Att. Özgür Kocabaşoğlu

Regulation on the Unlicensed Electricity Generation on the Electricity Market ("Regulation") has entered into force through publication in the Official Gazette dated July 21, 2011 and numbered 28001. The Regulation provides that real and legal persons fulfilling certain minimum legal requirements are exempt from the requirement of obtaining a license and establishing a company in order to generate electricity. With the Regulation, it is possible to establish a generating station or power plant, the installed power capacity of which is limited to a maximum of five hundred kilowatts based on renewable energy [1] sources, and/or cogeneration facilities [2].

Exemption Concerning the License and Establishment of a Company

Exemption concerning the license and establishment of a company is laid down under Article 4 of the Regulation. Pursuant to the relevant article, persons who can benefit from the exemption concerning the license and establishment of a company are as follows:

- Real and legal persons who will generate electricity in micro cogeneration [3] facilities, or generation stations with a maximum installed power of five hundred kilowatts based on renewable energy sources,
- Real and legal persons who will establish a cogeneration facility that exceeds the limit laid down under the Regulation on Increase of Productivity on the Utilization of Energy Sources and Energy, in order to meet their own needs.

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* ***Article of July 2011***

1 Renewable energy sources are the energy sources such as hydraulic, wind, solar, geothermal, biomass, gas obtained from biomass (including landfill gas), and non-fossil energy sources such as wave, stream energy and rise and fall.

2 Cogeneration facilities are the facilities that generate heat and electricity and/or mechanical energy simultaneously.

3 Micro cogeneration facilities are the facilities with a total installed power of fifty kilowatts and less based on electric energy.

The limitation on the number of power consumption station for each energy generation stations that can be established within the scope of the Regulation is important. Principally, only one cogeneration facility, micro cogeneration facility or generation facility based on renewable energy sources can be established for each power consumption station. However, in the case the distribution system has sufficient capacity to cope with the uptake, more than one cogeneration or generation facility based on renewable energy sources can be established for each consumption facility. On the other hand, the total installed capacity power of these stations may not exceed 500 kilowatts. The rule that allows the opportunity to establish more than one facility shall not be applicable on micro cogeneration facilities. Only one micro cogeneration station can be established for each power consumption station.

Another paramount issue that should be taken into consideration about the Regulation is that the power generation and consumption stations are required to be located within the same distribution zone. Stations, located outside distribution zones shall not be evaluated within the Regulation.

The Connection Principles and Connection Application

The power generation stations that fall under the scope of the Regulation are connected to the distribution system. The connection application can be made by real or legal persons willing to generate electricity in generation facilities under the Regulation, by filling out the Unlicensed Generation Connection Application Form. The application shall be made directly to the relevant distribution company, or to the legal entity holding Organized Industrial Zone distribution license. The document confirming the grant of utilization right of renewable energy sources must be accompanied with the other application documents.

Assessment of the Application

The applications are assessed against the set criteria such as the use of renewable energy sources in the generation stations, the eligibility of the station as a cogeneration station and whether the power station is located within same location with the power consumption station.

Surplus Energy

The basic principle required by the Regulation for the real and legal persons who opt to generate unlicensed energy is to generate energy to meet only their own needs. However, if surplus energy is generated, this amount of energy may be consumed in the consumption station located at the same location with the generation station, or in another consumption station belongs to the producer even if it is located outside of the power generating station's zone.

The unconsumed energy in the abovementioned stations is qualified as surplus energy. In the event that the surplus energy is generated from renewable energy sources, it can be purchased by a distribution company holding a retail sale license, on the price determined by the Code on the Utilization of Renewable Energy Sources for the Generation of Electric Energy dated 10.05.2005 and numbered 5346. In the event that the source of the surplus energy is micro cogeneration, it shall be purchased on the average wholesale electricity price applied in Turkey.

Another important issue concerning the surplus energy is that the unlicensed generators are not permitted to sell or supply the electricity generated within the scope of the Regulation by concluding bilateral agreements. Unlicensed generators may only sell the surplus energy to licensed distribution companies. Therefore, discretionary practices of unlicensed generators concerning the sale of energy are prevented.

The system that permits the sale of surplus energy is an advantageous and prosperous system not only for medium and small sized industries, but also for the State. Industries can raise additional income by the sale of the surplus energy they generate, and the State can make saving by purchasing the energy generated from renewable energy sources rather than importing high cost natural gas. As a result of consuming domestic surplus energy the cost-effective reductions may be obtained and contributions may be made to the austerity of the State while utilization of renewable energy sources will be encouraged and promoted.

Conclusion

The Regulation of the Unlicensed Electricity Generation in the Electricity Market was prepared by the Energy Market Regulatory Board in the light of sector consultation. With the Regulation, the possibility of unlicensed electricity generation has been based on a legal framework. As a result, unlicensed electricity generation has been permitted in Turkey, a country that is convenient for electricity generation from the sources such as wind turbines in terms of engineering, machinery, infrastructure and background. In addition, the possibility of sale of the surplus electricity will be certainly beneficial for both the generators and the State.

LAW OF OBLIGATIONS

Leases of Residential and Roofed Workplaces within the Frame of the New Turkish Code of Obligations*

Att. Ceyda Büyükoral

The Turkish Code of Obligations numbered 6098 ("TCO") has been published in the official gazette dated 04.02.2011 and numbered 27836. By the TCO which will enter into force on 01.07.2012, important issues are amended with respect to lease agreements.

The TCO annuls the Code of Obligations ("CO") numbered 818 and the Code of the Lease of Immovables numbered 6570. In the new TCO, articles with respect to lease agreements are stipulated in the 2nd part, 4th section, with the title "Private Debt Obligations". Also, (i) definition of lease agreement, (ii) duration of the lease, (iii) obligation of the lessor, (iv) obligations of the lessee, (v) private conditions, (vi) termination of the agreement, (vii) returning of the leased property and (viii) lessor's right of lien are regulated under the "General Provisions", and leases of residential and roofed workplaces are regulated under article 339 and the following articles.

The TCO regulates leasing of all residential and roofed workplaces under article 339 without making any distinction with respect to the place of the leased property unlike article 1 of the Code numbered 6570. Also, movables left in the possession of the lessee will be subject to the same provisions. In addition, unlike Code numbered 6570, the lease of immovables for a term of 6 months or less are subject to temporary use due to their nature and are not within the scope of the TCO. On the other hand, the lease agreements made by governmental institutions and organizations will be subject to the same provisions despite their own principles and procedures, and thus article 14 of the Code numbered 6570 is accepted.

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* ***Article of February 2011***

TCO article 340 addresses connected agreements aiming to protect the lessee which were not regulated in the previous code. It is stipulated that the formation or continuation of the lease agreement with respect to residential and roofed workplaces will not be connected to any obligation which is against the lessee and not in relation to the lease agreement, and thus such agreements connected with leases will be deemed void.

"The Cost of Usage" stipulated under article 341 regulates that the costs of usage such as heating, lighting, and water shall be borne by the lessee unless it is stated otherwise in the agreement or it is contrary to local practice. In addition, it is obligatory to submit a copy of the document proving such costs to the other party upon request.

Article 342 in the TCO has made a new arrangement in order to protect the lessee since the lessors in practice obtain deposits or other guarantees which are not within the scope of the rental. In this respect, requesting a guarantee is permissible, but the code restricts such requests. It is stated that the amount of a guarantee cannot exceed three months' rent. Additionally, if the guarantee is given in cash, it must be deposited into a bank account and cannot be withdrawn from the bank without the prior approval of the lessor. If the guarantee is a negotiable instrument, it must be deposited in a bank and the bank will not return such guarantees unless both parties approve the return or an execution proceeding or a court award becomes final and binding. The bank may return the guarantee upon the request of the lessee if the lessor informs the bank in writing within three months following the termination of the lease agreement that he or she has initiated a lawsuit or an execution proceeding regarding the lease agreement.

Article 343 of the TCO stipulates that amendments against the lessee, excluding rent amounts, cannot be arranged in the lease agreement after the lease agreement has been signed. Thus, by providing the opportunity to amend the rent upon renewal of the agreement or the extension of the term, an exception is made to the restriction of amendment against the lessee.

In article 344 of the TCO, rules for determining the rent are regulated, and thus a legal gap is filled in this respect. In the first sub-paragraph of the article, it is regulated that the validity of the agreement between

the parties in relation to a rent increase rate depends on the increase's not exceeding the "producer price index". The 2nd sub-paragraph of the article states that in the absence of any agreement with respect to a rent increase, the judge will determine the rent for the new lease period taking into consideration the condition of the leased property complying with equity, and "the producer price index" will be accepted as the maximum increase allowed. On the other hand, the third sub-paragraph of the article states that the judge will determine the rent, whether there is an agreement between the parties or not, by taking into consideration the producer price index, the condition of the leased property, comparable rentals, and equity principles if the lease period is more than five years or the lease agreement is renewed after five years in every fifth year. However, the producer price index is not accepted as the maximum limit for a rent increase. Additionally, the rent determined for every five-year period in this manner may be amended pursuant to sub- paragraphs one and two in the following years.

If the rent is fixed in a foreign currency by the parties, article 344/4 of the TCO regulates that there is a limitation on any increase in rent. Accordingly, no amendment may be made as to the rent before five years. The rent will be determined pursuant to sub-paragraph 3 of the article taking into consideration the monetary value of the foreign currency after five years have passed.

In article 345 of the TCO, the limitation period and the impact of any award via a lawsuit initiated for determining the rent are regulated. It is accepted that the lawsuit for determining the rent may be initiated at any time. However, the new rent determined by the court will bind the lessee beginning from the new lease period provided that the lawsuit is initiated at least 30 days before the new lease period, or if the lessor has given notice with regard to an increase in rent in writing to the lessee within such period, it may be initiated until the end of the new lease period. If there is an article in the lease agreement stipulating a rent increase for the new lease period, the rent determined by the court in a lawsuit initiated before the end of the new lease period will also be valid beginning with the new lease period.

In article 346 of the TCO, a new provision is stipulated under the title "restriction of provisions against the lessee". Accordingly, there is no payment obligation upon the lessee other than rent and ancillary costs, and agreements arranging penalty or acceleration clauses in case of a failure to pay the rent on time, which are very common in practice, are void.

The termination of an agreement for residential and roofed workplace is regulated under article 347 and following. It is stipulated under article 347 that if the lessee has not given notice at least fifteen days prior to the end of an agreement with a definite term, then the agreement is deemed to be renewed for a period of one year with the same conditions. Also, the lessor may not terminate the agreement based on the fact that the term of the agreement has expired. However, the lessor may terminate an agreement for any reason upon the end of ten years of renewals provided that the lessor has given notice at least three months prior to the end of the renewal year. Agreements with indefinite terms may be terminated by the lessee at any time and by the lessor, upon expiry of ten years, pursuant to the termination notice given in accordance with the general terms.

Pursuant to article 348 of the TCO, the termination notice for the lease of residential and roofed workplace may only be valid if it is made in writing.

The validity conditions of the termination of lease agreements related to family residences are regulated under article 349. Accordingly, the lessee is not entitled to terminate the lease agreement if the immovable is leased as a family residence without the consent of the spouse. However, if it is not possible to obtain such consent or the spouse refrains from giving such consent without a just reason, then the lessee may demand from the court a decision on the issue. If the spouse, who is not the lessee, informs the lessor and becomes a party to the lease agreement, then the lessor must inform the lessee and the spouse respectively of any termination notice and payment terms with respect to a termination notice.

The reasons for termination of lease agreements with respect to residential and roofed workplaces by taking a legal action are determined separately for the lessor and the lessee. The reasons originating from a lessor are regulated under article 350 of the TCO which is titled

"requirement, re-construction and development" and under article 351 which is titled "requirement of the new owner". On the other hand, the reasons originating from a lessee are regulated under article 352 of the TCO. Pursuant to this article, provided that some other conditions are also met, (i) an evacuation commitment, (ii) two justified notices and (iii) lessee or his or her spouse having another residence within the same municipal borders suitable for habitation are accepted as reasons originating from a lessee.

Article 352 of the TCO stipulates that the time period for filing a legal action will be extended until the end of the lease period provided that at the latest within the time period envisaged for filing a legal action the lessor sends to the lessee a notice of action in writing.

In article 354, it is stated that the conditions with respect to termination of a lease agreement by taking legal action cannot be amended against the lessee.

Article 355 envisages the "prohibition for leasing to another person" as it is also stipulated in the Code numbered 6570. It is stated that in case of breaching this prohibition, an amount not less than the one-year's rent paid within the previous lease period will be paid to the lessee. The criminal sanction stipulated in Code numbered 6570 is not envisaged in the TCO.

In article 356, the continuance of a lease agreement in case of the death of the lessee is regulated.

General Service Agreement in the Framework of the New Turkish Obligations Law *

Att. Sedef Üstüner

The Turkish Code of Obligations ("TCO"), which was published in the Official Gazette dated 04.02.3011 and numbered 27836 and which will be effective as of 01.07.2011 has a broader scope for provisions on general service agreements then the current Code of Obligations ("CO") numbered 818. The mentioned provisions are stipulated between Articles 393 and 447. If these provisions are evaluated in general, one should acknowledge that although the provisions are parallel with the stipulations of the Labor Law and in line with the Labor Law, they include wider regulations than the CO. Moreover, the field of application has also been widened. Accordingly, Article 393 and the following provisions would be applied to the subjects that are not within the scope or covered by the Labor Law. Also, in cases where it is more beneficial for the employee, Articles 393 and following would be applied rather than the Labor Law provisions.

There are more detailed regulations under the title "the Obligations of the Employee" in the TCO. The most important regulation is Article 396 stipulating the "Obligation of Diligence and Fidelity". This provision introduced obligations for the employees, such as keeping confidential the employer's secrets and not competing with the employer. In the same respect, the "Obligation to Deliver and Accountability", which was not previously regulated under the CO, has been addressed by Article 397. In addition, the obligation of the employee to comply with the orders and instructions of the employer is regulated under Article 399 as a separate title.

Whereas the "wage" was regulated under the TC as the "the wage stipulated under the individual or general agreement or as is customary", Article 401 of the TCO states that the wage would be in the amount of the "precedent wage, which should not be less than the minimum wage". On the other hand, overtime pay was calculated "in proportion to the wage

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* ***Article of March 2011***

stipulated under agreement taking into account the special conditions" pursuant to the TC. However, Article 402 of the TCO stipulates that the overtime pay would be 150% of the normal working wage. Moreover, in line with the flexible working principles under the Labor Law, it is introduced that the employer, with the consent of the employee, may allow the employee to take a leave proportionate to his or her overtime work instead of being paid overtime pay.

A new provision is brought with Article 404 stipulating that intermediary works can also be fulfilled on the basis of service agreements. Pursuant to this article, if it is agreed that a fee would be paid to the employee for providing intermediary services for certain transactions, the employee's right to demand this intermediary fee would arise upon the conclusion of such a transaction between the third party and the employer. However, if this agreement could not be fulfilled by the employer without its fault or if a third party would not be able to fulfill its obligations thereunder, then the employee's right to demand fees would be terminated.

It is stipulated under Article 406 of the TCO that as a principle the fees would be paid at the end of each month. However, parties may agree that the payments are to be made in shorter time frames. The same article also regulates the issues regarding the payment of fees in the intermediary works and for the works where the giving of shares is envisaged. In Article 407, new provisions are introduced to safeguard the wage credit of the employee. Thereby, the wage credit of the employee cannot be bartered for the credits of the employer from the employee. If there is a judicial award against the employee stating that the employee has purposely harmed the employer and been ordered to pay compensation to the employer, then these kinds of credits of the employer can only be partially bartered for the employee's wage on the part that can be subject to garnishment. It is also regulated that agreements on the use of the wage in benefit of the employer would be null and void.

Whereas, the liability arising out of the "piece or lump sum work" is subject to freelance provisions pursuant to the CO, the TCO Article 4011 envisages that this kind of work would be subject to provisions of "transactions due to time".

The TCO has also introduced very significant novelties in a highly controversial field, namely "Prevention of the Employee's Personality". Pursuant to Article 417 of the TCO, the employer is obliged to take all measures in order to prevent the employee from facing any psychological pressure or sexual harassment and to comply with all requirements necessary for workplace health and security. Moreover, if the employee dies or is harmed physically or if the personal rights of the employee are violated due to non-compliance of the employer with the obligations mentioned above, then the employer would be liable to pay compensation to the employee.

However, pursuant to the principle of "protection of the employee", Article 419 stipulates that the employer can only use the personal data of the employee if they are fit for work or if it is required for the fulfillment of the service agreement.

In addition, a new provision with the title of "Penalty Condition and Release" has been introduced with Article 420 of the TCO. Thus, it is stipulated that a penalty condition in a service agreement would be null and void. On the other hand, pursuant to the new legislation, in order for an agreement envisaging a release by the employee to the benefit of the employer to be valid, it should be concluded in written form at least one month after the termination of the service agreement, the type of the credit and its amount must be explicitly stated, and the relevant payment should be made to a bank account.

TCO Articles 241 and following regulate the provisions of "Holiday and Leave", "Service Record", "Transfer of the Service Relation", "Termination of the Agreement" in line with the Labor Law Pursuant to Article 442, in relation to the consequences arising out of the termination of the Agreement, it is stipulated that all obligations arising out of the agreement would be due upon the termination of the agreement.

Finally, we should remember that the TCO will enter into force as of 01.07.2012, and thereby the rights of all employees regardless of whether they are subject to the Labor Law or not will be strengthened by the entry into force of the provisions in TCO regarding the General Service Agreement.

Marketing Agreement within the Frame of the Turkish Code of Obligations Numbered 6098 *

Att. Pelin Baydar

The Turkish Code of Obligations ("TCO") numbered 6098 has been published in the Official Gazette dated 04.02.2011 and numbered 27836. The marketing agreement which is a special type of service agreement seen mostly in practice and which was not regulated previously is regulated in detail in the TCO that will enter into force on 01.07.2012.

The marketing agreement is defined in article 448 of the TCO. In the referred article, a marketing agreement is defined in which the marketer acts continuously as the intermediary for every action outside of the workplace on behalf of the employer who owns a commercial enterprise or if a written agreement exists, he accepts to fulfill the agreed transactions and the employer pays a fee for such services.

Pursuant to article 449 of the TCO, the marketing agreement should include the following issues (i) duration of the agreement (ii) termination (iii) competence of the marketer (iv) fees and payment conditions and (v) if one of the parties is resident abroad, then the applicable laws and competent courts must be specified.

It is stated in article 450, which regulates obligations of the marketer, that unless a just cause exists, the marketer is obliged to visit the customers in line with the given instruction, cannot act as the intermediary, and agrees not to act on behalf of third parties or himself unless permission is granted by the employer. Additionally, it is stressed that if the marketer is authorized to make transactions then he will use the prices foreseen in the instruction and also the other transaction conditions. He cannot make any amendment to those unless permission is granted by the employer. The marketer is also obliged to inform in detail about his marketing activities regularly, convey the orders to the employer promptly, and inform the employer of important events related to the customer environment.

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* ***Article of March 2011***

It is regulated under article 451 of the TCO with the title "Guarantee" that the agreements holding the marketer liable for nonpayment of customers or non-performance of other obligations or partial or whole costs made for the collection of debt will be void. However, an exception is made for the marketer who makes transactions in his own customer environment and who acts as an intermediary in insurance agreements.

In article 452, it is stated that the marketer is authorized to act as an intermediary solely in transactions unless otherwise stipulated in written agreements. However, if the marketer is authorized to conclude transactions, his authorization is limited to regular legal transactions and acts necessary for the fulfillment of such transactions. Unless special permission is granted to the marketer, he is not authorized to collect from the customers or change the payment dates.

In article 453, which regulates the "Activity Field", it is stated that if the marketer is authorized to act in a specific marketing field or in a specific customer environment and no contrary agreement is made in writing, then the employer cannot authorize any other party to act within the same field and environment, but he may transact with third parties. If a reason exists to amend the article of the agreement which is related with the marketing field or the customer environment, then the employer may amend such article unilaterally but the marketer will then have the right to compensation and he may terminate the service agreement with just cause.

Article 454 stipulates that the marketer must be paid a specific amount or a fee which is composed of a commission together with such amount. Written agreements in which whole or most of the fee is composed of commission will be valid if such agreed commission compensates his marketing activity properly. It is also stated in the same article that the fee paid during the trial period may be decided freely and that the trial period may be no longer than two months.

Article 455 explains that with regard to commissions and the marketer who is authorized to act in a specific marketing field or in a specific customer environment solely, the marketer may demand payment of such decided or accustomed commissions in all transactions made by himself or by the employer in such field or environment. If any other party is

also authorized to act within the specific marketing field and customer environment together with the marketer, the marketer will be entitled to a commission solely for his intermediary act or transactions made by him.

Article 456 states that if the marketing activities become impossible through no fault of the marketer's and if he is entitled to a commission or fee pursuant to the agreement or the code, then the fee will be determined according to the stable fee and the payment of proper compensation due to loss of commission. If the commission is less than 1/5 of the fee, then it may be decided in writing that the compensation will not be paid due to loss of commission. If the marketer has received his entire fee despite the fact that he could not conduct the business without his fault then, upon the request of the employer, the marketer is obliged to fulfill all work which he is able and which may be expected from him within the workplace of the employer.

In article 457 it is accepted that, unless otherwise decided in writing, each employer will be held equally liable for the expenses of the marketer who is working on behalf of more than one employer at the same time. Agreements in which the expenses are in whole or partially included in the stable fee or commission will be void.

The marketer is entitled to a right of lien pursuant to article 458 of the TCO against the movables, negotiable instruments, and money which he has received from customers due to his collection authority in order to guarantee the credits which are not due in case the employer has payment difficulties and also to guarantee the due credits from marketing relations. However, it is stipulated that the marketer cannot withhold vehicle and carriage documents, price tariffs, registrations of customers and other documents.

The special termination period for the marketing agreement is stipulated in article 459. This article states that if the commission is a minimum 1/5 of the stable fee and is affected by important seasonal fluctuations, then the employer may terminate the agreement of the marketer who continued to work with him since the end of the prior seasonal period by respecting a two-month grace period within the new season. The marketer may also terminate the agreement under the same conditions by respecting the two-month grace period until the

commencement of the following season if the employer has employed him until the end of the prior season and is continuing to employ him.

Article 460 stipulates that in case of termination of the agreement, the marketer will be entitled to a commission for every order which is conveyed to the employer until the termination date without taking into consideration its acceptance and due date and for each transaction he conducted personally or for which the marketer acted as the intermediary.

Guarantee and Surety Agreements *

Att. Berna Aşık Zibel

Surety Agreements

Surety agreement is defined under Article 487 of the Code of Obligations numbered 818 which is currently in force as "an agreement with which a person undertakes to the creditor to warrant the performance of an obligation entered into by an obligor".

The parties for the surety agreements are creditor or obligee and the surety. In other words, the surety agreement between the surety and the creditor is a different agreement from the agreement between the creditor and the principal obligor.

The most important and distinct feature of the surety is its ancillary character. Therefore, it requires the existence of a valid main obligation. If there is no valid obligation, a formulation of a valid surety is not possible. In addition, in case of the termination of the main obligation, the suretyship is also ended simultaneously.

Another distinctive feature of the suretyship is its secondary nature. This feature could be observed from the ordinary suretyship where it is necessary to apply to the obligor first and if the application becomes fruitless, application to the surety is possible.

Surety can also bring its own defenses against the creditor such as the surety agreement to be invalid, a time granted to the surety or the obligation is not due; along with the defenses of the main obligor such as the main obligation is invalid because of statute of limitation or the main obligation is not due.

Major Changes in Surety by the New Code of Obligations

The articles on suretyship in the New Turkish Code of Obligations [1] ("NTCO") are set forth between articles 581-603 under the title of "Surety Agreements".

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* ***Article of September 2011***

1 NTCO announced in the Official Gazette dated 04.02.2011 and numbered 27836 will enter into force on 01.07.2012.

When comparing TCO, which is still in force, Article 584 with the title "**Consent of Spouse**", Article 599 with the title "**Termination of Suretyship**" and Article 603 with the title "**Application Area**" are the new articles embedded into NTCO. Other than those, previously controversial issues are clarified with the explicit and delineated provisions of the new code. Within this section of this paper, the major changes and new provisions are summarized.

Definition

Article 581 of NTCO defines surety agreement as "the agreement in which the surety undertakes to be personally liable against the creditor for the consequences of which the obligor's non-performance of the obligation or failure to fulfill the contractual duties. This definition replaces the provisions, which could be interpreted as surety can be undertaken only for the obligations arising out of an agreement and provides a clear provision, which accepts that it could be undertaken for wrongful act, unjust enrichment and other legislative obligations.

Surety for an Invalid Obligation

As is known, Article 485 of TCO sets forth that in the event of a non-liability of an obligor for the contractual obligation due to mistake or legal incapacity, the surety remains valid if undertaking surety has knowledge of these material facts. Article 582 of the NTCO expands this exception further and includes the obligation lapsed due to statute of limitation in this exception.

Surety's Previous Waiver from the Defenses

Article 582 of NTCO clearly sets forth an issue, which has been controversial in Turkish legal doctrine. In accordance with this provision, "unless otherwise understood from the law, the surety cannot previously waive the rights given to him under this section." Since there is no such provision in the current code, Supreme Court of Appeal's implementation reflects the opinion that, it is possible for the surety to waive the defenses

he has beforehand.[2] However, with the new law this will be changed and this change will notably find its reflections in the surety provisions of the loan agreements drafted by banks.

Qualified Form Requirement

One of the major changes of NTCO on surety agreements is regarding the qualified formal validity requirement.

As per Article 583, as well as the "written form" requirement, the cap for which the surety is liable, "the date" of suretyship and in case of joint and several suretyship, the expression for "joint suretyship" should be noted with surety's handwriting and signature. These form requirements will also be applicable for the proxies granted for suretyship, the agreements containing surety promise and the later amendments of the surety agreement adversely affecting the surety. These imposed qualified formal requirements are general validity form conditions but not evidentiary form requirements.

Concurrently with the NTCO entering into force, the opinion of Supreme Courts of Appeal affirming "the validity of the surety when the amount is easily understood from the content of the agreement, even when there is no cap expressly indicated" will no-longer be effective and the surety agreements which do not contain cap should be accepted as invalid.

Consent of Spouse for Surety

One of the other major changes for the surety agreements set forth by the NTCO is the provision on "Consent of Spouse" in Article 584. According to this provision, for the validity of the surety agreements concluded by the married people, written consent of the spouse must be obtained. This requirement will be applicable irrespective of the type of suretyship.

This provision is mandatory. Therefore it is not possible to waive such right beforehand and conclude an agreement otherwise. As indicated for the form requirements, the consent of the spouse is not only required

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2 General Board of Supreme Court of Appeal 12.06.2002 dated and E:19-426, K:513 numbered decisions.

during the signature procedure of the agreement but also for the future-later amendments to the surety agreement that may adversely affect the surety.

As per this provision of NTCO, if there is a separation decision given by the court or a statutory right of living separately comes into existence, there is no necessity for obtaining the consent of spouse. Other than those situations, it is necessary to obtain such consent.

Scope of Liability

Pursuant to Article 589 of NTCO, "*the surety is, in any case, liable up to the amount indicated in the surety agreement*". Although it is explicitly indicated therein, since it is already accepted by the practice, this provision does not reflect a major change of the rule.

As to the surety agreements, one of the major changes is set forth by the NTCO in Article 589. According to the third paragraph, "*unless otherwise explicitly set forth in the agreement, the surety is only liable for the obligation becomes due after execution of the surety agreement*". Pursuant to this, the surety will not be liable for the obligation which exists before the execution of the surety agreements.

In addition, there is another major provision in this article which states that all agreements which set forth that the surety is liable for the damages arising out of the invalidity of the underlying contractual relation and the penalty clauses is null and void.

Default in Performance under Joint and Several Suretyship

As to the joint and several suretyship, the opportunity to apply to the joint and several suretyship without applying the main obligor and without asking for foreclosure of pledges is criticized by the doctrine for the reason that it harms the secondary nature of the surety agreements.[3]

Therefore Article 586 of the NTCO related to the joint and several suretyship sets forth that;

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3 **Özen, Burak**; Kefalet Sözleşmesi, İstanbul, 2008, s.230; Tandoğan, Haluk; Borçlar Hukuku – Özel Borç İlişkileri, Vedat Kitapçılık İstanbul 2010, 5inci Tıpkıbasım, s.770.

"*In the event that the surety accepts the undertaking as a joint and several surety or under any other similar term, the creditor may apply to the surety without applying to the obligor or without disclosure of the immovable pledge provided that the obligor should be in default and the notice becomes fruitless or the obligor should clearly be lack of payment ability.*

In the event that the debt is secured with a movable pledge subject to delivery or pledge of receivable, the surety should not be applied before foreclosure of those pledges…"

In light of the above, in order for the creditor to apply directly to the surety, the first condition is that the obligor must default for the performance of the obligation. However, the satisfaction of this condition alone is not sufficient. It is also necessary that either the notice becomes fruitless or the obligor should clearly be lack of payment ability.

Expiry and Termination of Suretyship

As per Article 598 of the NTCO; if the suretyship is granted by a real person even for an indefinite period, the suretyship itself will expire automatically at the end of ten years following the execution of the suretyship contract. The suretyship period may be extended with the consent of the surety for a new period of maximum ten years provided however that the extension should be completed, at the earliest, one year prior the termination of the suretyship contract.

In addition to the above, Article 599 of the NTCO sets forth a new provision which is not defined under TCO; i.e. the termination (revocation) right of the surety. In accordance with this article, in case of a suretyship for future debts, if the debtor's prior financial condition significantly disrupts after the execution of the suretyship contract, or the debtor's financial condition is much worse than the surety assumes in good faith; then the surety may terminate the suretyship contract with a written notice at any time prior the occurrence of the debt. However, in such case the surety will be liable to compensate the damages of the debtor.

Area of Application

In addition to the above explained provisions, most important reflection of the provisions regarding the surety agreements to the contracts law is arising out of Article 603 of NTCO.

This article titled as "Area of Application" states that "the provisions regarding the formal requirements, legal capacity for being a surety, and consent of spouse are also applicable for the other agreements titled differently in which real persons provides personal security."

Therefore, as per this provision, the above mentioned provisions of NTCO regarding the form requirements, capacity for being a surety, and consent of spouse which are mandatory are also applicable for the guarantee agreements, debt participation agreements, and credit order (NTCO Art. 516 et seq.).

Guarantee Agreements

Guarantee agreements are the agreements in which the guarantor, without being subject to the underlying contract, undertakes responsibility for the performance of the obligor.

A guarantee agreement qualifies as a "third party undertaking" pursuant to Article 110 of the Turkish Code of Obligations ("TCO"). Such undertaking obliges the guarantor to be liable for the performance of the obligor independently from the underlying contractual obligation[4] and requires the indemnification of the other contracting party (i.e. the creditor) for its losses occurred as a result of the non-performance of the underlying contractual obligation.

As per the TCO, a guarantee agreement may be drafted either for a specific term or an indefinite term. If a guarantee agreement is drafted for a specific term and the creditor fails to apply to the guarantor for performance until the expiry of this term, the creditor cannot rely on the guarantee agreement for payment. In case the guarantee agreement is drafted for an indefinite period of time, the general statute of limitations

4 **Tandoğan**, a.g.e, s.804.

set forth in Article 125 of the TCO, which is ten years commencing from the date on which the debt becomes due will be applicable.

As per Article 128 of NTCO, "the one who undertakes a third party's obligation in favour of the other party is liable to indemnify the damages arising out of the non-performance of this obligation". As is seen the "third party undertaking" institution on which the guarantee agreements are based does not set forth differently in the NTCO. In addition, applicable statute for limitation is not changed.

However, as stated above, since the area of application of the provisions on surety agreements is expanded, qualified formal requirements, legal capacity provision and the provision regarding the consent of spouse will apply to the guarantee agreements.

Distinguishing Surety Agreements from Guarantee Agreements

The major criteria for distinguishing surety agreements from guarantee agreements are as follows in below:

a) Primary- Ancillary and Secondary Obligation: The most notable difference between a surety agreement and a guarantee agreement is that; while surety imposes an ancillary and (depending on the type) secondary obligation for performance, a guaranty imposes a primary and independent obligation. Under a surety agreement, the surety shall be held liable only if the underlying contractual relation, is valid and enforceable. According to Article 492 of the TCO, "*in case of termination of the underlying contractual relation, surety will be exonerated from his obligation for performance"* . Whereas obligation of the guarantor has an independent nature, by being separate from the underlying contractual relation between the main obligor and the creditor. In this respect, the guaranty undertaking (agreement) shall continue to have effect even when the underlying contractual relation between the creditor and the obligor becomes invalid, thus the guarantor shall remain liable against the creditor for performance of the guarantee undertaking. In other words, when reimbursing the creditor, the guarantor would be fulfilling its own obligation arising out of the guarantee agreement, but not the obligation of the obligor arising from the underlying relation.

b) Defenses (plea): According to Article 497 of the TCO "*surety, shall benefit from, and also oblige to bring, all defenses which arise from the primary liability relation, those are belonging to the obligor*" whereas this opportunity is not granted to the guarantor thus the guarantor cannot assert those defensive arguments against the creditor.

c) Right of Recourse: The surety shall be the successor of the creditor's rights against the obligor, limited to the amount paid to the creditor by the surety. Therefore, as it is specified in Article 496 of the TCO, "*surety has the right to recourse to the obligor up to the amount which had been paid by the surety to the creditor*" whereas this right is not granted to the guarantor and accordingly he cannot raise a reimbursement claim against the obligor arising out of succession.

***d) Benefit of the Guarantor*:** Another significant feature of the guarantee agreement is that the guarantor shall obtain a benefit in exchange of standing as the guarantor. According to the Turkish legal doctrine, the existence of a (direct or indirect) benefit is an essential criterion to determine the nature of the agreement, i.e. whether there is a surety agreement or a guarantee agreement. If a third person does not have any benefit in the performance of the underlying contractual relation between two parties, then the nature of the performing third person's undertaking will be deemed a surety agreement.

Conclusion

As explained in detail above, when the changes in the NTCO reviewed, the new adopted provisions seem to serve for the protection of the surety.

In addition, the application of the provisions such as consent of spouse or formal requirements to the other security agreements will limit the freedom of contract and possibly the parties will find its significant reflection in the implementation. In light of the above, the criticism claiming that the NTCO is aiming "*to take side and to provide special treatment for one of the parties*"[5] turns out to be right for the suretyship and other security agreements.

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5 **Başpınar, Veysel**:"Hukuk Tekniği Açısından Türk Borçlar Kanunu Tasarısının Değerlendirilmesi", Ali Naim İnan'a Armağan, Anakara, 2009,s.220-221.

Adaptation of Agreements in the New Code of Obligations*

Att. Süleyman Sevinç

The adaptation of agreements to changed circumstances was a legal doctrine that was applied in practice under the Code of Obligations, even though there weren't any legal provisions included in the Act on this matter. With the New Code of Obligations ("New CoO"), adaptation of agreements has been regulated within the scope of the new code. Therefore, this institution that was widely accepted and applied by the practice has finally found basis in the legal system.

As is known, the Latin term *pacta sunt servanda,* in simple terms "agreements-promises must be kept" is the legal maxim of contract law. Consequently, the contractor parties are under obligation to comply with the provisions of the agreement. On the other hand, in some cases- especially in the occurrence of unforeseeable adverse conditions, disruptive or extraneous events, the contractual obligation become either impossible, or more onerous to perform therefore expecting the contractors to perform their contractual obligations will not be suitable with the good faith principle. Especially in the long-term synallagmatic agreements, the circumstances when the agreement has been executed may have change so drastically that the foundation of contract is altered, by becoming a different one, at the time of its execution. The expectation of performance of the contractual obligations from the burdened party in spite of such unpredictable situations may be unfair and poises a contradiction with the good faith principle laid down under Article 2 of the Civil Code. At this point, the modifications that occurred between the execution and the performance of the agreement need to be reflected to the restoration of agreement. If the parties are required to comply strictly with the *pacta sund servanda* principle, it may lead to numerous inconveniences and commercial impracticability, and the theory of adaptation of agreements was established to remedy such frustrations. The theory of adaptation of agreements is a theory accepted by the doctrine and the High Court of Appeals, concerning the cases in which the basis and expected purpose

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* ***Article of June 2011***

of the legal transaction has partially or totally collapsed, and in case the agreement needs to be adjusted and adapted to the new circumstances in accordance with the interest of justice.

The theory of adaptation of agreements is supported especially by the German doctrine. In accordance with the prevailing opinion in the German doctrine, the basis of the legal transaction of the agreement is formed by the currently existing and also forthcoming elements and circumstances and the material facts that have an effect on the conclusion of the agreement. In the event that the equilibrium between the obligations of the parties has become unbalanced in such a way that one of the parties cannot be expected to meet the terms and conditions of the contract as a result of increased burden the issue of collapse of the basis of legal transaction arises. Furthermore, under Swiss law that widely influenced Turkish law, the doctrine supports that there should be a solution in conformity with the good faith principle. Accordingly, the parties may demand the adaptation or the termination of the agreement, in the event that they cannot be expected to comply with the provisions of the agreement pursuant to the good faith principle.

The conditions for the adaptation of the agreement are laid down under the decision of the 13th Civil Chamber of the High Court of Appeals dated 17.05.2011 and numbered 2001/4384 E. – 2001/5327 K:

> *"Following the legal definition of the theory of adaptation, we should emphasize its conditions.*
>
> *The events that occur after the conclusion of the agreement and during its performance should be extraordinary and objective. For instance, the devaluation, inflation etc.*
>
> *Additionally, the equilibrium between the obligations of the parties should be considerably and clearly unbalanced. On the other hand, in the event that the circumstances stated below occur, the agreement cannot be adapted.*
>
> *The agreement and the law should not contain any provision concerning the changing circumstances. In case the parties foresee and assume the risk of the changing circumstances with*

a provision in the agreement, they cannot avoid this risk by claiming the good faith principle.

If the party demanding the adaptation of the agreement had an effect on the modification of the circumstances with its own negligence, he cannot demand the adaptation. The circumstances should not be predictable, and even if they are predictable, the parties should not assume the scope of their effects on the agreement. Additionally, the obligations should not be already performed. In the event that the claimant performed the obligations without a reservation, he cannot demand the adaptation of the agreement."

The conditions laid down in the decision above are followed and cited in the other decisions of the High Court of Appeals, and formed as a judicial precedent. The lawsuits concerning the adaptation of the agreements have been widely applied during the economic recession where pecuniary obligations of the debtor contractors adversely effected.

The theory of adaptation of the agreements has been regulated under Article 138 of the New CoO entitled "Excessive Difficulty in Performance". The aforesaid article is as follows:

"In the event that an extraordinary circumstance that cannot be foreseen or expected to be foreseen by the parties arises because of a reason that does not originate from the debtor and modifies the facts that exist during the execution of the agreement to the detriment of the debtor in such a way that he cannot be expected to perform his obligations, or has significant difficulty to perform the obligations in accordance with the good faith principle, and in the event that the debtor has not yet performed the obligations, or performed with a reservation, the debtor is entitled to demand the adaptation of the agreement to the new circumstances, or if it is not possible, to cancel the agreement. In principle, concerning the agreements with continuous performance, the debtor shall exercise the right of termination instead of the right of cancellation."

Consequently, the article stated above repeats the conditions required for the adaptation of agreements listed in the decisions of the High Court

of Appeals. These conditions are enumerated in the preamble of the New CoO. In addition, the aforesaid article states that the debtor has two options: Either he may demand the adaptation of the agreement to the circumstances, or in case it is not possible, he may exercise its right of termination. Thus, concerning the cases in which the adaptation is not possible, the debtor may cancel or, with regards to the agreements with continuous performance, terminate the agreement. These options were accepted also by the doctrine.

With the New CoO, the theory of adaptation has been based on a more solid foundation. The fact that this institution is regulated under legal provisions will, without a doubt, facilitate its application. On the other hand, we should emphasize that the theory of adaptation will be applied under condition to fulfill all of the conditions above. Within this framework, it should be taken into consideration that the basic principle of the law of obligations, *pacta sund servanda,* and the option for adaptation of agreements can only be used in exceptional cases.

The Concept of "General Transaction Terms" and its Implications under New Code of Obligations *

Att. Berna Aşık Zibel

One of the significant issues introduced by the new Code of Obligations, numbered 6098 ("NCO") is the concept of "General Transaction Terms ("GTT")" which was not included in the current Code of Obligations ("CCO"), and reflects the concept of "Terms and Conditions" widely incorporated in standard form contracts in English and American Law

The CCO based on "freedom of contract" principle and concept of "individual contract" drafted as a result of mutual negotiations of the parties. Individual contract is the contract in which the declarations of intent such as offer, counter offer, acceptance are achieved as a result of reciprocal negotiations. However, in present-day, enterprises such as finance companies, insurance companies or companies that offers goods and services to consumers use standard form contracts –also known as adhesion contracts- which are unilaterally and abstractly prepared for their later utilization in more than one transaction with respect to services rendered by them.

GTT is a contractual term inserted in these contracts. They also referred to as "adhesion contracts" or "standard form contracts".

As to GTT, there is imbalanced relationship between the parties in favor of one party over the other during the preparation of the agreement; the terms of the agreement are not negotiated. Mostly, the prices are set forth based on the tariffs. In such case, the party, who will enter into an agreement with the related enterprise, has no opportunity other than accepting or rejecting the text which was prepared unilaterally.

Regulations with respect to GTT may be considered as statutory intervention to the principle of freedom of contract where unfair contractual relationship between the contracting parties and the fairness in the contract is mislaid. In actual case, the parties are usually composed of

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* ***Article of July 2011***

one private individual and large organization do not negotiate equitably, because one of the parties has the power to determine the terms of the contract in favor of itself.

Before NCO

Imbalanced relationship under GTT generates a need for upholding legal protection for the party who enter into contract for the acquiring the services or the products without bargaining opportunity. This need initially draws attention for unconscionable consumer credit contracts in which one party has superior bargaining power over other contracting party. Arising thereof, GTT is mainly regulated with respect to the transactions of which the addressees are consumers under article 6 titled "Unfair Conditions of Contracts" of the Act concerning Protection of Consumers numbered 4077 ("Act nr. 4077").

Before regulated under Act nr. 4077, since there was no provision with respect to GTT and the legal protection tried to be achieved based on the mandatory provisions of Code of Obligations, Civil Code or Commercial Code such as bona fides, violation of law, public morality or public order or fraudulent actions.

In accordance with Article 6, added to the Act nr. 4077 with an amendment announced in the Official Gazette dated 14.03.2003[1], the terms and conditions of contract, which are set forth in the agreement unilaterally by the seller or the provider of the services without any negotiation with the consumer -in other terms adhering party- and which are against the bona fides, and thus causes extensively imbalanced relationship against the consumer, are defined as "Unfair Conditions". This article also indicates that unfair conditions are not binding for the consumers and can be put aside by the judge. Again, in accordance with this article, as per article 7 of the "Regulation on Unfair Conditions under Consumer Contracts" ("Unfair Conditions Regulation") announced in the Official Gazette dated 13.06.2003 and numbered 25137 emphasize the invalidity of the unfair conditions and it sets forth that if the contract stands, the remaining parts of the contract will be valid.

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1 The "Law for Amending the Law concerning the Protection of Consumers" numbered 4822 announced in the Official Gazette dated 14.03.2003 and numbered 25048.

As a result, an opportunity for judicial assessment is arisen for the contracts characterized as GTT which are executed with consumers. In that regards, the provisions of NCO regarding the matter are not new for Turkish law system, but expand the framework for better consumer protection.

Provisions of NCO

As it is indicated under grounds of articles of NCO, the inevitable changing circumstances and needs of the present-day and especially the frequent and wide-range use of such standard form and unilaterally prepared contracts requires a demand for an explicit regulation on this matter under Code of Obligations. Therefore, the articles with respect to GTT are set forth under NCO as mandatory provisions across the general provisions covering all contracts. Within this context, NCO widens the protection against GTT, towards broader notions of equity and provides legal opportunity to question GTT without degrading consumers against merchants.

The provisions of NCO with respect to GTT are regulated under articles 20-25. The current legal systems put a three-dimensional assessment system with respect to the assessment of GTT: (i) validity assessment, (ii) interpretation assessment and (iii) content assessment.

In General

As per article 20 of NCO, GTT is defined as "*the contract terms which are previously and unilaterally prepared by one party with a purpose of using them for several numbers of similar contracts and submitted to the other party during the signing of a contract*".

Within the context of this definition, three primary factors taken into account:

(i) the use of contractual terms for several numbers of identical agreements,

(ii) previously and unilaterally preparation, and

(iii) submission to the other party.

The absence of the factor of "lack of opportunity to negotiate" or "imposition" is criticized by academics.[2] Although the factor of "not being negotiated" is regulated under article 6 of the Act nr. 4077 with respect to consumer transactions, it is not indicated in article 20 of NCO.

The factor of "submission to the other party" which is used in the definition is not a distinctive factor. The important matter here is, not only submission of these terms to the other party but also unequal bargaining power between the parties in other words the weak party's position of lacking the opportunity to negotiate. As a result, such party is faced with either accepting the standard form contract including GTT or not reaching the relevant service, performance or value simply worded as "take it or leave it".[3]

Article 20 of NCO, following the definition of GTT, sets forth some rules for not letting the terms in those kinds of contracts put out of the definition by using some artificial methods. According to these rules:

- Placing those terms in the main text or in the annexes of the contract, the scope, type script or form shall not be important for the qualification.
- Not having the same texts for the contracts prepared for the same purpose shall not prevent considering those terms as GTT.
- The terms and condition, inserted in the contract containing GTT or another contract which are indicating that those terms are accepted through negotiations, shall not, alone, take those terms out of GTT definition.

The aim of the above provisions is to assess the merits of the matter and to prevent getting round the mandatory provisions of the law.

In accordance with the last paragraph of this article, *"these provisions for GTT are also applicable for the contracts prepared by the persons or entities who are rendering services as per the permits given by law or by*

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2 **Kuntalp, E**; Türk Borçlar Kanunu Tasarısı'na ilişkin Değerlendirmeler, p. 25, Galatasaray Üniversitesi Yayınları, Istanbul 2005.

3 **Demir, M**; 2008 Şubat Tarihli Borçlar Kanunu Tasarısı'nın Genel İşlem Koşullarına İlişkin Maddelerinin (m.20-25) Değerlendirilmesi ve Çözüm Önerileri, TBB Dergisi, Sayı 76, p. 217, 2008.

authorities without considering the characteristics". By this provision, the contracts of the services rendered by the governmental entities, also, become subject to the GTT assessment provided by NCO.

In lieu of the terms which become invalid as a result of the restriction which is identified as "being non-written" in NCO, the provisions of related laws will be applicable.

Validity Assessment

Validity assessment is for determining in what conditions and which of the GTT fall under the contract.

In accordance with article 21 of NCO, in order for the GTT fall under the contract, it is necessary for the party who prepared the contract to give clear information to the other party regarding the existence of these terms, to provide the opportunity to the other party for learning the content of these terms and it is also necessary that the other party accepts such terms. In addition, the contract should not contain terms and conditions which are unfamiliar to the composition of the contract and the characteristics of the actions subject to the contract.

In the event of breach of the above provisions, the relevant GTT are deemed as not-included in the contract as invalid terms.

In addition to article 21, article 24 of NCO sets forth a special provision applicable to a special type of GTT. According to this, in a contract which contains GTT or in a separate contract, the terms, which gives the party who prepared the contract the right to unilaterally amend and modify the terms and condition or to embed new terms and conditions in the contract which contains GIK that are disadvantageous for the weaker party, are deemed as not-included in the contract.

As per article 22 of NCO, in the event that some terms are deemed as not-included in the contract according the above restriction, the other terms of the contract will keep their validity. The party who prepared the contract cannot claim that it would not sign the contract if the contract does not include these terms.

In addition to the above issues, the rules, binding on the consumers as per Act nr. 4077 for GİK to be written in 12 font or applicable to some

special contract types as per some other laws (e.g. TCC 1266, NTCC 1425) to be easily legible, are also reviewed for the validity assessment.

Interpretation Assessment

The interpretation assessment will be made on the contract terms which were held subject to the validity assessment and deemed as fall under the agreement.

The provision of NCO with respect to the interpretation assessment is article 23. According to this article, if a term in GTT is not expressed with a plain language and easily understandable or ambiguous, then it shall be construed against the party who prepared the contract and in favor of the weaker party. This provision with respect to the interpretation assessment is a reflection of the main principles of Roman Law "*in dubio contra stipulatorem*" (in doubt, the contract construed against the drawee)[4].

Content Assessment

Article 25 of the NCO sets forth that within GTT cannot contain terms which are against bona fides, against the other party and significantly disadvantageous for the other party.

As is seen, this provision does not set forth the typical examples of unilateral GTT which could be qualified as unfair conditions and it does not set any concrete criteria for the assessment as well. Therefore, it puts such assessment within the broad discretion of the court.

Here the main issue is that being deviated from the ideal and equal balance of contract contrary to bona fides. In our opinion, during the content assessment, it is necessary to take into account the following matters for determining the violation of bona fides:

- whether the distribution of rights and obligations arising out of the nature of the agreement is deformed;
- when and where the balance of the agreement is deformed;
- whether there is any deviation from the substitute provisions of law;

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4 **Altop, A**; Türk Borçlar Kanunu Tasarısı'ndaki Genel İşlem Koşullarının Düzenlenmesi, Prof. Dr. Ergon Çetingil ve Prof. Dr. Rayegan Kender'e Armağan.

- whether the relevant terms are mutually negotiated?

Article 25 of NCO regarding content assessment does not include a sanction but only sets forth that those kinds of terms cannot be set forth under the contract. On that basis, it is possible to reach the conclusion that the contract terms which are contrary to this provision will also be deemed as not-included in the agreement as it is under validity assessment.

Conclusion

Freedom of contract is strictly linked with a healthy competition environment and the existence of a power balance between the parties of a contract. So that the legal provisions on GTT is an example of interruption of law to the freedom of contract when the power balance is deformed against one the parties and aims providing the contract justice.

As is known, due to technological developments and accelerating everyday life, GTT is being used in every area of life. Therefore, it is a positive progress that the assessments with respect to GTT are set forth in NCO without differentiating consumers and merchants. However, it should be considered that against the standard form contracts containing GTT, the other party does not always need protection and it should be given importance to the evaluation of the situation case by case.

The "Simulation" Concept in the New Code of Obligations *

Att. Özgür Kocabaşoğlu

The simulation is stipulated in article 19 of the new Turkish Code of Obligations ("NTCOO") numbered 6098 which shall come into force on 01.07.2012. The stipulation in the NTCOO mentioned below is similar to the provision in article 18 of the Turkish Code of Obligations (TCOO) numbered 818.

> *"**D. Interpretation of contracts, simulation***
>
> *In deciding the type or terms of a contract, the true intention and mutual assent of the parties should be taken into consideration, disregarding any expression which may have been used either by mistake or so as to disguise true intention of the parties.*
>
> *A person who is bound by the terms and conditions of a contract and obligations stated therein, cannot assert simulation as a defence against a third party who relies his claim on such an acknowledgement."*

The article 19 of NTCOO stipulates the interpretation principle of the contracts and the case where the simulation or collision cannot be plead as a defence. The heading of the article is different than the article 18 of TCOO where the new heading is mentioning transactions with simulation. Simulation is an exceptionally discussed issue both in the Turkish Law doctrine and practice whereas no other provision exists in the laws other than article 18 of TCOO.

Simulated Transactions

Two kinds of simulated transactions are accepted under Turkish Law doctrine; "absolute simulation" and "relative simulation". Absolute simulation means, an agreement made between the contracting parties in order to deceive third persons to gain any benefit as if there was a

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* ***Article of September 2011***

genuine and true underlying agreement between the parties. As for relative simulation, it means an agreement concluded between the parties with the intention to conceal the real (underlying) agreement.

Consequences of the Simulated Transaction

Article 18 of TCOO, as well as article 19 of NTCOO does not clearly set forth the consequences of the simulated transactions. However, this legal loophole was filled by both the doctrine and the Court of Appeal decisions.

There are different points of judicial view among the legal doctrine concerning the consequences of simulated transactions. However, the dominant and most widely favoured opinion is to accept the simulated transaction as invalid or void[1].

The Court of Appeal and Swiss Federal Tribunal both affirmed this point of legal view with their several judicial decisions. As a matter of fact, both the Court of Appeal in its decision dated 16.06.2010 and numbered E. 2010/1-275; K. 2010/327[2] and the Swiss Federal Tribunal[3], state that in the proven existence of a simulated transaction, the simulated agreement is invalid.

In addition to the invalidity of the simulated agreement, the Court of Appeal, in its decision dated 24.02.2010 and numbered E. 2010/6-94; K. 2010/100[4], also indicated that the concealed transaction will be valid if the general and essential validity conditions of an agreement are fulfilled (capacity of the parties, exchange of assents, non contrariety to public order, etc.).

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1 **OĞUZMAN, K./SELİÇİ, Ö.;** Eşya Hukuku *(Law of Property)*, Istanbul 1988, p. 329 / **TEKİNAY/AKMAN/BURCUOĞLU/ALTOP;** Borçlar Hukuku Genel Hükümler *(General Provisions of Law of Obligations)*, 7. Edition, Istanbul 1993, p. 550 et seq.

2 www.kazanci.com.

3 **ADAY, N.**; Taşınmaz Mülkiyetinin Naklinde Muvazaa *(Simulation in the Transfer of Unmovable Property)*, LLM Thesis, Institute of Social Sciences, Istanbul University, Istanbul 1991, p. 26 in reference to **GÜNAY, M.**; Roma Hukukundan Günümüze Muvazaa Kavramı *(The Notion of Simulation from Roman Law to Date)* LLM Thesis, Institute of Social Sciences, Ankara University 2007, p. 58, fn. 166, http://acikarsiv.ankara.edu.tr/browse/4234/.

4 www.kazanci.com.

The invalidity of the simulated transaction may have heavy consequences for the parties which may be summarized as follows:

- The simulated agreement becomes invalid or void from the moment it is made without any legal effect and consequently unenforceable together with all accessory rights and duties attached to it;
- The party who was harmed by the damage caused of the simulated agreement cannot claim to recoup its losses. Because, the harmed party is the one who assent to the simulated agreement with its free will without any duress;
- In a simulated agreement, the existence of simulation can be alleged by any third persons or be investigated and taken into consideration by the judge *ex officio* with the exception of the parties;
- There is no statute of limitation to allege the existence of a simulation. As a matter of fact, the simulation may be alleged or investigated by the judge *ex officio* at any time;
- The enforcement of obligations and duties cannot be claimed in case of simulation because of the absence of a valid agreement between the parties. Furthermore, for obligations that have already been executed, restitution may be asked based on the principles of unjust enrichment (Art. 61 et seq. TCOO);
- In principle, a person who has acquired a property / right on the basis of a simulated agreement cannot transfer this property / right to third persons. Otherwise, the said operation would be invalid due to the invalidity of the simulated agreement. Nevertheless, there are some exceptions to this principle:
    - The acquisition of a property/right by the third party with the good faith based on a written and signed document acknowledging a debt, is protected by law and considered as valid;
    - The acquisition of a right *in rem* by a third person with good faith based on Title Deed records kept by the Land Registry is protected by law and considered as valid;
    - The acquisition of a property / right by a third person with good faith from a fiduciary.

- The concealed agreement in relative simulation is valid provided that the required conditions for the validity of such an agreement are satisfied;
- The simulation cannot be alleged in case of existence of a civil service institution-government agency- as one of the parties to the transaction. Indeed, it is assumed that a civil servant won't take a part in a simulated transaction.

Proof of the Simulated Transaction

As indicated above, both parties of the simulated transaction and the third persons with good faith who have been confronted to the simulated transaction may allege the existence of such a dodgy agreement before the tribunal and claim the compensation for their damages. However, the parties are obliged to prove their allegation.

The standard for proof varies depending on the allocation of burden of proof among the parties. As a matter of fact, in case that the allegation is made by one of the parties to the simulated transaction, the party must present and exhibit written evidence to prove the simulation. This was also underlined by the Court of Appeal in various decisions[5].

On the other hand, it is also clearly stated in the decisions of the Court of Appeal[6] that if allegation is made by third persons, the simulation may be evidenced by all satisfactory of proofs.

As a consequence it can be clearly observed that without providing any new stipulations in regard of the simulation in the NTCOO, the lawmaker seems to intend keeping the vision of TCOO where this subject is mostly developed through the practice and Court of Appeal decisions.

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5 Decision of the 4th Civil Chamber of the Court of Appeal dated 05.07.1991 and numbered E. 1990/4988; K. 1991/7141; Decision of the Assembly of Civil Chambers of the Court of Appeal dated 27.01.1999 and numbered E. 1999/1-20; K. 1999/17; Decision of the Assembly of Civil Chambers dated 10.11.2004 and numbered E. 2004/14-464; K. 2004/588 – www.kazanci.com.

6 Decision of the 6th Civil Chamber of the Court of Appeal dated 21.03.2005 and numbered E. 2005/955; K. 2005/2510; Decision of the Assembly of Civil Chambers of the Court of Appeal dated 02.10.2002 and numbered E. 2002/6-618; K. 2002/659; Decision of the Assembly of Civil Chambers of the Court of Appeal dated 11.10.2000 and numbered E. 2000/6-1193; K. 2000/1247 – www.kazanci.com.

Objective Liability in the New Turkish Code of Obligations*

Att. Sedef Üstüner

In General

The Turkish Code of Obligations ("The Code") n° 6098 which was adopted on 11 January 2011 and published in the Official Gazette n°27836 on 4 February 2011 will come into force on the 1st of July 2012.

Although in the Code, the liability resulting from tortious acts is in a general way addressed as a "fault liability" in the articles from 49 to 64, situations of "objective liability" are also addressed for exceptional circumstances. The situations of "objective liability" called also "causal liability" are dealt in the article 65 and the followings by a threefold division: "strict liability", "vicarious liability" and "danger liability".

Strict (Absolute) Liability

The "Strict Liability", which has been newly brought and set up in the article 65 of the Code of Obligations, deals with the liability of persons who do not possess the ability to discern. In this article, the liability of tortfeasors, who do not have the power to discern, is construed by taking every contingency into account. In this respect, in the situations where the equity commands, proper causal relation, damage and illegality elements are sufficient to hold tortfeasor, who does not have the ability to discern liable for the damages caused by him, even if he is not at fault or culpable.

Vicarious Liability

The Vicarious liability is set up in the Code in a threefold division i) the employers' vicarious liability, ii) the liability of the keepers of animals, iii) the liability of the landowner.

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* ***Article of November 2011***

The Employers' Vicarious Liability

The Liability of the one who employs people for work is divided into four sub-paragraphs in the article 66. Art.66/1 stipulates *'The employer is obliged to repair the damage caused to others by this person while executing the work conferred to him'* . In this respect, the employer is held directly liable for the damages, resulting from the execution of the work, caused to others by his workers.

On the other hand, Art.66/2 postulates *'If the employer proves that he has acted in due diligence while selecting his worker, instructing him with his work, supervising and inspecting him, then he is not liable'* . With this article, a form of release is organized in favour of the employer and some conditions are set to release him from liability resulting from the damages caused to third people by the work of his workers. To release the employer from liability of the damages caused to others by its workers while executing the work attributed to them three conditions must be proved, the employer work must have acted in due diligence while i) selecting his worker, ii) instructing his worker about the work iii) supervising and inspecting him. The employer will not be held liable as long as he proves this due diligence requirement.

Art.66/3 stipulates that *'The employer of an enterprise is obliged to repair the damages caused by the activities of that enterprise as long as he cannot prove that the organization of the enterprise is suitable to avoid the realization of the damages'*. In this respect, in the case damages are caused due to the activities of the enterprise, if the employer manages to prove that he has not committed any malpractice in the organization of the work, then he cannot be held liable, otherwise its liability will persist. If the work organization of the enterprise is the direct cause of the damage, the employer cannot rely anymore to free itself from liability on the fact that '*he has acted in due diligence while selecting his worker, instructing him with his work, supervising and inspecting him*' in application of the art. 66/2. Because, even if the employer has been acting in a very careful way, he is personally responsible to organize the enterprise and the work environment and the worker is not able to prevent such a damage caused by these factors.

Art.66/4 stipulates *'The employer has the right of recourse of the indemnity he has paid, against the worker who has caused the damage to the extent of the personal liability of the worker.'* With this article, the right of recourse of employer against his worker is subject to the realization of the condition that the worker is personally obliged to pay an indemnity to a third person. In this respect, whereas the possibility of recourse in the proportion of the amount of the indemnity due by the worker exists, on the contrary the person who employs people for work has not right to recourse to the worker.

The Liability of the Keepers of Animals

It is set in the articles 67 and the followings of the Code. A person who permanently or temporarily assumes the care of an animal is held responsible to remedy to the damages caused by this animal but if he proves that he has acted in due diligence in order to prevent the occurrence of this damages then he will be absolved from this liability. However, in the case the animal has been frightened by another person or by an animal belonging to some other person, the keeper of the animals has the right of recourse against these persons.

As set in the Art.68, if an animal belonging to a person causes damage to an immovable of another person, the holder of the immovable can catch the animal and hold it in his possession until the damage is repaired. Moreover, he can even restrain or confine the animal if the circumstances prove it right. However, in this case, the holder of the immovable has the obligation to inform the owner of the animal.

The Liability of the Landowners

It is set in the article 69 of the Code. First, this article sets the liability of the landowner of a structure, premises or of any other kind of construction work for the defects of their construction or for the insufficiencies in their maintenance. However, the landowner cannot be held liable if the causal relationship between the material or moral damage occurred and the defectiveness or lack of care of the structure is cut by the interference of the fault of the person who suffered from the damage or by the fault of any third person.

In the same way, the article sets that right along with the landowner of the structure the persons who have the right of usufruct or occupier are also held liable for the insufficiencies in the maintenance or owe duty of care to keep the premises in safe condition. In spite of the fact that the persons who have the right of usufruct or occupier are held liable for the insufficiencies in the care of the structure, they are not liable for the defects in the construction of the structure. The persons, who are responsible in this matter, have the right of recourse against persons who are responsible to them.

On the other hand, the article 70 states that where no damage has been occurred yet, but a danger of damage exists, the person who can potentially suffer from that damage has the right to ask the owner of the structure or the construction work to remedy to this situation by taking all the necessary precautions.

Danger Liability

It is set in the articles 71 and the followings of the Code. The proprietor of an enterprise, of which exposes a serious amount of danger or the manager (if it exists) of such an enterprise is respectively liable for the damages caused by the activities of this enterprise. In this scenario, principally it is a matter of the existence of an enterprise exposing an imminent danger, which is of a severe degree. The criterion of an enterprise presenting an important degree of danger can be found in the article. Taking into account the materials used, the equipment, considering the fact that even with the proper care of an expert the enterprise is propitious to the occurrence of frequent or severe damages, this enterprise is considered to be an enterprise exposing a serious degree of danger. Even if these kinds of enterprises are permitted by law to exercise their activities, the people who suffer from these damages have the right to demand a compensation for their prejudice.

Conclusion

The articles of the Code on the objective liability different from the ones of the Code of Obligations n° 818 still in force and newly drafted, carry expanded liability clauses. It is thus possible to affirm that the arrangements made in this respect are effective to solve the problems encountered in a daily base and are appropriate.

CONSUMER LAW

The Regulation on Distance Selling Contracts *

Att. Ceyda Büyükoral

The "Regulation on Distance Selling Contracts" ("Regulation"), prepared by the Ministry of Industry and Trade, entered into force after being published in the Official Gazette dated 06.03.2011 and numbered 27866.

In the Regulation, which is prepared on the basis of Consumer Protection Law no. 4077, the application procedures and principles are set forth. Distance contract is defined under article 4 of the Regulation. Pursuant to this article, distance contract is defined as; "a contract concluded by using written, visual or electronic means or any other means which do not require the physical presence of the parties to the contract and where the parties agree that the delivery or performance of the goods or services is to be effectuated instantaneously or subsequently."

It is stipulated in article 5 of the Regulation that prior to the conclusion of any distance contract, the consumer must be provided with the following information in a clear, comprehensible and appropriate manner.

1. The name, title, explicit address, phone and other contact details of the seller or the supplier,
2. The main characteristics of the contract goods or services,
3. The sale price of the goods or services in Turkish Liras including all the taxes,
4. The delivery costs, if any,
5. The arrangements for payment, delivery or performance,
6. The conditions and the way of exercising the right of withdrawal,

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* ***Article of April 2011***

7. The additional cost of using the means of distance communication, if it is not charged over the regular tariff,
8. The period for which the offer or the price of the goods or the services remains valid,
9. The minimum duration of the contract, if the contract envisages permanent or periodic performance of the goods or services,
10. The conditions envisaged for termination of contracts, concluded for an indefinite term or a term longer than 1 year,
11. Information stating that the consumer can address his complaints or objections to the arbitration committee for consumer problems, situated at the place where the consumer purchased the goods or services or where the consumer is domiciled, if the monetary value is within the limit determined by the Ministry in December of each year or otherwise the consumer can apply to the consumer court.

It is stipulated that the consumer must be also provided with a form including all of the above mentioned information. In this regard, it is stated that for a contract of purchase of goods, prior to the delivery of goods; for a contract of purchase of services, within a reasonable time prior to the performance of the contract and for a contract concluded by means of verbal distance communication such as telephone, latest at the time of delivery, the consumer must be provided with such form.

In article 6 of the Regulation, it is foreseen that unless the consumer gives a written confirmation of receipt of the above mentioned information, the seller or the supplier cannot conclude a contract. It is agreed that for a contract concluded electronically, confirmation can also be given in electronic form.

The right of withdrawal is regulated in article 7. Pursuant to this article, the consumer has right of withdrawal from a distance contract without indicating any reason or paying penalty. It is stipulated that such right must be exercised within seven days. However, it is stated that in case there is a violation of article 5 or 6 of the Regulation, the consumer can exercise his right of withdrawal within three months. It is indicated that for a contract of purchase of goods the withdrawal period will run

from the date of delivery and for other contracts the withdrawal period will run from the conclusion date of the contract.

In subparagraph 4 of article 7, the types of contracts to which the right of withdrawal does not apply, are established.

In subparagraph 5 of article 7, it is regulated that if the seller, supplier or a third party in cooperation with them grants loan to the consumer for complete or partial fulfillment of his obligations arising from distance contract, the loan agreement will also be cancelled without any liability of reimbursement or penalty when the consumer exercises his right of withdrawal from the distance contract. However, it is stated that the consumer must also send his withdrawal notice to the creditor and the liabilities of the parties are reserved.

The consequences of withdrawal are regulated in article 8 of the Regulation. The seller and the supplier are obliged to refund the sums paid by the consumer or return back any debenture given by the consumer without charging expenses and within ten days and also receive back the goods within twenty days following the receipt of the withdrawal notice.

It is accepted that the consumer can still exercise his right of withdrawal in spite of decline in value of the goods or any reason which prevents returning back the goods. However, it is stated that if such occasion occurs due to the consumer's fault, then the consumer must reimburse the total value or the decline in value of the goods. It is indicated that any change or deterioration arising from ordinary usage of the goods will not be considered as decline in value.

"Performance of contract" is regulated in article 9 of the Regulation. Pursuant to this article, the seller or the supplier is obliged to perform his obligations arising from the contract within thirty days following the receipt of the purchase order and this period can be extended up to ten days provided that the consumer is previously informed.

It is stipulated that in case of impossibility of performance, the consumer must be informed and any sums paid by the consumer must be refunded or any debenture given by the consumer must be returned back within ten days. Furthermore, it is also stipulated that the situation

where the goods are out of stock, will not be considered as impossibility of performance.

It is stated that in such occasion, the seller or the supplier can supply other goods or services equivalent in quality and value provided that the contract allows to do so and it is obvious that contract goods or services cannot be supplied due to justifiable cause and the consumer gives his consent after being informed in a clear and comprehensible manner.

It is regulated that if unsolicited goods or services are supplied, the seller or the supplier cannot claim any rights against the consumer except the situation where the goods or services are used by the consumer. Moreover, it is stated that the consumer's failure to reply does not constitute consent and the consumer is not liable to return back or maintain the goods.

In article 12 of the Regulation the seller or the supplier is obliged to build a system which allows the consumer to obtain information and exercise his right of withdrawal and to keep written, verbal or electronic data for three years. It is stipulated that the burden of proof is on the seller or the supplier to establish that intangible goods or services, supplied through electronic means, were free from defects.

The "Regulation on Application Procedures and Principles of Distance Contracts", which was published in the Official Gazette dated 13.06.2003 and numbered 25137, has been abrogated following the enforcement of the Regulation, explained herein above.

Regulation on Consumer Rights in Electronic Communications Sector *

Att. Pelin Baydar

Scope and Aim of the Regulation

Regulation on Consumer Rights in Electronic Communications Sector ("Regulation"), which has entered into force by being published in the Official Gazette dated 28.07.2010 and numbered 27655, comprises the procedures and principals in respect of consumer rights benefiting from electronic communication services and statutory obligations of the service providers.

General Principles

The consumers benefiting from electronic communication services has the right to utilize the services with fair prices and has the right to choose whether his the personal data can be listed in the public directory, among the other rights mentioned herein below:

a) Right to benefit from directory service with/without any charge and registry without an discrimination,

b) Right to demand detailed sales invoices,

c) Right to receive information with respect to scope of the electronic communication service submitted by the providers,

d) Right to access to the explicit, detailed and updated information regarding applicable tariffs in terms of services submitted to the consumers and notification of the changes in the tariffs before their entry into force,

e) Right of withdrawal from all electronic marketing services including premium content services within the scope of the tariffs and campaigns, via text message, call center, internet or similar methods,

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* ***Article of October 2011***

f) Right to demand that no discrimination is made between the consumers in dealing with consumer complaints or faulty product claims excluding institutions regarding health, fire, security, disaster or similar institutions,

g) Right to benefit from international standards and benefit from good quality services, the framework of which is in compliance with the standards determined by Information and Communication Technologies Authority ("Authority"),

h) Right to demand the invoices and the subscription agreements to be in the form that the blind or visually impaired consumers may benefit from,

i) Right to reject unsolicited messages and e-mails,

j) Right to opt upper spending limit for the invoices.

According to article 6 of the Regulation, the operators shall submit all information spontaneously without a necessity of request, regarding applicable tariffs, subscription packages if exist, the tax issues included in the tariffs, prices of the tariffs in terms of access and usage of electronic communication services and also shall procure that these informative services are easily reached by the consumers.

Additionally, the notification shall be made without any charge with respect to debate, competition, gambling game and similar services. Following the notification, the charging and service of premium content shall commence upon acceptance of the terms by consumer.

Article 8 of the Regulation mentions that the service providers are obliged to inform the consumers explicitly, accurately and in details regarding the campaign's conditions, duration, target group and similar issues. The campaign information shall be published in the web site of the service providers in a way that the consumers may easily reach. If the service providers make any change in the campaign's conditions, then the operators shall inform the consumers prior to execution of the changes of the campaign, saving the acquired rights of the consumers. If it is determined that if consumer rights have been infringed as a result of

the committed acts, then the seller is liable to compensate all the damages of the consumers who similarly benefitted from the campaign and have been affected in a similar way.

According to article 9 of the Regulation, operators are obliged to inform the consumers about the changes of the tariffs through the way of text message, telephone calls and/or post before reasonable time prior to entry into force. The reasonable time limit may be determined by the Authority.

Another important issue regulated in the Regulation is that the service providers are obliged to inform the consumers regarding safe shopping on the internet and submit the infrastructural services as optional, without any extra fee, in order to protect the consumers against illegal trading schemes and financial scams determined by Head of Telecommunication Communication. The Authority may determine procedures and principals with respect to implementation of this article.

Additionally, if it is determined that the usage of the service is far above the reasonable usage or there is a valid implication of suspicious fraudulent activity, then in order to protect the consumer's benefits, the service provider may suspend or limit the usage of service by informing the consumer.

In the Regulation, subscription agreements' forms and conditions, principals of invoices and unjustified conditions with respect to subscription agreements are also regulated.

If the service providers shall not fulfill obligations stated herein under this Regulation, then the provisions of Regulation on Administrative Fine and Other Sanctions and Precautions to be applied to service providers by the Telecommunication Authority published in the Official Gazette dated 05.09.2004 and numbered 25574 shall apply.

This Regulation has annulled the Regulation on Consumer Rights in Electronic Communications Sector published in the Official Gazette dated 22.12.2004 and numbered 25678.

Conclusion

By the Regulation which has provided important developments in the consumer rights, the service providers in electronic communication area shall submit applicable tariffs, subscription packages if exist, the tax issues included in the tariffs; procure the easy access to these information; notify the consumers without any charge with respect to debate, competition, gambling game and similar services; notify the consumers about the changes of the tariffs via text message, calls and/or post before reasonable time prior to entry into force; inform the consumers regarding safe use of the internet and submit the services as optional, without any extra fee, in order to protect the consumers against illegal trading practice and financial scams; if it is determined that a consumer right has been infringed as a result of the committed acts, then the provider shall compensate all the damages of the consumers who similarly benefitted from the campaign and has been affected in a similar way.

The Unfair Terms in Consumer Contracts *

Att. Ceyda Büyükoral

The Provision Regarding Unfair Terms in Consumer Contracts Stipulated in the Code No. 4077 on Consumer Protection

The Code No. 4077 on Consumer Protection ("Code No. 4077") had been entered into force after its publication in the Official Gazette dated 8 March 1995 and numbered 22221.

The purpose of the Code No. 4077, as outlined in the Article 1, is "to take measures aimed at protecting the health, safety and economic interests of consumers in line with the public benefit, building consumer awareness, indemnifying losses incurred by consumers and protecting them against environmental hazards; to promote consumer initiatives aimed at protecting consumer interests and to encourage volunteer organizations for establishing consumer-related policies."

The Code No. 4077 had been amended by Code No. 4822 for the purpose of harmonizing Turkish legislation with the European Union Acquis.

In this regard, a provision regarding unfair terms in contracts was inserted into Code No. 4077.

The relevant provision states that a contractual term which has been unilaterally included in the contract by the seller or supplier without it being negotiated with the consumer shall be deemed as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

Pursuant to the aforesaid provision;

- Any unfair term included in a contract, which the consumer is a party to, shall not be binding upon the consumer.
- A term shall always be deemed as not individually negotiated where it has been drafted in advance and the consumer has therefore not

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* ***Article of November 2011***

been able to influence the substance of the term, particularly in the context of a standard contract.

- The fact that certain aspects of a term, or one individual term, have been negotiated shall not exclude the application of the same provision to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a standard contract.
- Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be on him.

Furthermore, according to the provision, consumer contracts required to be drawn up in writing under articles 6/A, 6/B, 6/C, 7, 9, 9/A, 10, 10/A and 11/A shall be drawn up at least in character size 12 and in bold characters, and the lack of one or more necessary terms in the contract shall not affect the validity of the contract. However, such lack shall be forthwith removed by the seller or supplier.

The above stated articles are respectively concerned with installment sales, time-share vacations, package tours, campaign sales, door-to-door sales, distance contracts, consumer credits, credit cards and subscription agreements.

Regulation on Unfair Terms in Consumer Contracts

Regulation on Unfair Terms in Consumer Contracts ("Regulation") had been prepared and entered into force by the Ministry of Industry and Trade in order to designate the principles and guidelines for the determination of unfair terms in contracts, which the consumer is a party to and control of such terms for the protection of consumers.

According to article 6 of the Regulation which is entitled as "evaluation of unfairness of contract terms";

- Contract terms shall be written in plain and intelligible language.
- When evaluating the unfairness of the contract terms, nature of the contract goods or services, the terms leading to the conclusion of the contract and/or terms of related contracts shall be taken into consideration.

- When evaluating the unfairness of the contract terms, the balance between the primary contractual obligations of the parties or proportionality between the price in the contract and the real price of goods or services shall not be taken into consideration provided that the terms are written in plain and intelligible language.
- In case of doubt, the contract terms shall be interpreted in favor of the consumer.

Pursuant to article 7 of the Regulation, the unfair terms in the contracts concluded between the seller, supplier or creditor and the consumer shall be deemed as null and void. On the other hand, the rest of the contract shall be valid provided that it is still viable without these terms.

Article 8 of the Regulation is entitled as "judicial review" and it stipulates that real and legal persons having legitimate interest may file a lawsuit in order to prevent the application of unfair terms of standard contracts. In such a case, the court decides on the necessary precautions.

An indicative and nonexhaustive list of examples of contract terms which may be deemed as unfair is annexed to the Regulation.

Conclusion

As a consequence of amendments made to the Code No. 4077 for the purpose of harmonizing Turkish legislation with the European Union Acquis, a provision regarding unfair terms in contracts was inserted into the aforesaid Code.

Pursuant to the provision, any term (i) unilaterally included in the contract by the seller or supplier, (ii) non-negotiated with the consumer, (iii) contrary to the requirement of good faith and (iv) causing significant imbalance in the parties' rights and obligations to the detriment of the consumer is defined as unfair term.

Any unfair term included in a contract, which the consumer is a party to, is deemed as null and void for the consumer.

In order to designate the principles and guidelines for the determination of unfair terms in contracts, which the consumer is a party to and control

of such terms for the protection of consumers, Regulation had been prepared and entered into force by the Ministry of Industry and Trade.

The Regulation entitled real and legal persons having legitimate interest to file a lawsuit in order to prevent the application of unfair terms of standard contracts.

Furthermore, as an annex of the Regulation, contract terms which may be deemed as unfair is listed. However, the list is indicative and nonexhaustive.

In the light of the above information, the terms included in a contract, which the consumer is a party to, shall be in compliance with article 6 of the Code No. 4077 and the Regulation. Otherwise, it can be argued that the terms shall not be binding upon the consumer.

Decision of 13th Civil Chamber of High Court of Appeals Regarding Application of Credit Card Fees *

Att. Sedef Üstüner

The surcharges imposed on consumers by the banks under the name of "fees" have been a subject of a debate for a long time. In order to inform the consumers better and to have the discussions diminished, the decision of 13th Civil Chamber of High Court of Appeals dated 07.02.2011 and numbered 2010/3958 – 2011/1717 (the "Decision") shall be examined below.

In the Decision, it is stated that the Bank has requested from the credit card holder ("Consumer") to give consent for a specified amount of charge for the credit card with a notification and the card shall be blocked if otherwise acted. Upon the contrary action to such request by the Consumer, the credit card has been blocked by the bank. The Consumer claimed a reinstatement by unblocking the card and further, moral indemnity awards resulting from the blocking.

The Bank responded that none of the banks shall be obliged to issue credit card to anyone who requests, and if it is issued, none of the parties of an agreement can be forced to continue to execution of the agreement and that both of the parties shall be entitled to terminate credit card agreement at any time.

The Court of First Instance stated in its decision that the credit card could not be blocked since the Bank cannot cease or refuse for providing service unless there is a justifiable cause.

Upon the appeal against the decision, the High Court of Appeals reversed the judgment with following justifications:

- The freedom of contract may be limited only by public order.
- Everyone is free to conclude any agreement and may not be forced to continue to execution of agreements. The exception of this principle is the "participation agreements" concluded by public administration and institutions conducting public services.

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* ***Article of June 2011***

- The banks are not considered as institutions for providing public services but institutions for making profit. Hence, the agreement between the banks and Consumers may not be accepted as "participation agreements". Accordingly, the banks may claim a fee for their service.
- Besides, using of credit cards results also in risk and cost for the banks. Thus, it is usual that the risk and the cost may be reflected to the Consumer.

As a result, termination of the agreement and transaction for blocking the credit card for use shall be evaluated within the framework of freedom of contract and the Bank may not be obliged to conclude this agreement in the situations where the Consumer is not willing to pay the credit card fee and in particular when the agreement does not contain any stipulation that the credit card fee cannot be charged to the Consumer.

LABOR LAW

Termination of Employment Agreement by Abrogation *

Att. Süleyman Sevinç

Employers and employees can terminate an employment agreement by mutual consent at any time. This is a result of the freedom to contract, which is accepted in every case except for the special restrictions regulated under the Code of Obligations. At this point, there is no difference between an employment agreement for a definite term and an employment agreement for an indefinite term. The agreement to terminate the employment agreement in this way is called an "abrogation agreement".

Since the termination of an agreement through an abrogation agreement is not a termination of the employment agreement, the provisions concerning job security cannot be applied. Similarly, compliance with notification time or payment of the compensation related to the notification time (notification compensation) and payment of severance compensation do not arise. In other words, an employee is not entitled to the severance and notification compensation and cannot benefit from job security provisions. Moreover, an employee is not entitled to the unemployment allowance stipulated under Law No. 4447.

For these reasons, "a reasonable benefit" for the employee is required by the 9th Civil Chamber of the Court of Appeal for the conclusion of an abrogation agreement. The Court of Appeal's skeptical approach may be explained by the use of this institution by employers to avoid fulfilling the job security provisions.

It is obvious that the Court of Appeal's skeptical approach continues after the entry into force of Labor Act No. 4857, and the principle of

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* ***Article of January 2011***

interpretation in favor of employees is applied more strictly as the job security provisions are eliminated by the abrogation agreement.

"The abrogation agreement is not regulated under Turkish legislation. It is stated in a decision of the Court of Appeal that due to the freedom of contract doctrine it is possible to terminate a legal relation, and the parties are able to terminate the contractual relationship in a way other than the ordinary termination. This is defined as abrogation.

The accord of the intentions of employee and employer on the termination is not a termination of a party. The abrogation agreement is concluded when a party has communicated to the other a declaration concerning the conclusion of an agreement related to the mutual termination of the employment agreement (offer) and when the other party accepts this offer. However, the Labor Act does not regulate this type of termination.

The offer in an abrogation agreement aims to terminate the employment relation through the appropriate intention of the other party. Therefore, the offer related to the conclusion of an abrogation agreement cannot be considered a termination and cannot be converted into a termination.

In this sense, the form of an abrogation agreement, its conclusion, its scope and validity will be determined pursuant to provisions of the Code of Obligations. However, termination of an employment agreement through the abrogation agreement will be interpreted considering the principle of interpretation in favor of the employee since it closely concerns labor law.

The provisions of the Code of Obligations concerning defective intentions regulated in articles 23-31 must be carefully examined in terms of abrogation agreements. Normally, you would not expect an employee to try to benefit from the job securities stipulated for termination of employment agreements by the employer and to file a reemployment lawsuit within one month following its offer or acceptance for conclusion of the abrogation agreement.

It is also necessary to focus on the reasons for termination of the employment relation through a mutual agreement even though

the relationship could be terminated by a dissolving constitutive declaration by either of the parties. First of all, the offerer must have a reasonable interest in conclusion of an abrogation agreement.

Although terminations of employment relationships through abrogation agreements were not common in the period of Act. No. 1475 and previously, they have become more common following the entry into force of Labor Act. No. 4857 due to its job security rules. At this point, it is possible that the provisions for job security can be dismissed by conclusion of an abrogation agreement even though the transaction, in reality, is a termination of an employment relationship by the employer. In this respect, the reasonable interest of the parties in concluding an abrogation agreement must be determined separately from the control of intention defects. Reasonable interest is determined by considering whether the employee or the employer is the offerer, and the characteristics of the instant case must be taken into account.

An employee whose employment agreement is terminated through an abrogation agreement is not entitled to severance or notification compensation which are the rights related to a termination transaction, and he or she will be deprived of job security. The employee cannot benefit from unemployment insurance within the scope of Act. No. 4447. All these issues justify the need to interpret in favor of employees on the point of the validity of the abrogation agreement as the principle of strict interpretation is a rule in labor law for release contracts.

The parties may also stipulate in an abrogation agreement the notification, severance, and job security compensation. The validity of abrogation agreements will be evaluated considering all these points." (9th Civil Chamber of High Court of Appeals E. 2008/1888, K. 2008/25058, T. 25.09.2008)

In addition to the decision of the 9th Civil Chamber of the Court of Appeal mentioned above, which analyses the approach to the issue of

employment terminated by abrogation while conducting an appellate review, the same principles have been repeated in various decisions.

"*In spite of the fact that each party can terminate the employment relationship with a dissolving constitutive declaration, the reasons for not making this choice and terminating by mutual consent should be emphasized. Even though examples concerning cases in which the employment agreement was terminated by an abrogation agreement were never reflected in practice, after the job security clauses entered into force, especially after Labor Act no. 1457, they became widespread.*

At his point, the suspicion concerning the elimination of the job security clauses by the employer by disguising the termination by the employer as a mutual agreement can arise. In this respect, whether the parties have a reasonable interest in concluding an abrogation agreement besides the defective intention control should be examined. Reasonable interest criteria should be handled by taking into consideration whether the offer concerning the conclusion of an abrogation agreement was made by the employer or the employee, and the characteristics of the current case.

Not only is an employee whose employment agreement has been terminated by an abrogation agreement deprived of job security, but he or she is not entitled to notification and severance compensation, which are the rights connected to the termination. Furthermore, the employee will not be able to benefit from unemployment insurance within the scope of Act no. 4447. All these issues justify the need to interpret in favor of the employee on the point of the validity of the abrogation agreement as the principle of strict interpretation is a rule in labor law for release contracts.

The parties might also stipulate in abrogation agreement the notification, severance, and job security compensation, as well as the payment regarding the time without any employment and some or all of the other rights. The validity of abrogation agreements will be evaluated considering all these points."

(9th Civil Chamber of High Court of Appeals E. 2008/1888, K. 2008/25058, T. 25.09.2008)

Briefly, in case of a termination of an employment agreement through an abrogation agreement without considering the labor law principles such as "interpretation in favor of the employee", "strict interpretation" and "reasonable interest criteria", it is highly possible that the employee may benefit from the job security provisions of Act No. 4857 through a lawsuit.

The Obligations of the Employer Regarding Occupational Health and Safety *

Att. Alper Uzun

According the provisions of the Code of Obligations, the employer is obliged to pay, to treat equally, to supervise, and to protect the employee. This obligation is related to taking occupational measures and is the most important equivalent of the obligation of loyalty of the employee.

In the framework of the obligation of supervision, the employer is obliged to act according to the interests of the employee, to protect and to help the employer, and to avoid behavior that may harm the employee. One of the main obligations of the employer within the scope of the obligation of supervision is to take occupational safety measures.

The concept of occupational health and safety means the provisions aimed to protect the employee from occupational accidents and illnesses. The obligation regarding taking occupational health and safety measures is principally the obligation of the employer.

The main rule regarding this obligation is stated in Chapter 10 entitled "Employment Agreement" in Article 332 entitled "Measures and Workplaces" of the Code of Obligations Numbered 818. According to this provision, the employer is obliged to take necessary occupational measures against the dangers which may occur during work within the framework of the contract and nature of the work, to provide a healthy and appropriate workplace, and, if necessary, to provide a healthy place to sleep.

Employers are obliged to take measures to ensure the occupational health and safety of their employees and to have all of the necessary equipment at the workplace pursuant to Article 77 of Labor Act numbered 4857. Also, pursuant to the same article, employers are obliged to control the measures taken for occupational health and safety and to inform employees of occupational risks that they face, the measures to be taken, and their legal rights and obligations. Employers are also obliged to train

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* ***Article of March 2011***

them for necessary occupational health and safety issues. The employers must notify the regional directorate in writing within two days of any occupational accident or illness as a requirement of the aforesaid article. Pursuant to the last paragraph of this article, the provisions regarding occupational health and safety also apply to apprentices and trainees.

It is also necessary to mention the Regulation Pertaining to Departments of Health and Safety at Work and the Regulation Pertaining to Common Departments of Health and Safety which entered into force through publication in the Official Gazette of 15 August 2009. These regulations concern workplaces which employ at least 50 employees and concern the formation of departments of health and safety at work or procurement of the service from the common departments of health and safety, and workplace doctors and other personnel to be charged. Besides, they also concern workplaces which employ at least 50 employees where the work is deemed as industrial for the appointment of engineers or craftsmen who are occupational safety specialists.

Pursuant to the provisions of the Regulation, employers are under an obligation to determine, take, follow the application, supervise and develop occupational health and safety measures, to prevent occupational accidents and illnesses, and to provide employees with first-aid and emergency action and preventive and protective health and safety services in order to establish a healthy and safe work environment. For work places which employ at least 50 employees, it is obligatory to form a department of health and safety at work in order to provide these services; to appoint one or more workplace doctors and other personnel if needed; and for workplaces where the work is deemed industrial, to appoint one or more occupational safety experts. Employers may fulfill the occupational health and safety measures wholly or partially by providing these services from common departments of health and safety formed outside of the work place.

The fact that the employer provides these services using experts or institutions outside of the workplace does not eliminate the employer's liability in this respect.

The decision of 14 September 1999 numbered 1999/4222 E. – 1999/5690 K. of the 9th Civil Chamber of the Court of Appeal states that,

"The Labor Act requires clearly that the employer is under the obligation to do what is necessary in order to safeguard the health of its employees and their occupational safety, to meet the conditions in this respect and to provide the necessary equipments."

In case of death, disability, or occupational illness of an employee resulting from the failure of the employer as to the duty to supervise or in case the necessary safety measures are not taken in the workplace, civil, penal and administrative liability will be imposed upon the employer.

The Compensatory Time Work *

Att. Begüm Taner Huntürk

In Employment Law "Compensatory time work" means working period of an employee in lieu of the time which had been taken off due to various reason without receiving any over time emolument for such working period. In the frame of flexible working principle, the Labor Law vested the employers, under certain conditions, the right to require from their employers to perform compensatory time work.

Pursuant to Article 64/1 of the Labor Law, the employer may demand compensatory time work within two months after the actual leave, in cases of where the time taken off the work due to unanticipated emergency circumstances, given time work off in public holidays before or after national feasts and general holidays or having worked for a period, which is substantively less than normal working hours or total shutdown of the workplace due to similar reasons or given time off work to employee upon his demand.

This type of working situation would not be considered as overtime work or working for extra hours.

On the other hand, compensatory time work cannot be enforced in return of leaves granted by law or granted pursuant to individual or collective labor contracts between employee and employer and in the legal strikes or lockouts periods.

For example, compensatory time work cannot be enforced in return of leaves up to three days which must be given in the of marriage, birth or death circumstances.

In the same manner, compensatory time work cannot be exercised for the holidays taken pertaining to employment contract. Furthermore, as the National Feasts and General Holidays Law Article 3/a provides that the weekend holiday starts at Saturday 13:00 o'clock and also includes the whole Sunday, compensatory time work cannot be carried out in these days. If the labor contract stipulates that employees will not work on

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* ***Article of April 2011***

Saturdays or even in the lack of such a provision in the labor contract; if there is such an established practice in workplace then it will not be lawful to carry out compensatory time work on Saturdays. However, pursuant to the labor contract or established customary practice in workplace if the weekly holiday is not used at the weekends on Saturday or Sunday but in the other day of the week instead, then compensatory time work can be enforced on Saturdays and Sundays. Nevertheless, in such cases compensatory time work cannot be carried out in the day established as week holiday in practice.

Pursuant to Labor Law, the authority to make decision whether a compensatory time work is needed, belongs to the employer. The employer, who will enforce a compensatory time work, should notify the employee by specifying, which of the above referred reasons such work is required for and the date the work is to be started to compensate the lost time.

We should mention as a last issue that compensatory time work is limited to the maximum of three hours per day under the condition that the utmost daily working hours, which is 11 hours, is not exceeded.

The compensatory time work is a lawful right vested on the employer in the frame of flexible working principle. However, it has an exceptional nature and should not be abused by the employers to the detriment of employees' rights.

Part Time Employment Agreements *

Att. Pelin Baydar

Pursuant to the Labor Code numbered 4857, the agreement is defined as Part Time Employment Agreement when an employee's normal working hours are less than the full time working employee's scheduled working hours.

Pursuant to Regulation on Working Periods Regarding Labor Code article 6, it is stipulated that *"if the working hours of workers in a workplace are 2/3 of the full time workers within the frame of full time period employment agreement, their working pattern is deemed as part time working"* Accordingly, the weekly working hours in a workplace shall be the criteria while determining the nature of employment agreement. For example, if the weekly normal working hours in a full time working workplace are 45 hours in compliance with the labor code, then employment agreements regulating weekly working hours of max. 30 hours, shall be defined as part time working employment agreement.

Employees working pursuant to Part Time Employment Agreement benefit from annual leaves as full time working employees and shall not be subject to less favorable treatment than the full time workers. Unless different treatment is determined on the justifiable and objective grounds, employees who are working pursuant to Part Time Employment Agreement shall not be treated less favorable than comparable full time workers based solely on employee's Part Time Contractual terms and conditions.

Also, if the employer and the employee decide on a monthly wage, then the employer shall inform the Social Security Institution as if the employer carrying out a full time work irrespective of the amount of working hours in a week, even if the employee has worked 1 hour within a day.

If the employment agreement involves hourly work element then the work is deemed as part time work and number of Insurance contribution

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* ***Article of May 2011***

premiums -which have to be notified, shall be calculated on pro rata basis between total monthly working days of the insured and 7, 5 hour of statutory daily work hours pursuant to Labor Code. Working fewer than 7, 5 hours shall be completed to 1 day.

Pursuant to Social Security Transactions Regulation, monthly service and insurance contribution premium documents and the written part time working employment agreement of the insured worker, who worked less than 30 days within a month or who is paid incomplete wage, shall be submitted to the institution as attached to the incomplete days notification form or sent through express mail service, return receipt requested or recorded mail.

It is also required to complete general health contribution premiums regarding incomplete days to 30 days for those who work part time. Then the general health insurance premiums regarding incomplete days shall be calculated and paid with same procedure and methods as general health insurance of the insured worker's.

Part time employment agreement can be concluded for a temporary or permanent term. However, in a temporary employment agreement the worker is hired for objective grounds such as completion of a particular project or and unforeseen urgent need that arose in the workload of employer. In practice the Court of Appeal accepts that temporary employment agreement may be concluded due to requirement of objective conditions or material reasons. Therefore, it shall be possible to finalize the work within a definite term pursuant to the agreement.

Termination of Employment Agreement by the Employer as a Result of Business Operations Decision *

Att. Süleyman Sevinç

Article 18 of Turkish Labor Law headed *"Fair Dismissal Reasons"* comprise a list of fair reasons for redundancy and one of the prominent of those which stands out in the list is, *"valid reasons caused wholly or mainly by either business requirement-such as cessation of business-, workplace -such as closure of business at employee's site- or nature of the work-such as reduced requirement for the relevant workforce"* . The article specifies certain conditions to be met by the employer so as to protect employees from being made redundant on unlawful grounds.

The Redundancy Decision As Part of Strategic Business Operations

Even though Labor Law sets forth fair reasons for termination of employment related to the business or workplace, it does not clearly stipulates what "the requirements of business operations" and sequent "redundancy decision" may entail. In this framework, judicial decision numbered E. 2010/33259 K. 2010/30959 and dated 01.11.2010 of the 9th Chamber of the High Court of Appeals is important to highlight those concepts. Definition of the operational redundancy decision has been set out as follows in the said decision:

> *"All decisions taken by the employer regarding business, workplace and management of the work including termination of the employment agreement fall under the definition of operational decision."*

Internal and External Factors Affecting Business Performance

The existence of operational decision taken by the employer for the management of the business is mandatory for courts to evaluate and decide if the redundancy was made on lawful grounds. The redundancy decisions

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* ***Article of August 2011***

taken as a result of business operations may be caused by internal and external factors. In the above-mentioned decision, external decisions can be defined as *"all reasons on which enterprise have not a direct effect"* and *"diminution regarding orders, difficulties related to the marketing, energy problems"* can be given as examples. Moreover, it is stated in this decision that, for the termination of the employment agreement with a valid reason related to an external reason, there should be existence of labor surplus. In this respect, burden of proof is on the employer to prove the related situation and its effects caused on the business in a likely reemployment lawsuit which might be filed by redundant employees.

In the related decision, internal factors are defined as *"all technical and organizational measures taken by the employer for the achievement of management policy"* . In this framework, it is obvious that the employer has right to take any decision related to the management and therefore uses hereby this right of management. According to this decision;

> *"Employer is obliged to concretize the measures taken for the management of business and the effects of these measures to the employee regarding the termination with an internal reason. However, employer is not required to justify the expediency and the necessity of these measures. In this framework, courts shall take into consideration if the operational decision is really applied and implemented and if there is not any possibility to continue to work in this workplace for the employee because term of the notice of termination is ended."*

The Principle of *"Ultima Ratio"*

In this framework, operational decisions are not subject to examination for legitimacy by the courts, because burden of proof lies with the employer to prove the valid reason pursuant to the Article 20/2 of Labor Law. In other words, it is the duty of employer to prove that the termination is inevitable, necessary and ultimate remedy and is not arbitrary but absolute. In that decision, it is emphasized that control of the necessity of the termination should be *"technical and not economical and be made regarding the principle of ultima ratio"* .

Arbitrariness

In the above mentioned decision, it is stated as follows that operational decisions should not be arbitrary:

> *"Employer who terminates the employment agreement with an operational decision should not be arbitrary while using this right in scope of his management authority and should act pursuant to the Article 2 of Civil Code. Employee is obliged to prove if the employer acts arbitrarily."*

Conclusion

The analysis of the termination related to an operational decision is important for the protection of employee's statutory rights. In this framework, the concept "dismissal with fair reasons" related to business operations decision is defined by the doctrine and by the precedents of the High Court of Appeals since Labor Law is not clear and open to different interpretations. In conclusion, it is possible to establish that redundancy decision may be taken based on the internal management of the business or any other external reasons. However in any case, the establishment of real and substantial connection between redundancy decision and strategic business operations is required to be necessary, while avoiding unlawful discrimination in the redundancy procedure-such as dismissal of disabled or older workers in the case of collective redundancy- is a must and consequently the termination of employment should be ultimate remedy for the survival of the prosperous business operations.

The Novelties Brought By the Regulation Regarding Implementation of Law on Work Permits for Foreign Citizens *

Att. Begüm Taner Huntürk

The Regulation Regarding Implementation of Law on Work Permits for Foreign Citizens dated 29.08.2003 was modified and published in the Official Gazette numbered 27918 and dated 28.04.2011. The major novelties are illustrated herein below with comparison of old and new versions.

- **Article 5/1:** In the former regulation it was stated that for applications made via online, completed and signed hard copies of the application form should be dispatched to the Home Ministry with the other supporting documents within six business days following the application date. In the current Regulation, the time period of six days is removed and the arrival of the documents to the Home Ministry reckoned to be sufficient irrespective of time limit. On the other hand, the time period of six days is inserted in article 7, which regulates the in-country applications.
- **Article 6/3:** In the former regulation, it was stated that applications from abroad should be addressed to the representative offices (Turkish General Consulate etc.) of Turkish Republic based on the country where the application has been lodged with. On the application date or within ten business days following the application date, the sponsor employer who offered the position to the applicant should submit the supporting documents (a copy of employment contract, description of role, salary etc.) to the Home Ministry. Besides, it was stated that the applications submitted to the Ministry within ten business days prior to the application that had been made to the representative offices would be also evaluated. In the current Regulation, it is stipulated that the sponsor employer shall make online application and submit the documents to the Ministry within ten business days following the application

* ***Article of May 2011***

of the foreign citizen made in the representative offices of Turkey abroad.

- **Article 7/3:** Regarding the in-country applications, it is stated that the application form and all required relevant documents shall be submitted to the Ministry within six business days following the online submission of the application.
- **Article 8:** Subparagraphs 6 and 7 of Article 8 are abrogated. The aforesaid subparagraphs stipulated that the document issued by the Ministry regarding the renewal applications shall be valid for 90 days.

Furthermore, whereas in the former regulation, it was stated that the foreign citizens or the sponsoring employer was obliged to submit the former work permit certificate to the Ministry with the application form and other supporting documents listed in the annex of the regulation; in the current Regulation, this obligation is abrogated.

In subparagraph 5 of Article 8, it was stated that the foreign citizens who applied for the extension of existing work permit could continue working, provided that the nature of his work remains the same and he works for the same employer and in the same profession until the renewal process is finalized. In the current Regulation, it is stated that the foreign citizen who applied for the extension of work permit can continue working for a maximum of 45 days, provided that the nature of his work remains the same and he works for the same employer and in the same profession. It is also stated that work conducted during the application process period will be considered lawful stay and work in the country and obligations of the foreign citizen, the relevant authorities and the employer will remain in force and the foreign citizens who applied for renewal shall be notified to the Ministry online.

- **Article 9:** Pursuant to this article, in the cases where the required documents by law are incomplete in order to grant work permit, the applicant shall be notified and allowed "thirty days of period" to complete and forward the required documents to the Ministry. The period of thirty days will commence from the date in which the first application form and incomplete documents have been submitted to the Ministry. It is stated that in the event the application

for work permit is not duly effectuated in accordance with the procedures and principles or incomplete documents have not been submitted to the Ministry within fifteen days, the application for the work permit will be rejected.

- **Article 13:** In the former wording of subparagraph 3 of Article 13, which was stipulating evaluation for granting or renewing work permits, professions and jobs, which are deemed to be unsuitable for the foreign citizens, should be reported to the Ministry periodically every four weeks by the Turkish Employment Organization/Job Centre on the basis of province. In the current Regulation, it is regulated that within four weeks following the application, the Turkish Employment Organization will scrutinize and check the unemployment records in order to determine whether there are a jobseeker Turkish persons in the territory with the equivalent qualification for the role in question.

  Furthermore, it is also stated in subparagraph 4 of Article 13 that the Ministry will determine the criteria for evaluation.

  Subparagraph 5 of Article 13 is abrogated.

- **Article 26:** In the former wording of Article 26, the Ministry was entitled to extend or restrict the validity area of work permits for a definite term by taking into consideration of the data entered on the basis of province, administrative district or geographical region. In the current Regulation, it is regulated that the Ministry is entitled to make amendments only on the basis of province or geographical region. The phrase of "administrative district" is removed from the article.

  It is inserted in article 26 that the work permit will be valid only for the same employer who sponsored the work permit and address indicated on the certificate and any request for the foreign citizen to enable work in another branch, registered in the trade registry of the same sponsor company, will be evaluated by the Ministry. Moreover it is also stated that if the request by the foreign citizen is approved by the Ministry, the necessary amendments will be made and the relevant authorities will be informed about such change. Also, it is stipulated that in the case of any change in the

trade name or the company address, the compulsory notification and amendments will be made to the relevant authorities along with the verifying documents of these changes issued by official authorities.

- **Article 35/2:** In the former wording of Article 35/2, which was stipulating work permits for an indefinite term, it was stated that the work permit would be valid depending on the validity of residence permit unless there was any change made within context of the work permit. It is currently regulated that the work permit for an indefinite term can be valid depending on the validity of residence permit and in the case of any change of the employer or the address of the workplace; the Ministry shall be informed within fifteen days. It is stated that in such a case, the Ministry will make necessary amendments to the work permit certificate and inform the relevant authorities.
- **Article 44:** In the former wording of Article 44, it was regulated that among the foreign citizens who gained permanent residency in Turkey through marriage with a Turkish citizen can apply directly to the Ministry in order to obtain exceptional work permit. It is currently regulated that only the time condition for residence permit is not required for such foreign citizens.

LAW OF CIVIL PROCEDURE

Jurisdiction Agreement *

Att. Süleyman Sevinç

According to Article 9 of the Civil Procedure Code ("CPC") of 18 June 1927 numbered 1086, which is still in force and which will remain in force until 1 October 2011, all lawsuits are to be filed in the court of the domicile of the defendant unless otherwise stated in the Code. Article 10 of the CPC determines the jurisdiction for conflicts arising from agreements. Pursuant to this article, the lawsuit will be filed in the court of the place where the agreement will be enforced or where the agreement was concluded under the condition that the defendant or its representative is there at the time of the lawsuit.

On the other hand, pursuant to Article 22 of the CPC, the parties may agree on jurisdiction of a place which does not have the jurisdiction if the issue is not concerned with public policy. However, it is not possible to abrogate the jurisdiction of the general and special competent courts with a jurisdiction agreement. In this case, the lawsuit may be filed not only in the competent court according to a jurisdiction agreement but also in the legally competent court.

The Court of Appeal accepts the aforementioned principles in its consistent precedents.

According to the Court of Appeal, if the issue is not concerned with public policy, the parties may agree on jurisdiction by a court which is not competent regarding certain conflicts to arise between them. However, if the issue is concerned with public policy, such as rights *in rem* on immovables or divorce etc., the parties may not conclude a jurisdiction

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* ***Article of March 2011***

agreement and if they do, it will be invalid. These principles are regulated in Article 22 of the CPC.

It must be stated that the provision of Article 22 of the CPC may not be accepted as it is stipulated in order to exclude the jurisdiction of the court which is competent.

Interpretation of this article against this principle will result in the validity of negative jurisdiction agreements, but this sort of agreement is inferred as distrust by some courts and as against the public policy, and, therefore, they will be deemed invalid. Moreover, the jurisdiction provisions accepted in the jurisdiction agreement will be deemed as abrogated in favor of the party which benefits from this right, and the party which benefits from the provision arising from the agreement and stated in favor of one party may use its right arising from the CPC and file a lawsuit in the legally competent court, waiving its right in the jurisdiction agreement. As a result of these principles, the jurisdictions of general and special competent courts will not be abrogated by a jurisdiction agreement.

However, the new Civil Procedure Code ("New CPC") of 12 January 2011 numbered 6100 which was published in the Official Gazette of 04 February 2011 numbered 27836 and which will enter into force on 1 October 2011 modifies totally the system for jurisdiction agreements. Article 17 of this code regarding jurisdiction agreements is as follows:

Jurisdiction Agreement

Article 17 – (1) The merchants and the public legal entities may agree on the competence of one or more than one court regarding an existing or possible conflict between them. Unless otherwise stipulated by the parties, the lawsuit can be filed only in the court which is determined in the agreement.

As is obvious from the text of the article, with the New CPC, the consistent precedents of the Court of Appeal regarding the jurisdiction agreements and the practice will be completely changed.

This modification is explained in details by the Legislature in the grounds for this article.

The grounds are as follows:

The regulation regarding jurisdiction agreements makes a distinction between merchants or public legal entities and other persons in respect of the conclusion of jurisdiction agreements. The merchants and the public legal entities may be evaluated as on an equal position among themselves. On the other hand, the merchants and the public legal entities are more powerful against a real person. It is necessary to protect the less powerful persons against merchants and public legal entities, which are more powerful. Especially in standard agreements where consumers are obliged to sign documents that the seller or service provider companies submit to them without any chance of negotiation, they have to accept the terms and conditions stipulated unilaterally by the company or public legal entity, jurisdiction clause among them. Therefore, for example in German law, the issues concerning which jurisdiction agreements can be concluded are limited.

In the transactions effectuated by merchants and public legal entities between themselves, there is no less powerful party. It is possible to consider the parties as equal to each other. These persons are entitled to conclude jurisdiction agreements between themselves provided that the requirements of the code are respected. The parties may also agree on the exclusivity of the jurisdiction agreement in which they agreed on jurisdiction of one or more than one court.

As can be seen, merchants and public legal entities are entitled to conclude exclusive jurisdiction agreements whose validity was discussed in Turkish law. Unless otherwise stipulated in the agreement by the parties, lawsuits can only be filed in the court or courts determined in the agreement. In that case, the jurisdiction agreement is an exclusive agreement unless the parties stipulate otherwise. If the parties wish to have the legal jurisdiction of general and special competence of courts in addition to the jurisdiction of the court stated in the agreement, i.e., they wish to have a non-exclusive jurisdiction agreement, it must be clearly stated in the jurisdiction agreement.

Persons other than merchants and public legal entities, especially consumers, need to be protected against the merchants and public legal entities since the consumers are less powerful than the merchants and

public legal entities. To this end, the aim is to prevent the conclusion of jurisdiction agreements between merchants or public legal entities and consumers.

Accordingly, merchants and public legal entities cannot conclude a jurisdiction agreement with a person who lacks these qualities. It must be also stated that persons apart from merchants and public legal entities cannot conclude jurisdiction agreements between themselves either.

Thus, it is possible to reach the consequences below as a result of an examination of the text of Article 17 of the New CPC and its legal ground:

1. Following the entry into force of the New TCC, jurisdiction agreements can be concluded only between merchants or public legal entities. Jurisdiction agreements cannot be concluded between merchants or public legal entities and consumers. There will not be any jurisdiction clause in agreements concluded between consumers and sellers or service provider companies that consumers have to sign without any opportunity for negotiation.
2. The validity to exclusive jurisdiction agreements between merchants and public legal entities whose validity was discussed in Turkish law is granted. Unless otherwise stipulated in the agreement by the parties, lawsuits can be filed only in the court or courts determined in the agreement. In that case, the jurisdiction agreement is an exclusive agreement unless the parties stipulate otherwise. In current practice, the Court of Appeal does not accept exclusive jurisdiction agreements.
3. The parties may agree to the jurisdiction of more than one court with a jurisdiction agreement. This issue is not accepted by the Court of Appeal. According to the Court of Appeal, it is necessary to agree on the jurisdiction of only one specific court. The parties cannot agree on jurisdiction by more than one court.

Legal Actions for Unspecified Claim Amounts *

Att. Süleyman Sevinç

As mentioned in our recent Newsletter dated May 2010 entitled "Partial Claim Cases", the right to file a partial claim case was recognized by a benchmark Constitutional Court Decision of July 20, 1999, numbered 1999/1 E. and 1999/3 K., which was published in the Official Gazette of 4 November 2000, repealing the last sentence of Article 87 of the Code of Civil Procedure which had stated the phrase "claimant cannot increase the statement of a claim by modification".

It is widely known fact that the claimant may claim his rights which are preserved, in a partial claim suit by filing an additional lawsuit, or by taking the advantage of the above mentioned repeal of the Article 87 by the Constitutional Court Decision and raise his claim in the same lawsuit by filing a partial modification petition provided that he pays the proportional fees. The partial case can be defined as; suing for a partial amount of a claim while preserving the other or remaining amount of the claim for a later date for some reason and then if the circumstances emerge, claim the previously preserved rights by virtue of modifying the ongoing litigation by broadening its scope without filing a new litigation.

The Claimant files a partial claim case by preserving his rights of surplus amount. In practice, in terms of litigation technique, "preserving the rights of surplus" means taking a legal action for a claim to recover, compensate or indemnify partial amount of a claim, which is entirely infringed or contested by the defendant, and postponing the right of action or right to claim other remaining part for a later stage for some reason.

The rationale behind the partial claim case is to keep the court fees minimized. It is reasonable to expect that the claimant might not want to pay court fee in full in the initial stage of the litigation to avoid large amount of costs for an action in which the claimant is uncertain about. With the partial claim action, the claimant may have a chance to observe the trial period of the litigation and see whether he can make

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* ***Article of April 2011***

any inferences about the outcome of the case. It is highly likely that throughout the trial period of the litigation the claimant will able to anticipate the judicial determinations especially after expertise report, hence can increase their claim amounts and pay required additional court fees which will be proportionate to the compensation or indemnification eventually awarded.

On the other hand, pursuant to the principle adopted by unanimity by the General Assembly of Civil Chambers of the Court of Appeal, the fact that the right of surplus is reserved in the partial claim case does not interrupt the prescription period, and the prescription period is interrupted only for the part that is preserved. Similarly, the lapse of time is preserved only for the part that was claimed with the partial case. The lapse of time is not preserved for the part that was out of the scope of the partial case.

The concept of "Legal Action for Unspecified Claim Amount" is adopted by Article 107 of the Code of Civil Procedure ("CCP") numbered 6100 which was published in the Official Gazette of 4 February 2011 and numbered 27836, and will enter into force on 1 October 2011.

The legal action for unspecified claim amounts is a type of action for enforcing the debt recovery or compensation or indemnification claims which is not or cannot be defined precisely by the claimant because the determination of the claim amount is left to the court.

Pursuant to the aforementioned article, in case the claimant cannot be deemed to define the amount of claim on the date of filing a lawsuit or in case this is impossible, the claimant can file an action for unspecified amount of claim by assessing a minimum amount or value. As soon as it is possible to define clearly the amount and value of debt by the help of the information or investigation provided by the adverse party, the claimant may raise his claim without being subject to the prohibition of broadening the claim.

The legislator expresses the ground of the relevant provision as follows:

> *"The claimant may be unable to assess and define the entire amount of debt even if he knows the basis of the claim, the defendant and the minimum amount to be claimed. This issue*

might arise particularly with regard to compensation cases where the damage cannot be defined from the beginning, but can be assessed after an examination. In our legal system, a person in this position has to face many difficulties. To begin with, he is asked to file a lawsuit for a debt that he does not have a total knowledge of, on the other hand, in case it is found out that the debt is over the claimed amount, the claimant was able to mention this fact only within the limits of the prohibition of broadening the claim. However, the right to claim legal remedies should not aim to approve such limitation and to force an unrealistic position, but to protect the person whose rights were infringed or may be infringed to the greatest extent possible. Currently, the fact that the concept of "efficient legal protection" becomes a current issue in comparative law and Turkish law necessitate this protection."

When the relevant article is examined with its legal ground, it is possible to reach the following conclusions concerning the application of the unspecified claim actions:

1. The action for unspecified claim amounts can be filed (i) in cases where the amount of the claim can only be defined after the defendant provides information to the court, (ii) in the cases where the amount of the claim can only be defined after the investigation stage of the litigation process, (iii) with regards to the claims that will be defined in accordance with the discretion of the judge, and only for pecuniary claims.
2. In the cases where the amount of claim is possible to be specified, an unspecified claim case cannot be filed.
3. The claimant can file an unspecified claim case by specifying the legal relationship and a minimum amount or value.
4. The prescription period will be interrupted by the unspecified claim action, contrary to the current practice, and it will not be possible that the claim which is not defined by the claimant is subject to prescription.
5. With the unspecified claim action, the judge will no longer be bound and confined by the claim of the claimant.

Recovery for Unjust Preliminary Injunctions *

Att. Alper Uzun

Concept

The preliminary injunction – also known as interim or interlocutory injunctions - is one of the provisional remedies for the purpose of preserving the perspective rights of the parties which is subject of a legal action until the final determination is given and it is regulated in Article 101 of Civil Procedural Code ("CPC") and Article 389 of the New Civil Procedural Code ("New CPC") which shall enter into force on October 1, 2011. The preliminary injunction may be granted upon request of one of the parties either prior to or following the filing of the action to redress the pecuniary loss.

The party, making motion for a preliminary injunction is obliged to provide with a security deposit in order to pay the damages sustained by the other party or the third parties in case the request for preliminary injunction is determined to be unjust. In the case that the motion for preliminary injunction is determined to be made unjustly and therefore the interim decision is reversed, the enjoined party and the third parties may claim the harms inflicted on them as a result of wrongfully-issued interim decision triggered by unjustly made preliminary injunction motion.

The Conditions for Action and Judgment

Despite the fact that the action to recover damages resulting from unjust preliminary injunction is not clearly expressed in CPC, in practice the action is being filed on the grounds of Article 110. However, Article 399. of New CPC embodies this action in the Code with a specific provision.

The text of the article is as follows:

"(1) The party requesting the preliminary injunction shall be obliged to indemnify the damages resulting from unjust preliminary injunction in case the preliminary injunction is

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* ***Article of July 2011***

determined as unjust or the rescission of injunction occurs or a rescission of injunction is decided upon objection.

(2) The action for damages resulting from unjust preliminary injunction shall be filed in the same court where the main case is being examined.

(3) The right to file the action is subject to lapse of time of one year following the finalization of the decision or the rescission of the injunction."

First condition to file a legal action to recover the damages resulting from unjust preliminary injunction is that the preliminary injunction decision must have been executed. In other words, the claimant must have been wrongfully restrained and adversely affected as a result of enjoining enforcement.

Secondly, the injunction must have been proven to be an unjust and erroneous decision. In case the main lawsuit is rejected and the judgement is given in disfavour of the party requesting preliminary injunction, the interim decision for the preliminary injunction shall be accepted as unjustly granted. Accordingly, the finalization of the decision regarding main lawsuit should be waited in order to claim the damages resulting from unjust preliminary injunction. Besides, the party requesting preliminary injunction is obliged to file the main lawsuit within 10 days - 2 weeks according to New CPC - following the promulgation of preliminary injunction decision. Thus, in case the main lawsuit is not filed within this period of time, the rescission of preliminary injunction shall occur and the preliminary injunction shall be deemed as unjust and granted wrongfully hence the entitlement is gained for the action to claim restitution or recover damages resulting from unjust preliminary injunction decision. The word "unjust" is defined in New CPC. Accordingly, a preliminary injunction shall be deemed as unjust in case the preliminary injunction is determined to be as unjust at the time of motion or the rescission of injunction occurs or a rescission of injunction is decided upon objection.

Some landmark decisions of High Court of Appeals are presented below:

The lawsuit is filed regarding claim of damages resulting from unjust preliminary injunction. The fact that the preliminary

injunction is unjust is stated upon the dismissal of the action filed by the bank regarding annulment of the letter of guarantee. **(11th Civil Chamber of High Court of Appeals, dated 04.02.1991 and numbered 1990/8459 – 1991/519)**

"The Plaintiff claims its damages resulting from unjust preliminary injunction. The party requesting preliminary injunction is obliged to indemnify the damages caused to wrongfully enjoined party resulting from unjust preliminary injunction. Strict liability principles shall be executed for damages resulting from unjust preliminary injunction. A final decision for the main lawsuit is not required to accept the preliminary injunction as unjust. Accepting the file as non filed is also sufficient for accepting the preliminary injunction as unjust." **(7th Civil Chamber of High Court of Appeals, dated 23.07.2008 and numbered 2008/1996 – 2008/3247)**

"In order to be obliged to indemnify the damages resulting from unjust preliminary injunction, the omission of the party requesting the preliminary injunction is not required. The fact that the preliminary injunction is being unjust shall be sufficient without seeking any wrongdoing. **(4th Civil Chamber of High Court of Appeals, dated 27.02.1975 and numbered 1973/13954 – 1975/2496)**

Third condition for the action to recover for damages resulting from unjust preliminary injunction is the fact that the enjoined party or the third parties shall incur some damages. The damage shall be calculated to cover the period in between the date of preliminary injunction and its rescission.

Another condition for action for damages resulting from unjust preliminary injunction is the cause and effect connection between the damages and the preliminary injunction.

The indemnification obligation of the party is based on the principles of strict liability. In other words, the omission, negligence or intention of the requesting party is not required. Even if the requesting party is of the opinion that the request is just and acts with a good faith, he or she may be still obliged to indemnify the other party.

However, strict liability rules shall be applied only for the pecuniary damages. Indemnification of the moral damages is subject to negligence or intention of the requesting party according to Article 49 pf the Code of Obligations.

The venue and competent court regarding a legal action for damages resulting from unjust preliminary injunction has been subjected to general provisions of territorial and subject-matter jurisdiction rules. However, this action shall be filed in the same court where the main lawsuit is examined according to New CPC. This action is subject to lapse of time of one year. The lapse of time shall run following the finalization of the decision.

The party claiming the damages resulting from unjust preliminary injunction may be redressed from the security deposit that the requesting party had posted when it requested the preliminary injunction. As a result of this fact, the security deposit may not be returned to the requesting party until the decision for legal action to recover damages resulting from unjust preliminary injunction is finalized even if the main lawsuit has been finalized.

Conclusion

The legal action for recovering damages resulting from unjust preliminary injunction is a way to protect the rights of the restrained party or third parties which shall incur some damages resulting from an unjust preliminary injunction. This action is highly common in practice.

Partial and Collective Legal Actions in the New Turkish Civil Procedure Code *

Att. Alper Uzun

Partial Action

Partial action is a legal concept which is widely practiced under Turkish Civil Procedure Code ("TCPC") which will be abolished on October 1, 2011 by the entry in force of the New Turkish Civil Procedure Code numbered 6100 ("New TCPC"). By filing a partial action, a certain part of the plaintiff's claims will be subject matter of the action, on the other hand, the plaintiff reserves his right to modify the legal action by expanding the claim further concerning a certain part of his claim, and exercises these rights in the future. The plaintiff may claim his additional rights that he reserved in the litigation process, without the need to file a new lawsuit, by means of "amendment".

The rationale behind filing a partial action was the intention to keep litigation costs minimized. By filing a partial lawsuit, the plaintiff prefers not to bear the full costs of litigation in advance and have the opportunity to defer a percentage of the fees and costs that equates with the remaining part of the claim. Therefore, the plaintiff can avoid paying high amount of litigation cost when filing a lawsuit, and the remaining part of claim can be claimed at a later stage when the plaintiff has a certain degree of inclination about the outcome of the case, by means of partial action, then legal charges are complemented.

The New TCPC, which shall enter into force on October 1, 2011, brings new dispositions, which will completely modify application of partial action in practice.

New Dispositions Concerning Partial Action

Article 109 of the New TCPC regulates the partial action as follows:

(1) In the event that the claim may be divided in respect of its nature, a certain part of the claim may be subject matter of a lawsuit.

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* ***Article of September 2011***

(2) In the event that the amount of claim is undisputed by the parties, or is clear, a partial action may not be filed.

(3) The partial lawsuit shall not be assumed as a waiver of the remaining portion of the claim, unless the plaintiff explicitly waives his rights while filing a lawsuit.

In the light of the said article, the economic benefits of filing a partial action are eliminated, and the option to file a partial action is limited to the cases in which the claim may be divided in respect of its nature, the amount is disputed between the parties, or not clear. Therefore, the field of application is now narrowed.

Accordingly, "the partial claim" is a claim in which the plaintiff does not claim his receivables in full, but a certain part, and which may only be exercised with regards to claims that may be divided. In the second paragraph of Article 109, it is stated that in the event that the amount of claim is undisputed by the parties, or is clearly determinable, it is not possible to file a partial action. As a result, if there is not any controversy between the parties about the amount of claim, or even if it there is controversy between the parties concerning the amount, the amount can be easily established and may be determined by anyone, a partial action may not be filed.

According to third subparagraph of the said article, one of the biggest problems of the TCPC period is expected to be disappearing. The application of High Court of Appeals resulting in waiver of the rights of the plaintiff who has not reserved its rights while filing the lawsuit shall finally find its implementation to its end. Consequently, even the rights are not reserved; it shall be possible to file a new lawsuit for the rights which are not reserved. The waiver for the not reserved part of the claim may be valid only if the waiver has been explicitly made.

In case the amount of the claim is not definite, a "lawsuit for indefinite claim" may be filed. Due to existence of this new institution, the necessity to file a partial action shall not be valid in scope of New TCPC. Accordingly, the libel suits, which cannot be filed as a partial action could be filed as a lawsuit for an unspecified claim.

In the case where a lawsuit for unspecified claim may be filed, filing a partial action shall not be feasible. Because, the part of the claim

which is not included within the scope of partial action shall be subject to prescription and the interest accrued for that part may be claimed only as from the date of amendment, if that part is claimed by the way of amendment.

As a result, the partial action shall not be exercised very frequently and prevalently following the entry into force of the New TCPC and may be filed only in the cases where the claim amount is divisible and the amount is not controversial between the parties or is not clearly identifiable.

Collective Action (Class Action)

The New TCPC brings the possibility to file a "collective action".

Article 115 of the New TCPC is as follows:

"The associations and other legal persons, within the framework of their status, may file lawsuits in order to protect the rights of its members or of the sphere that they present, for their own names, to determine the rights of relevant persons or to eliminate the illegal situations or violation of the future rights of relevant persons."

According to this article, in the event that several persons are affected by a violation, a sole lawsuit shall be filed for all these persons rather than separate lawsuits for each individual. Consequently, not only the legal person but also all individuals within this collective group shall benefit from and shall be influenced by the result of the lawsuit. The decision rendered in the end of collective action shall also be used as a precedent judgment in future individual lawsuits that may be taken.

As a result, the collective rights and social utility shall be preserved by collective action.

Joinder of Actions (CPC art. 110) *

Att. Fatih Işık

Introduction

Even the claims, cause of actions, of a claimant party are, in general, intended to seek a sole result to enforce, it is also possible to seek relief through several claims intended to pursue more than one redress. By means of such course of action, the claims are consolidated. The joinder of the claims exists in case there are more than one claims alleged in a cumulative manner.

The joinder of actions was being exercised even during the period of Civil Procedure Code numbered 1086, despite the fact that the institution had not been explicitly regulated. It has been exercised in accordance with art. 3 of the Civil Procedure Code stating that the competence of the courts to decide in particular controversy shall be determined according to total amounts of the claims that are subject matter of the actions, in case several relieves are sought with a single action. Therefore, it was possible to allege several claims in one sole action. The Civil Procedure Code numbered 6100 ("CPC") which entered into force on 01.10.2011 has explicitly regulated the institution in art. 110 entitled as "Joinder of Actions". The article is as follows:

> *"The claimant may allege several primary independent claims against the same defendant on the same petition for action. This is possible only if all the alleged claims are considered within the same type of court, which have jurisdiction over the venue for each claims."*

In case of joinder of actions, there is several accrued cause of actions to seek remedy with one sole action. It is possible that the court may accept all of the claims or to dismiss all of them; or may decide to accept one of the claims and dismiss the others. Accordingly, there are several results that the claimant intends to reach.

The purpose of the joinder of actions is to realize the economy in procedural transactions during a lawsuit and to thwart the risk of

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* ***Article of December 2011***

occurrence of contradictory court decisions. In case of joinder of actions, there are actions and decisions amounting to the number of claims. However, the procedural transactions are conducted at the same time and so that it prevents loss of time.

The Conditions for Implementation

As seen above, the joindery of actions had not been explicitly regulated under Turkish Law. As a result of this fact the conditions for implementation had been determined by the doctrine[1]. However, the conditions for implementation have now been explicitly determined within art. 110 of CPC. Pursuant to this article, the joinder of actions shall be possible when all the alleged claims are considered within the authority of same type of jurisdiction and in the same venue. The justification of the article stipulates the conditions more detailed: (i) existence of several - more than one claim- claims to be alleged by the claimant against the same defendant, (ii) non-existence of a relation between the claims as to be principal or accessory, (iii) the claims need to be considered within the authority of same type of jurisdiction, (iv) the venue to settle all of the claims must be the same.

(i) Existence of several claims to be alleged by the claimant against the same defendant

The first condition sought for joinder of the actions is existence of several claims to be alleged by the claimant against the same defendant. However, the cases in which there are several claims alleged by the claimant may differ from each other. For instance, the actions with alternative pleadings, subsidiary claims and counter claims are the actions in which several claims are alleged but these actions shall not be considered as joinder of the actions. The joinder of actions requires the existence of the independent claims in addition to each other. Accordingly, it is not possible to accept occurrence of joinder of actions in all cases where there are more than one accrued causes of action. The claims are not alleged in an order and there is no gradation between these claims; all of the claims have the same importance level.

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1 **KURU, Baki**, Hukuk Muhakemeleri Usulü, C.II, 6. Baskı, İstanbul 2001, s. 1498.

Another notion to be differed from joinder of actions is "competition of claims". The competition of claims has the meaning to have several legal grounds to allege one claim. So that, the competition of claims is based on only one claim, which can be alleged on more than one legal ground while the joinder of actions is based on occurrence of several cause of actions that lead to make more than one claim within one sole action. In fact, for the competition of claims, the competition is not between the claims but between the legal grounds[2].

(ii) Non-existence of a relation between the claims as to be principal or accessory

The second condition for joinder of actions is non-existence of a relation between the claims as to be principal or accessory. This condition emphasizes the difference between joinder of actions and actions with alternative pleadings since the latter requires existence of a claim alternative to principal claim for the cases where the principal claim is not accepted. Accordingly, for existence of joinder of actions it is necessary that there is no order of priority between the claims, an order as being the principal and accessory claim.

(iii) The claims need to be considered within the same type of jurisdiction

For joinder of actions, the claims need to be considered within the same type of jurisdiction. However, there is no explanation neither in the article nor the justification regarding what to be understood with "type of jurisdiction". The term "type of jurisdiction" is defined in the doctrine as "holding the transactions forming an entity subject to a different judgment procedure"[3]. Departing from this definition, the different types of jurisdiction are classified as Constitutional Jurisdiction, Administrative Jurisdiction and Civil and Penal Jurisdiction[4]. As seen, the types of jurisdiction are accepted as judicial remedies. In this case, it should

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2 **ALANGOYA, H. Yavuz/ YILDIRIM, M. Kamil/DEREN – YILDIRIM, Nevhis**, Medeni Usul Hukuku Esasları, İstanbul 2011, s. 129.

3 **KURU, Baki / ARSLAN, Ramazan/ YILMAZ, Ejder**, Medeni Usul Hukuku, Ders Kitabı, Ankara, 2011, s. 58.

4 **KURU/ARSLAN/YILMAZ**, s, 58 vd. **PEKCANITEZ, Hakan / ATALAY, Oğuz / ÖZEKES, Muhammed**, Medeni usul Hukuku, İstanbul 2011, s.73 vd.

be stated that the claims subject to different judgment procedures but within the same type of jurisdiction shall constitute a joinder of actions. However, we are of the opinion that joinder of actions should be accepted only if the claims may be evaluated within the same judgment procedure.

(iv) Each claim must fall within the authority of same territorial jurisdiction

The claims to be alleged within one sole action need to be pleaded before a court having the authority to adjudicate each claim in the same venue. This is rightly appropriate condition for joinder of actions since the accrued cause of actions should be "consolidated" before the same court. However, the article considers merely territorial jurisdiction and is not extended to overlap subject matter jurisdiction. In this case, it may be assumed that the competent court in respect of territorial jurisdiction is also able to adjudicate the actions of the claims that fall under the competency of subject matter jurisdiction pursuant to art. 110 of CPC. However, we are of the opinion that the joinder actions need to be alleged before the special court in case there are special and general courts having the territorial authority to adjudicate same actions of claim.

Conclusion

Neither the article nor its justification does not stipulate any method for instituting joinder of the actions, even they set out a general framework for the conditions. Therefore, the joinder of the claims may occur by allegation of the claims on the same petition for action or by appending more claims during the judgment procedure (extension of the action) or consolidation of the actions. It is also defended in the doctrine[5] to insert additional several claims by the way of amendment of pleading. As a result, there is not a specific prescription and constraint regarding the methods for joinder of actions and the issue to be sought is whether the conditions for implementation exist or not.

5 **PEKCANITEZ/ATALAY/ÖZEKES**, s. 408.

An Important Innovation Brought by the New Civil Procedure Law: Expert Opinion *

Att. Alper Uzun

The New Civil Procedure Law ("New CPL") numbered 6100 which shall enter into force on 01.10.2011 by repealing the current Civil Procedure Law ("CPL") provides numerous innovations through its entry into force.

One of these innovations is the concept of "Expert Opinion" set forth under Article 293 of the New CPL.

The aforesaid article is as follows:

- The parties may seek scientific opinions from experts, in connection with the subject matter. The parties may not demand additional time for this purpose.
- The judge may, upon demand or *ex officio*, decide the expert who submitted his report, to be summoned and heard. The judge and the parties may ask questions at the hearing in which the expert assists.
- In the event that the expert does not appear in the hearing in which he is summoned without a justified reason, the judge shall not take the report drafted by the expert into consideration.

In the legal ground of the Article, it is stated that the concept of "party expert" or "expert witness", which are the concepts of Anglo-Saxon legal system, has been regulated and the aforesaid Article is similar to the dispositions of the Criminal Procedure Law.

As is stated in the justification, the expert opinion differs from the concept of expert appointed by the judge, and the court may appoint an expert *ex officio*, or upon demand of the parties. In addition, the parties may benefit from the opinions of experts which have not been appointed by the judge. Therefore, the parties may provide expert opinions with regards to special and technical matters, and support their claims with these opinions.

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* ***Article of May 2011***

Under civil procedure, the parties frequently submit to the court the opinions with regards to technical matters, including legal issues, provided from the experts, in order to support their claims or defenses. Therefore, the New CPL regulated a practice which was applied, even though it was controversial.

The aforesaid article regulates that the parties may not demand additional time in order to provide an expert opinion, the judgment may not be delayed, and that the judge shall evaluate the expert opinion submitted to the file in his own discretion. This disposition aims to prevent the claims which are submitted in order to delay and extend the trial period in bad faith. It should be emphasized that the expert opinion is not binding upon the judge.

In the second paragraph of the Article, it is clearly stipulated that the expert whose opinion is consulted may be heard in the court. The expert whose opinion is needed by the party in order to support its claims or defense may be summoned by the court *ex officio* or upon request of the other party. During the hearing, the parties or the judge may interrogate the expert. It is stated in the legal ground of the Article that the aim of the disposition is to clarify the issues requiring a special expertise and to prevent the judgment to be adversely affected by contradictory or imperfect knowledge or misinformation.

Summoning the expert to the hearing is widely exercised in several law systems. By this way, the difficulties for the court resulting from abstract or incomprehensible technical issues shall be removed in order to clarify the subject matter.

In the last paragraph of the Article, it is emphasized that the judge shall not take the report drafted by the expert into consideration in order to prevent delay of the judgment in the event that the expert does not appear without a justified reason in the hearing in which he is summoned. Since the hearing of the expert aimed to clarify the doubts resulting from the report and the report causing doubts may not be taken as a basis for a fair judgment, the absence of the expert in the hearing may cause such sanction for the report.

The Preliminary Examination among the Reforms of the Civil Procedure Act *

Att. Alper Uzun

The Civil Procedure Act number 6100 which came into force on the 1st of October 2011 superseded the Civil Procedure and Judicial Act number 1086 and has changed in many ways our procedural law. The most important one of these changes resides in the "preliminary examination" institution.

The preliminary examination, which is established as a phase of the trial proceedings and did not exist in our legislation before the Civil Procedure Act, is regulated between the articles 137 to 142 of the Civil Procedure Act. The reason behind the admission of the preliminary examination institution in the legislation is indicated as the great increase of the workload and the lengthening of the trail period due to the commencement of investigations by the Courts without a proper preparation, i.e. incomplete evidence collection, and without constituting the necessary background in order to resolve the dispute (this fact received in practice a significant complaint and was shown as the reason behind the lengthening of the trail process), and due to the fact that one has to wait until the end of the trail in order to receive information on procedure related trial conditions and the judgments on the first objections. As known, until today, in practice, setting a trial date without respecting the arrangements and phases of trial set in the Civil Procedure and Judicial Act, without even the completion of the exchange phase of the petitions, redundant trials were held, which were causing a very important amount of workload for Courts and parties and where no procedural operations had been made flourished thus the trial period had been lengthened needlessly.

With the Civil Procedure Act and with the "preliminary examination" institution, whose framework is explicitly put forward, it is aimed to preclude these problems, to make the necessary preparation for the trial and to achieve the resolution of the dispute with right and swift steps.

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* ***Article of November 2011***

The Scope of the Preliminary Examination

The preliminary examination phase starts after the initiation of the lawsuit and the mutual exchange of the petitions when these petitions are examined in a preliminary way by the Court. Without the completion of the preliminary examination, it shall not be moved on to the investigation phase and as long as it is not necessary, it shall not be set a trial date. The Act, in order to avoid unnecessary trial burden, has given to this rule a mandatory character.

The Court, in this phase will examine the trial conditions, the first objections, establish exactly the points of conflict (the points where the parties agree and disagree), will make the necessary operations in order for the parties to present their evidence by making the preparatory operations and in order to collect the evidence, will encourage the parties to find a compromise and will write all of these to the minutes.

The Trial of the Preliminary Examination

If the Court does not give a refusal decision on the file relating to the trial conditions and first objections, it will invite the parties to the trial by setting a trial date. This trial will certainly be held after the exchange of the petitions. The invitation of the parties to a compromise, the exact establishment of the points of conflict will be realised in the preliminary examination trial. Additionally, if the Court cannot reach a decision on the procedural issues it will resort to the parties' statements in this trial in order to be able to reach a decision. In other words, the Court, at this phase cannot hear witnesses, make discovery, receive opinions of experts and propose oath statements.

As it is aimed to move on to the investigation phase by carrying out a fast and an efficient trial proceeding, as a rule the preliminary examination is settled in one trial. However, in cases of possible amicable settlement between the parties or necessary situations a new trial day can be set but only once. In the preliminary examination trial, it is given to the parties a precise two weeks time in order for them to present documents that they have referred to in their petitions but have not submitted yet or to make the necessary explanation so as the documents can be brought from somewhere else. If the parties do not comply with these points in the

period of time accorded to them, it will be assumed that they waive their rights to rely on this evidence. Consequently, this is a regulation, which aims to prevent the trial to stick at some indefinite points and the parties to act in bad faith.

At the end of this trial, if the parties could not have reached an amicable settlement, the points of conflict will be written one by one to the minutes of the trial. The judge, before starting the investigation phase, by examining the objections and defences on the foreclosure and prescription periods, will reach a decision.

Conclusion

If the Courts achieve to apply correctly the preliminary examination institution which came into force with the Civil Procedure Act, as set out in the legislation, it will provide an arrangement which can remove the lengthiness of the trial proceedings which has been the most criticised element of our trial system by courts, lawyers and citizens as for today. With the preliminary examination conducted in accordance with its aim, an opportunity of amicable settlement between the parties will appear, the necessary preparation of the investigation will be made and thus the trial proceedings will be accelerated and consequently it will be useful for the right and quick settlement of disputes.

Major Amendments in the Notification Law *

Att. Pelin Baydar

"The Notification Law and Law with regard to Amendments to Certain Laws" ("Law") entered into force by being publishing in the Official Gazette dated 19.01.2011 and numbered 27820. Major amendments are made to the Notification Law by this law.

According to amended article 1 of the Notification Law, all notifications, including those in the electronic environment, by (i) judicial authorities, (ii) public administrations within the scope of the general budget, (iii) administrations with private budgets, (iv) regulatory and supervisory institutions, (v) social security institutions, (vi) provisional special administrations, (vii) municipalities, (viii) rural legal personalities, (ix) bar associations and (x) notaries will be made by the PTT General Directorate or an officer.

The electronic notification is regulated by the amendment to the Notification Law. Nevertheless, article 7/a regulated that electronic notification may be made to those who provided their electronic addresses and is sufficient for notification. On the other hand, it is obligatory to make electronic notification to joint stock companies, limited companies, and limited partnerships divided into shares. It is stipulated within the same article that an electronic notification is deemed to have been made on the fifth day following the display of the notification in the electronic address of the respondent. In addition, it is stipulated that the notification may be made by other means if electronic notification is impossible due to obligatory reasons.

A new sub-paragraph *"Notification to the known address"* was added to article 10 of the Notification Law. If the latest known address is not sufficient for notification or it is not possible to make a notification to that address, then the respondent's residence address registered in the address registration system will be deemed to be the latest known address, and notification will be made to that address. Article 21 of the Notification Law with the title *"Impossibility to notify and refusal of receiving*

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* ***Article of January 2011***

notification" stipulates the cases where the respondent has not resided at the relevant address or moved from that address permanently although the respondent's residence address is still registered as such address in the address registration system. In this case, the officer will deliver the document subject to notification to one of councilor or municipal police officer or chief in consideration for signature and the document to be notified shall be attached on the door; in such a case, the date of attachment will be the notification date.

The phrase, "*The notifications made at the lawyers' law offices regarding works being followed by an attorney shall be made within the official working days and hours",* was added to article 11 which stipulates notification to the attorney or legal representative.

Notification to Turkish citizens resident abroad is also newly regulated. Accordingly, notifications issued by judicial authorities may be directly delivered to a Turkish Embassy or a Consulate placed therein.

The Notification Law article 29 also stipulated that notice by publishing may be made in the electronic environment, as well as by gazette.

Article 35 with the title, *"Obligation to inform the address change",* states that if a respondent has changed his or her address or has not informed his or her new address, and if the residence address is not discoverable in the address registration system, then the document to be notified must be attached to the door of the building with the previous address, and the attachment date will be the notification date. Also, it is stipulated in the same article that the addresses registered in the official records of the legal entities will be taken into consideration although no notification has been made in that address before. In addition, if a Turkish citizen who has previously received has moved, has not informed the official authorities, and has not had a new residence address registered in the address registration system, the notification will be deemed to have been made on the thirteenth day following the notification of the document to the previous address by the Turkish Embassy or Consulate.

Article 36, solely regulating notification during hearings, has been rewritten as, *"The document concerning prosecution, lawsuit or execution will be deemed notified during the hearing or in the secretariat*

of the court to the parties, relevant third parties, participant or attorney upon indication in the trial records or upon signature. In such case, notice paper shall not be issued and no cost shall be paid" .

Article 49, which concerns notification by Title Deed Registries, sets forth that the owners of an immovable registered in the title deed registries or owners who acquire an immovable by inheritance, expropriation, enforcement or court award will inform their present address and in case of change of address, their new address to the title deed registries where they are resident, and the document to be notified or notice paper shall be notified to the latest known address, if the owners do not inform their new address, then their residence address registered in the address registration system shall be deemed to be the notification address.

It is stated that the procedures and principles with respect to the Notification Law will be regulated by a regulation issued by the Ministry of Justice within 6 months following the publishing of the law and all references made to the Notification Communiqué will be deemed to have been made to this regulation. However, all provisions of the Notification Communiqué which are not contrary to the Notification Law will be applied until the said regulation enters into force. In addition, it is foreseen that the PTT General Directorate will set up all technical infrastructure for the notifications made in the electronic environment within one year following the entry into force of this law.

The Regulation on Procedures and Principles Pertaining to Vest Public Notary with Power to Grant Probate and Issue Letter of Invitation to Spouse Who Left the Matrimonial Home *

Att. Süleyman Sevinç

The Regulation on Procedures and Principles Pertaining to Vest Notary Public with power to Grant Probate -also known as Certificate of Inheritance- and Issue Letter of Invitation to Spouse Who Left the Matrimonial Home (the "Regulation") entered into force through publication in the Official Gazette dated 04.10.2011 and numbered 28074. The Regulation sets forth procedures and principles pertaining to legal transactions; grant of probate and invitation letter to return matrimonial home for spouse who left the home. The Regulation shall be implemented for issues where the national identification register deeds are satisfactorily sufficient; the probate is non-contentious; or the applicant is not a foreign citizen. According to the Regulation, the execution of transactions shall be made by the notary himself/herself or authorized employee, who has a law degree or the notary trainee.

Grant of Probate

The probate or certificate of inheritance is a document set forth in Article 598 of Civil Code numbered 4721 certifying the inheritors and their rights on how to administer or deal with deceased person's affairs. The applications for grant of probate were previously being dealt by the by the courts prior to entry into force of the Regulation.

According to the Regulation, the notary publics are now responsible and authorized bodies to grant probate and issue representation letters for the deceased's person estates. Upon the request of issuance of certificate of inheritance, the current registers provided by the relevant persons or electronic registers shall be taken as basis to assess and determine the correct persons. The certificate of inheritance certifying heritage shares shall be issued for the relevant person who has proved that it is the legal

* ***Article of October 2011***

inheritor. However, in the contentious probate matters -where complex family relationship involves- the grant of probate is not a straightforward issue to resolve and may require a witness, expert examination or even may need to be referred to court for a detailed judgment. These situations must be well examined by the notary public for realization of the transactions.

The certificates of inheritance may be subject to objection by those who have applied for issue of certificate or whose interest is infringed before the competent court to be determined according to Civil Procedure Code. Thus, the decisions of the notary public shall be subject to the review and may be reconsideration by the courts.

Invitation of the Spouse who Left the Matrimonial Domicile

The invitation letter of the spouse who left the matrimonial domicile is related to the divorce cases based on leaving of one of the spouses according to Article 164 of Civil Code numbered 4721. Pursuant to this article, the spouse who left home with no intention to return may be subject to a divorce lawsuit if does not return home within six months.

Prior to entry into force of the Regulation, the formal invitation letter to the spouse, who has not returned home, were being issued by the courts. The Regulation transfers these duties from the courts to the notary public. The invitation letter shall include the identity information of the spouses, the details of the matrimonial home where the spouses lived together and a legal notice that the marriage may be headed for a divorce lawsuit if the spouse does not return home.

Conclusion

The authorities granted to the notary public under the Regulation aim at decreasing the workload of the courts. It is certain that the new provisions will decrease the workload of the courts substantially and hasten the proceedings for such transactions. Prior to the Regulation, the legal procedure for obtaining the certificate of inheritance was complex and time-consuming procedure and causing inherent delays because of the cumbersome requirement to file a lawsuit. However, in case the records stored by national identification register deeds are not coherent with the

current situation or defective, the new provisions may cause disputes and some of the rights to be protected less efficiently. In this case, the notary public should consider and determine carefully whether a judgment is necessary or not for the relevant issue.

Would a Signature Stamp be Legally Valid? *

Att. Sedef Üstüner

A signature is a sign which is placed on a document or under a writing to show that the document or the writing was signed by the signatory and that the signatory accepts the content of the document or the writing.

In the intensive tempo of daily commercial life, the signature stamp is applied in a serial way, rather than as indicating an examined, duly-signed document. These applications cause many discussions on whether signature stamps can substitute for wet signatures or not. In this respect, we will draw attention to the issue of whether signature stamps placed under agreements are valid or not.

The provisions regarding signatures are stipulated in the Code of Obligations ("CO") and the Code of Civil Procedure ("CCP"). The explanations of these provisions are given below.

- Pursuant to Article 14 of the CO, a person who will become a debtor by signing a document must put a handwritten signature on the document. However, in cases where the customary rules allow, and particularly when large quantity of negotiable instruments will be issued, signatures affixed by means of an instrument are also deemed to be valid.
- Pursuant to Article 15, persons who are not able to sign (illiterates or the blind) may use their fingerprints or any handwritten marks, or affix a seal provided that they are approved in due form.
- Article 297/2 of the CCP stipulates that an illiterate or a person unable to sign may use a fingerprint or affix a seal and in such a case, the board of alderman or two locally well- known witnesses must approve that the fingerprint belongs to that person or that the seal was affixed by that person.

Pursuant to the provisions stated above, in line with the practice and the precedents of the Supreme Court, as a general rule, persons who are able to sign must use their handwritten signatures. Handwritten signatures

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* ***Article of February 2011***

are compulsory for drawing up negotiable instruments. If people use their fingerprints or a signature stamp or affix a seal, the fingerprints, signature stamp, or seal will not be deemed valid even if they are approved by official authorities in due form.

For these reasons, it is not legal to use a signature stamp as a substitute for the actual signature of a company's signatory. Thus, in practice it is likely that the signature stamp will be alleged to be illegal by the opposing party in case of a dispute between the parties.

According to practices in tax law, it is obligatory to sign invoices. On the other hand, taking into consideration the workload and the quantity of invoices issued within a day, the Treasury Administration may enact tax rulings which allow the use of signatures of the authorized signatories approved by public notaries and printed by the printers on the invoices. Even though the signature stamp can be considered to be valid in line with this practice, as tax rulings are enacted for the specific institution for which the opinion is granted and only that specific institution is exempted from responsibility, it would be beneficial to require a tax ruling in favor of the specific company in question.

Fees With Regards To the Enforcement of Foreign Arbitral Awards *

Att. Ezgi Babur

The Judgment and writ fees to be charged in the enforcement of foreign arbitral awards are a problematic issue in practice. The situation has been thrown into further disarray and confusion while International Jurisdiction Network Project ("UYAP"), imposes to charge a fixed fee for the foreign judgment, and Article 3 of the Act of Fees numbered 492 ("Act of Fees") imposes to charge a fixed or proportional fee dependent upon the nature of the foreign arbitral awards, and that resulted with common inclination to conclude that a proportional fee is charged concerning the disputes which are subject to proportional fees.

General

In the determination of the fees to be charged with regards to enforcement of international arbitral awards, the distinguishing characteristic of the examination conducted in enforcement procedure are of importance. Therefore, the special features of enforcement procedure shall be examined below.

In the enforcement procedure, the judge shall not conduct an examination concerning the subject matter of the case, and only considers whether enforcement conditions and enforcement obstacles are met at present case. The relevant subject is entitled as the prohibition of *"révision au fond"* by the doctrine. In the event that, the enforcement judge examines the subject matter of the award, the parties' preference in choosing arbitration rather than state courts to settle their dispute, will, without any doubt, be ignored. Therefore, the prohibition of *"révision au fond"* is one of the essential principles of the enforcement of foreign arbitral awards.

When the parties prefer that the disputes shall be settled by arbitration, the competence in this matter is granted to the arbitrator, not to courts.

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* ***Article of December 2011***

In the event that the substance or legality of awards pronounced by the arbitrators is examined by the enforcement judge, the preference of the parties as per the choice of arbitration as a dispute resolution process will be ignored.

Within this framework, the fees to be collected with regards to enforcement lawsuits shall be handled in light of our explanations above.

Relevant Provisions of the Act of Fees (Court Fees)

Fees to be charged with regards to enforcement of foreign arbitral awards are regulated under Article 3 of the Act of Fees. Pursuant to the first paragraph of the relevant article, a judgment and writ fee shall be charged in accordance with the nature of the award. Pursuant to the second paragraph of the relevant article, it is regulated that the same principle shall apply to fees with regards to arbitral awards and disputes that are compulsory to be settled by arbitration.

Judgment and writ fees are regulated under the Tariff No.1 attached to the Act of Fees. Pursuant to title III/1 of the relevant tariff which regulates proportional fees, in the event that *"a decision is taken with regards to the lawsuits, a subject matter of which is a disputed sum"*, a proportional fee of 59.4 per mille shall be charged over the sum which is subject to the dispute. The fixed fee is regulated under the title III/2 of the Tariff No.1. Pursuant to the relevant disposition, a fixed fee shall be charged for all cases except where it is indicated that the case is subject to a proportional fee.

As we mentioned above, Tariff No.1 clearly regulates that, in the event that *"a decision is taken with regards to the lawsuits, subject matter of which is a disputed sum in between parties"*, a proportional fee shall be charged. On the other hand, in enforcement lawsuits, there is not any decision taken with regards to the substance of the dispute, and the examination merely includes whether the conditions of enforcement are met or there exists any enforcement obstacles.

Moreover, in UYAP system, there is a common practice concerning the collection of fixed fees with regards to enforcement lawsuits, and the fee is calculated as a fixed fee by the court clerkship, and the treasury cash desk collects a fixed fee.

On the other hand, the doctrine and the precedents of the Court of Appeal are of the opinion that a proportional fee shall be charged in accordance with the nature of the award that will be enforced. Baki Kuru supports the view that the claimant of the enforcement lawsuit shall pay the application fee, one fourth of the proportional fee with regards to lawsuits which are subject to proportional fees, and with regards to the lawsuits which are subject to fixed fees, the fixed fee shall be paid by the claimant.

A decision of the Court of Appeal which makes reference to the said opinion is as follows:

> *"On the other hand, for lawsuits pertaining to the enforcement of foreign arbitral awards (like Turkish arbitral awards), judgment and writ fee shall be charged in accordance with the nature of the arbitral awards. In this case, the party requesting the enforcement of the arbitral award shall pay the application fee and proportional judgment and writ fee with regards to the cases which are subject to proportional fee (Prof. Dr. Baki Kuru, Hukuk Muhakemeleri Usulü, Altıncı Baskı, Cilt VI, 2001, sf. 6210, 6211). In the present case, it is inexact that a fixed fee is charged without taking into consideration the fact that a proportional fee should have been charged."* (Court of Appeal, 19th Civil Chamber, decision dated 15.9.2009 and numbered 2009/5703 E., 2009/8256 K.)

As is seen, the Court of Appeal decided that a proportional fee should have been charged instead of a fixed fee.

Conclusion

The common practice with regards to the fees of enforcement lawsuits is not yet entirely clear. According to UYAP system, a fixed fee is charged and at a later stage the defendant of the enforcement lawsuit may request the completion of the remainder, which is not a suitable practice. The examination that shall be made by the enforcement judge is enforcement conditions and obstacles, regardless of the value of the subject of lawsuit. Consequently, considering the fact that the subject matter of the case is not examined and the nature of the enforcement procedure, it will be relevant and appropriate practice to adopt the provision concerning the collection of a fixed fee with regards to enforcement lawsuits included in the Act of Fees.

MISCELLANEOUS

The Modifications in the Legislation Concerning Protection of Cultural and Natural Heritage *

Att. Süleyman Sevinç

The cultural and natural heritage is protected under the Act on Protection of Cultural and Natural Heritage numbered 2863. Pursuant to this act, High Council on Protection of Cultural and Natural Heritage is established and the act has been implemented through this council. However, the term "Natural Heritage" has been removed from the name of the council pursuant to Article 41 of the Decree Law dated 08.08.2011 and numbered 648, which was published in the Official Gazette dated 17.08.2011 and numbered 28028. Consequently, protection of natural heritage has been removed from the scope of the aforesaid act and the concepts of "cultural" and "natural" heritage have been disassociated.

Purpose and Scope of the Regulation

The need for two different piece of legislation for these disassociated topics arose and this legal gap has been filled by the Regulation on Principles and Procedures Regarding Establishment and Operations of Natural Heritage Protection Commissions (the "Regulation") published in the Official Gazette dated 18.10.2011 and numbered 28088. The Regulation has been published to set forth the principles and procedures for establishment and working pattern of Central Commission for Protection of Natural Heritage ("Central Commission") and Regional Commissions for Protection of Natural Heritage ("Regional Commission") in order to ensure fulfillment of the duties of the Ministry of Environment and Urban Planning ("Ministry") regarding the natural heritage to be protected and natural protected areas.

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* ***Article of October 2011***

Accordingly, the scope of the Regulation consists of establishment of above stated commissions and the operational activities and transactions concerning natural heritage and natural protected areas. Thus, the transactions and activities for natural heritage and natural protected areas shall be conducted within the framework of the Regulation and through the commissions.

Establishment and Duties of the Commissions

The commissions are the Central Commission to be established within the body of Ministry and the Regional Commissions to be established in the regions which are deemed suitable by the Ministry. Establishment of these commissions, qualification of the members of these commissions, the duties and working principles of the commissions have been respectively regulated under the Regulation.

The Central Commission shall consist of 15 members to be presided by Undersecretary of Ministry or relevant Deputy Undersecretary. The Central Commission shall be charged with procurement of coordination between Regional Commissions, to evaluate the objections made against the decisions of Regional Commissions, and to decide concerning the general problems in practice resulting from the decisions of Regional Commissions.

Accordingly, the Regional Commissions shall be established consisting of 5 or 7 members in regions deemed necessary by the Ministry. The Regional Commissions shall be charged with express of opinion regarding natural heritage and natural protected areas, decide about the projects and their modifications, identify and designate protection and preservation areas of natural heritage and decide the scale of natural heritage and natural protected areas to be covered by practice.

The Decisions of the Commissions

The decisions of the Regional Commissions shall be distributed to relevant authorities in the cities of its district by Environment and Urban Planning City Directorate (“Directorate”). In the case of any contradiction of the decisions with legislation, the Directorate shall inform the General Directorate Protection of Natural Heritage (“General Directorate”) and

request its opinion. The opinion of General Directorate shall be evaluated in first meeting of Regional Commission.

According to the Regulation, relevant authorities are bound by the Commission's decisions. However, it is possible to file administrative lawsuits against these decisions. In the case of a filed lawsuit against the decisions, the Regional Commissions are entitled to consider and evaluate the applications of persons other than the claimants unless the decision is annulled or a decision of stay of proceeding is rendered.

The Regulation includes also provisions regarding objection to the decisions rendered within the scope. According to these provisions, the public authorities -having the planning permission authority and the governorate and municipality- may raise an objection to the Central Commission within sixty days against the decisions concerning natural heritage, natural protected areas, their categorization, protection principles and utilization conditions for protected area transition period, zoning plan and revisions for protection.

Conclusion

As seen, the Decree Law numbered 648 and above-mentioned Regulation gave rise to emergence of two different authorities. We are of the opinion that while the establishment of two authorities may ensure a more efficient protection for natural and cultural heritage, it may also result in increase of complex bureaucratic transactions that escalates ponderous performance. Moreover, it is predicted that the number of transactions, which may be subject to an annulment proceeding in administrative courts shall be doubled. This fact may result in prolongation of judgment periods and delay of pending projects.

The Act on Compulsory Use of Turkish Language in Economic Enterprises *

Att. Sedef Üstüner

The validity of legal transactions and documents is not related to the use of Turkish language; legal transactions in foreign languages are also considered to be valid. However, use of Turkish language is mandatory while Turkish companies conduct their commercial operations and transactions in Turkey and also foreign companies' commercial dealings with Turkish citizens and Turkish enterprises.

"Act No. 805 on Compulsory Use of Turkish in Economic Enterprises" (the "Act") which is published in the Official Gazette dated 22.04.1926 and numbered 353 and entered into force by being published, regulates the procedure of keeping records for Turkish enterprises.

The Scope of the Act

Pursuant to Article 1 of the Act, all Turkish companies and enterprises are obliged to conduct their business transactions, conclude their agreements and keep their correspondences, records and books in Turkish language within Turkey.

The term "companies and enterprises" includes also real person merchants. Transactions, agreements and correspondences concluded between Turkish companies and enterprises and foreign companies fall within the scope of this Act.

It is not mandatory to use Turkish language for any agreement which is concluded outside of Turkey by a Turkish company even though the results and effects of the agreements arise within Turkey.

Similarly, there is not any obligation to use Turkish language regarding the transactions and operations concluded outside of Turkey by a Turkish company and regarding the transactions and operations concluded between a Turkish company and its foreign branches and organizations.

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* ***Article of July 2011***

Pursuant to the Article 2 of the Act, foreign companies are required to use Turkish language for the documents and books to be presented to the Turkish governmental authorities within Turkey.

Moreover, foreign companies are required to use Turkish language for the transactions and communications made with Turkish citizens and Turkish companies.

Obligation for foreign companies to use Turkish language is only limited to the circumstances mentioned above. In this framework, even within Turkey, there is not any obligation to use Turkish language while a foreign company concludes a transaction with another foreign company or while the operation is related to its internal business.

Pursuant to the Article 3 of the Act, foreign companies may also use a language other than Turkish language. According to the relevant article, text in Turkish language is required to be added next to the text in foreign language. However, it is the Turkish version of the text which should be signed and attested, even though the text in foreign language is signed, text in Turkish language shall prevail over.

One of the examples regarding obligation of use of Turkish language is related to the trade name of the companies. Pursuant to the communiqué of Ministry of Science, Industry and Technology, trade name and subsequent name to this name are required to be in Turkish. Only exception of this rule is that if the name or brand of the goods and services within the activity of the company are foreign and a foreign person is a shareholder of the company. However, this trade name is required to be compatible with national and cultural values, public order and shall not be misleading for third persons.

According to the enactment regarding bill of exchange and considering the Turkish Commercial Code, issue of a bill of exchange in foreign language is possible while the parties are Turkish citizens or while a party is a Turkish citizen and the other party is foreign national. Similarly, payment of a debt may be requested by the endorsement of the bill of exchange issued in foreign language.

Pursuant to Article 4 of the Act, in case that all information and documents which are not drafted in Turkish language by the above

mentioned companies and enterprises, shall not be used in favor of these companies and enterprises.

Pursuant to Article 7 of the Act, in case there is any violation of the provisions of the Act, an administrative penalty shall be charged. According to the relevant provision, this person shall be condemned to an administrative penalty of not less than 100 days.

Decisions of the Court of Appeal

Pursuant to the decision dated 30.10.1979 and numbered 1979/3309 E. - 1979/5469 K. of the 11th Civil Chamber of the Court of Appeal, letters of guarantee are required to be drafted in Turkish except for the cases where it is obligatory to use foreign international terms because of the characteristic of the business, other terms in foreign language are not valid.

Pursuant to the decision dated 23.06.2003 and numbered 2003/3773 E. - 2003/8176 K. of the 13th Civil Chamber of the Court of Appeal, with reference to the Article 1 of the Act, it is stated that the notation on the receipt is required to be in Turkish, however while in the agreement it is stipulated that the payment shall be made in foreign currency, request for payment of the debt in Turkish Liras considering the relevant obligation is not accurate.

Pursuant to the decisions dated 04.12.2007 and numbered 2006/89 E. - 2007/15338 K. and dated 04.05.2009 and numbered 2009/2051 E.- 2009/5292 K. of the 11th Civil Chamber of the Court of Appeal, it is stated that it may be decided on the validity of the agreement and its annexes which are drafted by the bank within Turkey and sent to the foreign branch in English in order to be signed by the evaluation of Article 1 together with Article 4 of the Act.

Moreover, it may be determined by the judicial precedent of the Court of Appeal that terms in foreign language may be added to an agreement, which is required to be drafted in Turkish, because of the characteristics of the business and this is not violating the Law.

Conclusion

It may be conclusively mentioned that the obligation for the use of Turkish language is appropriate for the purpose of effective control and supervision of the commercial activities by the public authorities, however it is observed that the Law is not applied strictly, violated frequently and use of foreign languages are very widespread practice.

Regulation with regard to Determination, Notification, Filing of Improper Insurance Underwriting Process and Principles for Controlling this Practice *

Att. Pelin Baydar

The secondary legislation with regard to Determination, Notification, Filing of Improper Insurance Underwriting Process and Principles for Controlling of this Practice ("Regulation") prepared by Prime Ministry Undersecretariat of Treasury aiming to determine, notify, file improper insurance underwriting process and legislative provisions on measures to combat improper practice together with insurance contracting parties' obligations have been published in the Official Gazette dated 30.04.2011 and numbered 27920. The temporary article 1 shall be entered into force on date of publication and the remaining articles shall be entered into force on 01.06.2011.

In article 5 of the Regulation about improper insurance underwriting process are defined. Accordingly, it is defined as

a) Improper insurance underwriting process within the Insurer Company: Improper insurance practices against the Insurer Company by the act of company's personnel at whatever level with the third person who is working at the company and/or not,

b) Improper insurance underwriting process of the insured and improper insurance underwriting process during the compensation term: the improper practices against the company at the stages of formation and execution of the insurance policy and in the event of occurrence of the insurance compensation by the insured, the relevant parties in the insurance relationship, agent for following up the compensation, those who conduct management and dissolution of the losses, insurance actuaries etc.

c) Improper insurance practices by the brokers: Improper insurance practices against the insurer companies, insured or the relevant parties in the insurance relationship by the insurance brokers.

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* ***Article of June 2011***

d) Other improper insurance practices: improper insurance practices other than (a), (b) and (c).

By the new Regulation, the obligations of i) taking appropriate precautions in order to provide high standards of business good faith ii) allocating the required sources for the purpose of acquiring effective procedures in order to protect, determine, record, remove and notify to the relevant authorities of improper insurance underwriting process have been attributed to the companies and the agents.

Additionally, companies shall determine potential risks, take necessary precautions in order to control the improper insurance underwriting processing terms, provide training, which of its content is determined by the undersecretariat, to all employees-insurance advisers, underwriters, insurance sales agents including the board of directors about the improper insurance practices and inform the insured, beneficiary and owner of rights about the consequences of misrepresentations about the material facts and duty to disclose information relating to risk which may effect whether to award or amount of insurance compensation in the event of occurrence risk.

The insurance companies shall also be obliged to keep a data base where the rejected claim cases are being stored due to probable improper insurance underwriting practice and notify it to the insured in writing.

In article 12 of the Regulation, it has been foreseen that an accessible special data base shall be created where the information with regard to improper insurance underwriting practices are recorded and which is open to access by competent authorities determined by the undersecretariat and the companies.

Pursuant to temporary article 1 of the Regulation, the companies are obliged to insert the cases within three months following the publication of this Regulation, of the improper insurance practices valid before publication of this Regulation, especially, the cases which are subject to court award or judicial proceeding.

The Regulation on Placing Advertisement on Commercial Vehicles *

Att. Pelin Baydar

The Scope and aim of the Regulation

The Regulation on Placing Advertisement on Commercial Vehicles ("Regulation") has entered into force by being published in the Official Gazette dated 06.08.2011 and numbered 28017.

The aim of the Regulation is to determine the procedures and principals in respect of placing advertisement in or on commercial vehicles that provide passenger or load transportation within the municipal boundaries and their adjacent areas.

The provisions of the Regulation comprise within this scope, the vehicles such as i) cab, ii) shared cab, iii) minibus, iv) bus, v) pick-up truck, vi) rental car and trailers pulled by these vehicles that provide passenger or load transportation with commercial purposes except for the shuttle bus, personnel shuttle bus and school bus.

The definitions under the Regulation are as follows:

- The term "Advertisement" is defined as promoting activity of goods, business, enterprise or a service by the way of using writings, signs, pictures, symbols, boards, announcements, flags etc. and sound equipment, luminous or visual means which are subject to receiving permission;
- The term "advertising medium" is defined as the real or legal person, who consents to display the advertisement prepared or directed by the advertiser or by its agent, on its vehicle pursuant to the agreement to be concluded by and between the parties during the time that is allowed by the permission certificate for advertisement on the commercial vehicle;
- "The Advertisement permission certificate for the commercial vehicle", is defined as the document which is provided by the

* ***Article of August 2011***

relevant municipality concerning the vehicle on which the advertisement shall be placed;

- "The Authorization Certificate" for the commercial vehicle", is defined as the document, which is provided by the relevant municipality for real persons or legal entities -such as advertising agency-, which are established according to the Turkish Commercial Code and engaged in the activity of advertisement and publicity.

Obligation to Obtain Advertisement Authorization Certificate and Advertisement Permission Certificate for the Commercial Vehicles

According to the article 5 of the Regulation, it is obligatory to obtain authorization certificate from the relevant municipality in order to place advertisements on the commercial vehicles. The application shall be finalized within 7 business days and if it is deemed convenient, the certificate shall be approved and delivered to the advertiser. The certificate is granted for 1 year and it shall not be assigned or leased. The certificate is valid within the municipal boundaries and their adjacent areas for the advertisement activities.

According to the article 6 of the Regulation, the period for advertising campaign cannot exceed 1 year. If the marketing campaign period exceeds the period of the certificate, it is obligatory to extend the period of the certificate. During a campaign period, it is allowed to advertise only one good or service. It is also possible to advertise various trademarks and goods during various periods in a campaign regarding one good or service. It is compulsory to submit a letter of guarantee to the municipality in a determined amount while issuing advertisement permission certificate for the commercial vehicle in order to reimburse the probable damage which can occur during placing and removal of the advertisements. Advertiser shall submit the required letter of guarantee and obtain advertisement authorization certificate for the commercial vehicle in case the advertiser increases the number of vehicles or changes the type of the vehicle in a continuing campaign.

According to the article 7 of the Regulation, an agreement shall be concluded between the advertiser who possesses the advertisement

authorization certificate for the commercial vehicle and the owner or operator of the vehicle who will place advertisements in or on their vehicles. The application shall be finalized within 7 business days and if it is deemed convenient, the certificate is approved and delivered to the advertiser for each vehicle separately depending on the nature of the advertisement.

The following procedures and principles regarding placing advertisements on or in the vehicles are applied:

i) It is not allowed to place advertisements on the windows, wheels and front/back sides of the vehicles.

ii) It is not allowed to entirely cover the vehicle with advertisements or place the advertisement in a way that will completely change the color of the vehicle.

iii) Advertisement equipment such as panels, signboards etc. shall not cover lightning gear, signs of compulsory discriminations such as license plate, symbols or writings which determine the capacity and other qualities and the plate numbers that are on the vehicle or on the side doors of the vehicle. The writings and plates may be written in different colors if the colors of the advertisement and plate writings are in the same color, provided that they are placed in the same proportion.

iv) It is forbidden to place and use the advertisement panels and signboards exceeding the extent, height and length of the vehicle, separate from the vehicle body. However, it is allowed to place advertisement signboards on cars, cabs and shared cabs provided that it does not exceed 50 centimeters at height including its support brackets and other installation devices and they do not cover the cab's or shared cab's plate. If the advertisement covers the plate numbers, then they shall be written on the signboard or on other part of the roof with same size and color.

v) The advertisement panels, signboards to be used on light trailers shall not exceed the extent, height and length of the trailer or the vehicle that pulls the trailer. However, it is allowed to place advertisement signboards on cars, cabs and shared cabs provided that they do not exceed the height of the vehicle more than 50 centimeters.

vi) The advertisement to be placed on the vehicle may be in the shape of a rotary or fixed signboard, panel and line, also they may be painted or foiled.

vii) Advertisements to be placed on the exterior side of the vehicles, sound equipment or visual devices, 3-D objects and reflective materials that may cause danger to the driving safety or other road users, cannot be used.

viii) The advertisement of signboards, panels and etc. shall not be placed in a way which may cause advertisements to fall, slip, disturb the balance, touch the ground, catch onto something and limit the view of the driver.

ix) Visual advertisement devices may be placed inside of the vehicle in a place where the driver is unable to see.

x) The advertisements that cause visual pollution because of partial deletion, damage or similar defections shall not be placed on the vehicles.

xi) At the end of the advertisement campaign, the advertisements inside and outside the vehicles shall be removed within 5 business days. The vehicle owners or operators shall repair all the color changes or other changes caused because of the advertisement on the vehicle within 30 days beginning from expiry date of the campaign.

xii) Tobacco products and alcoholic beverages cannot be advertised on the vehicles.

xiii) Any writing, picture, figure, symbol and sign and the broadcast with the visual devices inside the car shall not be contradictory with Republic of Turkey Constitution Law and legislation; the principles of the Republic; Ataturk's principles and reforms; religious, national, spiritual values, public moral, democratic regime, the principles stated in the article 16. of the Law on the Protection of the Consumer dated 23.02.1995 and numbered 4077 and the principles determined by the Board of Advertisement.

xiv) Commercial advertisement and announcements, which are being investigated and sanctioned with a suspension penalty, are strictly forbidden from being placed on the vehicles.

According to the article 9, it is obligatory to keep the advertisement authorization certificate for the commercial vehicle available in the vehicles and submit it upon the request of the officials. Sanctions shall be applied on the owners and drivers of the vehicles who place advertisements without an advertisement authorization certificate, who place advertisements with an expired authorization certificate or who place advertisements without obeying the conditions of the authorization certificate.

According to the article 12 of the Regulation, Regulation for Placing Advertisement on Commercial Vehicles published in the Official Gazette dated 28.02.1998 and numbered 23272 has been abrogated.

According to the temporary article 1 of the Regulation, advertisement permission certificate and advertisement authorization certificate for the commercial vehicles granted before the publication of this Regulation shall remain valid until their expiration date.

Conclusion

It is compulsory to obtain advertisement permission certificate and advertisement authorization certificate for the commercial vehicles from the relevant municipality in order to place advertisement in or on commercial vehicles that provide passenger or load transportation within the municipal boundaries and their adjacent areas. The procedures and principles regarding placing advertisements on or in the vehicles are regulated in the Regulation for Placing Advertisement on Commercial Vehicles, which has entered into force on 06.08.2011. Sanctions are applied in case provisions of this Regulation are breached.

The Regulation on Procedures and Principles in Relation to Reimbursement of Health Care Costs for the Victims of Road Traffic Accidents *

Att. Ceyda Büyükoral

The Scope and aim of the Regulation

The Regulation on Procedures and Principles governing the reimbursement for medical treatment and prescription costs that entitled to the People who suffered from a personal injury as a result of Road Traffic Accidents ("Regulation") has entered into force by being published in the Official Gazette dated 27.08.2011 and numbered 28038.

The aim of the Regulation is to determine the personal injury claim procedures and legal principles in respect of reimbursement and collection of medical treatment costs that the victims are entitled to compensate their damages caused by road traffic accidents.

The provisions of the Regulation, comprise within this scope, are the road traffic accidents -car crashes, collisions- occurred in our country's highways and the types of insurance covers; Compulsory Motor Insurance, Compulsory Transport Insurance and Passenger Transport Insurance.

The definitions under the Regulation are as follows:

- "Institution" is defined as Social Security Institution;
- "Assurance Account" is defined as the account, opened by Association of the Insurance and Reinsurance Companies of Turkey within the frame of Insurance Code dated 03.06.2007 and numbered 5684;
- "Office" is defined as Turkish Motor Vehicles Office established and operating its activities within the frame of the Regulation Regarding Working Procedures and Principles of Turkish Motor Vehicles Office published in the Official Gazette dated 28.06.2008 and numbered 26920;

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* ***Article of September 2011***

- "Green Card Insurance" is defined as international motor insurance issued pursuant to European Agreement regarding Motor Vehicles used in another visited country for the civil liability;
- "Code" is defined as the Code regarding restructuring Certain Receivables and Amendments in the Social Insurances and General Health Insurance Code and Certain Other Codes or Decree Laws dated 13.02.2011 and numbered 6111.

General Principles

According to article 4 of the Regulation, all required health care costs for personal injuries that were treated by university hospitals and all other official and private health institutions and organizations as a result of road traffic accidents shall be compensated by the Institution without considering whether victims are being covered by social insurance or not.

According to article 5, the institution is to be remunerated by the relevant insurance companies and Assurance Account as means of transfer of the sum -health care bill- that accrued as a result of treatment of the personal injury.

The transfer of the sum to be made to the Institution shall be shared between the Assurance Account and insurance companies as herein below:

i) Insurance companies who have authority to issue insurance policies for Compulsory Traffic Insurance, Compulsory Transport Insurance and Compulsory Passenger Transport Insurance shall transfer a fixed amount of insurance premium, determined in their policy to the Institution until the end of third month following the due date of the premium, either in lump sum or in three equal installments. For the road traffic accidents occurred prior to the enactment of this Code; The Companies -insurers- which issue insurance policies for Compulsory Transport Insurance and Compulsory Passenger Transport Insurance shall transfer the amount calculated in accordance with the method determined in the attachment of this Regulation to the Institution in installments determined by the Undersecretariat of Treasury. As for Compulsory Traffic Insurance, the time period for the insurer to make transfer to the Institution is set for 3 years upon publishing of the Code.

ii) Assurance Account shall transfer 15 % of the ceding commission collected from the cedent insurance companies for the Compulsory Traffic Insurance, Compulsory Transport Insurance and Compulsory Passenger Transport Insurance to the Institution until the 10th day of the month following the collection date. Assurance Account shall transfer 20 % of the referred amounts to the Institution for the traffic accidents occurred before publishing of the Code.

iii) The Undersecretariat of Treasury is entitled to increase or decrease the referred amount in the ratio up to 50 %.

iv) If the receivables of the Institution remain overdue after the payment period, late payment penalty and late payment interest shall be applied pursuant to article 89 of Social Security and General Health Insurance Law dated 31.05.2006 and numbered 5510.

Pursuant to article 6 of the Regulation, the Institution shall claim from the Office among the treatment costs of traffic accidents caused by or involvement of foreign licensed vehicles, the part corresponding to the liability of the operator of the vehicle with foreign license within the frame of Green Card Insurance. For traffic accidents occurred abroad, the health treatment costs which shall be compensated by the Office pursuant to Green Card Insurance shall be paid by the Office within the frame of general provisions.

The liability of the insurance companies issuing voluntary insurance policies within the frame of policies that may be subject to health care demands raised from traffic accidents, are reserved pursuant to article 7 of the Regulation.

The insurance companies and Assurance Account are discharged from their liabilities for health/treatment costs once the settlement has been made to the Institution within the scope of Compulsory Traffic Insurance, Compulsory Transport Insurance and Compulsory Passenger Transport Insurance Policies towards the insured and beneficiaries. Claiming any expense for the medical treatment from the insured is not to be made within the frame of Compulsory Traffic Insurance, Compulsory Transport Insurance and Compulsory Passenger Transport Insurance for health care costs based on this Regulation.

Pursuant to article 11 of the Regulation, the insurance companies and Assurance Account reserve their right of subrogation to the person who causes the damage.

Temporary Articles

Pursuant to temporary article 1, all outstanding bills and the medical treatments that will be billed for the traffic accidents occurred before the publication of the Code shall be paid by the Institution.

Temporary article 2 regulated the interim period in between publishing of the Code and publishing of the Secondary Legislation -Regulation- in details.

Conclusion

In summary, according to Regulation, all health care costs -medical expenses and prescription- required for the personal injury treatment by the university hospitals and all official and private health institutions and organizations as a result of road traffic accidents shall be compensated by the Institution. The Procedures and principals in respect of reimbursement of health care costs provided for car accident victims, are regulated in the Secondary Regulation Regarding Procedures and Principles in Relation to Reimbursement of Health Care Costs Provided to the victims of car accidents, entered into force on 27.08.2011.

The Family Dwelling House and Legal Implications of Putting a Family House Annotation onto the Title Deed Registry *

Att. Ceyda Büyükoral

"Family House" is a wording, entered into civil law terminology first by the Turkish Civil Code numbered 4721 ("TCC"), which was entered into force in 01.01.2002.

The Family Dwelling House is regulated under article 194 of the TCC.

Definition of Family Dwelling House

The exact definition of the term "Family Dwelling House" has not been given under article 194 of the TCC. However, it is defined in the preamble of the aforesaid article as "the place where the spouses establish and maintain their lives for the greatest time of their life with happiness and sadness. Also, according to doctrine and Supreme Court precedents another definition of "family dwelling house" was made as "a residence designated mutually by the spouses in where they live their ordinary lives with their children, if any.

By law, to consider a real estate as a family dwelling house, union of civil marriage between the couples and their commitment to reside permanently in the property are sought. Therefore, a real estate where unmarried couples are living or a real estate where spouses are temporarily residing, such as a holiday homes is not considered as a family dwelling house.

Provisions in the TCC Regarding Family House

It is stipulated under article 193 of the TCC that each spouse can enter into legally binding relations or execute binding transactions with the other spouse or with a third party. However, legal transactions regarding family house are exception to the rule of spouses' full legal capacity to enter into or conduct legal transactions.

Pursuant to article 194 of the TCC:

Neither of the spouses can terminate the tenancy agreement of the family house, transfer the ownership of the family house nor restrict the

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* ***Article of July 2011***

rights upon the family house solely without the explicit consent of the other spouse.

The spouse may demand intervention of the judge to obtain a consent order if the partners do not reach a settlement in between them as to the division or other matters related to property.

In the case of renting out family dwelling house; if one of the spouses is party to the tenancy agreement, other spouse may also become a party to the agreement by notifying to the lessor.

If the family dwelling house is owned by only one of the spouses, the other spouse is entitled to demand putting family dwelling house annotation onto the title deed registry.

Family Dwelling House Annotation

Pursuant to article 57 of the Regulation on Title Deed Registry, in order to put family house annotation onto the title deed registry the following documents are required; a document confirming that the property is being used as a family dwelling house -obtained from local council or residential block management-, certified copy of identification or copy of civil marriage certificate.

The Legal Nature of Family House Annotation and Its Legal Implications

The legal nature of family house annotation and its legal implications was evaluated in the Assembly of Civil Chambers of the Court of Appeal decision dated 04.10.2006 numbered E.2006/2-591, K.2006/624.

The below text is the quotation taken from the aforesaid decision which settled the conflicting opinions between the local court and the relevant civil chamber of the Court of Appeal on the point of whether family house annotation is a founding annotation or ownership of a third party, who relied on the title deed records in good faith, will be legally protected.

> *"…As it is also indicated in the preamble of the article, a family dwelling house is the area where the spouses live all their lives and direct their lives accordingly and live happy and sad days therein.*

Any legal transaction to be executed by only one spouse regarding such an important asset may be against the benefit of the other spouse. Therefore, pursuant to article 194 of the Turkish Civil Code numbered 4721, the transfer of the ownership of a family house is subject to the consent of the other spouse. In other words, the transfer of the ownership of a family house is a legal transaction which requires the consent of the other spouse. (Bilge ÖZTAN, Aile Hukuku, Ankara-2004, p. 207; Ahmet M. KILIÇOGLU, Türk Medeni Kanunu'nda Diğer Eşin Rızasına Bağlı Hukuksal İşlemler ve Yasal Alım Hakkı, Ankara-2002, p. 18)

It is provided in subparagraph III of article 194 of the Turkish Civil Code numbered 4721 that a family house annotation can be put onto the title deed registry in order to prevent legal transactions without receiving consent. However, the aforesaid article is not an exception to the rule of trust in the title deed records. (KILIÇOĞLU, p. 20)

If the other spouse failed to demand the relevant annotation to be put onto the title deed registry, the right of the third party, who acted with good faith in the legal transaction with the spouse who owns the house, will be protected in accordance with article 1023 of the Turkish Civil Code numbered 4721.

On the other hand, annotation will render legal transactions void despite the third party's good faith. Therefore, the decision of the local court stating that the restriction on transaction of the ownership will arise by annotation, in other words, the annotation is a "founding annotation" and thus the right of the third party will be deemed as valid without considering whether the third party is in good faith, is found to be inaccurate.

As it is known, article 1023 of the Turkish Civil Code numbered 4721 stipulates the rule of trust in the title deed records. The subparagraph III of article 194 of the Turkish Civil Code numbered 4721 indicates that this rule is maintained. (KILIÇOĞLU, p. 20)"

As it is understood from the above decision, the Assembly of Civil Chambers of the Court of Appeal is in the opinion that the family house

annotation is not a "founding annotation"; however article 194 of the TCC is not an exception to the rule of trust in the title deed records; and therefore, in lack of annotation onto the title deed registry, the third party's right in rem shall be protected provided that he acted with good faith in the transaction with the spouse who owns the house although the other spouse has no consent.

Conclusion

Pursuant to article 194 of the TCC, regulating family dwelling house which has a great importance to spouses, neither of the spouses can terminate the rental agreement regarding the family dwelling house, transfer the ownership of the family house nor restrict the rights upon the family house without the explicit consent of the other spouse. If the family house is owned by only one of the spouse, the other spouse is entitled to demand to put family dwelling house annotation onto the title deed registry.

The Assembly of Civil Chambers of the Court of Appeal is in the opinion that the family house annotation is not a "founding annotation". Therefore, in lack of annotation onto the title deed registry, the third party's right in rem will not be protected in a straight course; at this point the faith of the third party will be considered.

If the third party is in good faith, his right in rem will be protected; if the third party is not in good faith, his right in rem will not be protected. On the other hand, annotation will render legal transactions void despite the third party's good faith.

Therefore, in order to prevent the spouse from executing transaction regarding the family house which he owns, the other spouse shall definitely demand to put family dwelling house annotation onto the title deed registry. Otherwise, if the third party is in good faith, his right in rem will be protected.

In addition, in order to avoid any dispute, it will be convenient that a person to receive the consent of the other spouse if he knows that he is a party to a transaction regarding a family house.

Appeal and Litigation Procedure against the Turkish Patent Institute's Decisions *

Att. Ceda Buyukoral

Decree Law No.556 Pertaining to the Protection of Trademarks ("Decree Law no 556"), article 47 and the following articles regulate the appeal and litigation procedure against the Turkish Patent Institute's ("TPI") Decisions.

Appeals against the Decisions of the TPI

According to article 47, appeals may be placed against the decisions of the TPI. Persons entitled to appeal are regulated under article 48. Accordingly, any party adversely affected by a decision of the TPI may appeal against the decision of TPI. Others who are party to the procedures with respect to the decisions shall have the authority to appeal directly.

According to article 49 titled as "Form and Duration of Appeal", notice of appeal must be filed in writing to the TPI within two months after the date of notification of the decision. However, in order to examine the appeal, the fee for the appeal has to be paid when filing of the notice. Also, if the statement of grounds for the appeal has not been submitted within the period of two months, the appeal shall be deemed not to be filed.

Pursuant to article 36 of the Implementation Regulation under the Decree Law no 556, the appeal shall be filed to the TPI within the specified periods with a signed petition explaining the grounds of the appeal including the original receipt of the full payment for the appeal and if an attorney is appointed, the power of attorney of the attorney shall be attached to the petition. In case all the documents have not been submitted at the time of the appeal, the missing documents may be completed within the period of appeal. For appeals against the decisions, if all the documents have been submitted, the examination may commence before the end of the two months period. If the specified documents have

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* ***Article of December 2011***

not been submitted fully within the granted period, the examination shall start after the end of two months period as they may be completed within the granted time.

According to article 50, the relevant department of the TPI may rectify its decision if it decides that the appeal is justified and accurate. This shall not apply where the appeal is filed by a person who is not directly a party to the proceeding regarding the decision. If the related department does not accept the appeal, then it shall convey it to the Re-examination and Evaluation Board without any comment as to its grounds.

Article 51 of the Decree Law no 556 titled as "Examination of Appeals", regulates that the Re-examination and Evaluation Board shall commence proceedings to examine the appeal if the appeal is found admissible. In such a case, the Re-examination and Evaluation Board shall invite the parties to submit their observations within the period prescribed by the Implementing Regulation, regarding the observations of the other parties or the department.

Pursuant to Article 52 of the Decree Law no 556, the Re-examination and Evaluation Board shall give its decision upon the examination of the appeal.

According to article 39 of the Implementation Regulation under the Decree Law no 556, the fee paid for filing an appeal against the TPI's decision which is with respect to the trademark application shall be deducted from the fee for the issuance of trademark registration certificate provided that the appeal is accepted.

According to article 7 of TPI Re-examination and Evaluation Board Regulation, the Board decisions of TPI are final and not subject to an appeal. However, the applicants may demand to rectify the material errors by providing its grounds. In this case, the Board shall decide on the application for rectifying the material errors within 15 days and notify the applicant.

Litigation Procedure against the TPI Decisions

Pursuant to article 53 of the Decree Law no 556, lawsuits may be initiated against the final decisions of the Re-examination and Evaluation

Board in respect of the appeals referred herein above at the competent court within a period of two months beginning from notification of the decision. Therefore, there shall be a decision of Re-examination and Evaluation Board and it shall be final. The two months period is a lapse of time. If this period is elapsed, then the lawsuit shall be dismissed.

The lawsuits against the TPI decisions shall be initiated at the judicial courts. Article 71 of Decree Law no 556 envisages special courts for the lawsuits to be initiated within the frame of Decree Law no 556 as the competent courts. Ankara special court shall be competent and have jurisdiction for the lawsuits initiated in respect of the TPI's decisions within the frame of Decree Law no 556 and for the lawsuits initiated against the TPI by a third party who is damaged as a result of the decision of the TPI.

The lawsuit shall be initiated in respect of cancellation of the decision on refusal of registration application or cancellation of the decision on refusal of the objection made regarding the registration application.

If the person whose application is refused on the absolute grounds for refusal for registry of a trademark, which are listed in article 7 of Decree Law no 556, does not receive a favorable result from TPI to its appeal; may initiate a lawsuit before competent courts within the prescription time. If the court decides that there shall not exist any absolute grounds for refusal for registry, then upon becoming final and binding of the court decision, no obstruction shall deemed to be existing with respect to absolute grounds for refusal for application of a trademark registration. In this case, objections may be made based only on the facts of relative grounds for refusal for registration of a trademark objection**.**

The person, who has objected to the decision on trademark registration on the basis of relative grounds for refusal which are listed in article 8 of Decree Law no 556, shall be entitled to initiate a lawsuit if his objection is refused by TPI. If the court does not find the relative grounds for refusal justified and dismiss the lawsuit, then no objection may be made to the trademark registration application based on relative grounds for refusal.

In lawsuits initiated against TPI, the claimant shall be the person whose objection or application is refused by TPI. The defendant shall be TPI Directorate.

The person, whose trademark application is refused, initiates a lawsuit to cancel the TPI's refusal decision; then he shall include in the lawsuit the person who objected to the trademark application besides TPI Directorate. The person who objected to the registration and whose objection is refused initiates a lawsuit for cancellation of the decision; then he shall include in the lawsuit the person who made application for trademark registration besides TPI Directorate.

Conclusion

Article 47 and following articles of Decree Law no 556 regulate the appeal and litigation procedures against the TPI decisions. Accordingly, it is possible to appeal against the TPI decisions. Those who are damaged as a result of the decision of the TPI and others who are a party to the procedures with respect to the decisions shall have the authority to appeal and they shall use their right of appeal within two months beginning from notification of the decision.

The relevant department of TPI may rectify its decision upon the appeal if it finds justified and accurate. However, this shall not apply where the appeal is filed by a person who is not directly a party to the proceeding regarding the decision. If the related department does not accept the appeal, then it shall convey it to the Re-examination and Evaluation Board without any comment as to its grounds.

Re-examination and Evaluation Board decisions are final. A lawsuit may be initiated against the decisions of the Re-examination and Evaluation Board at the Ankara special court within a period of two months beginning from notification of the decision. In such a case, the defendant shall be TPI Directorate and the person whose rights shall be affected as a result of the lawsuit shall also be included in the lawsuit.

The Rights of Air Passengers *

Att. Begüm Taner Huntürk

The rights of the air passengers are set forth by the Regulation Regarding the Rights of the Passengers who Travel by Airway ("Regulation"), which is published by the General Directorate of Civil Aviation ("GDCA") in the Official Gazette dated December 3, 2011 and numbered 28131. The Regulation shall enter into force as of January 1, 2012.

Pursuant to Article 9 (g) of the Law on the Duties and Organization of the Directorate General of Civil Aviation, realization and supervision of the arrangements necessary to implement the rules determined in the international field related to passenger rights, are among the duties of the GDCA Flight Operation Chamber. In principle, the Regulation is also aiming to harmonize the provisions of the EC Regulation No. 261/2004 dated 11.02.2004 with the national legislation in line with the mentioned duties of the GDCA and also provide solutions to the problems which arise during practice.

Scope

This Regulation shall apply to:

- passengers who have a confirmed reservation on the scheduled or unscheduled flights of (i) the Turkish air carriers which depart from or arrive to an airport in Turkey or (ii) the foreign air carriers which depart from an airport in Turkey, except in the case of flight cancellation, and who present themselves for check-in as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorized travel agent, or if no time is indicated not later than 45 minutes before the published departure time;
- passengers who have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason,

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* ***Article of December 2011***

- passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public and passengers travelling with their gathered miles and points.

We should herein state that this Regulation only stipulates the rights of the individual passengers. The mutual rights and claims of the tour operators and air carriers are out of the scope of this Regulation and they are reserved.

Denied Boarding on a Flight

When an operating air carrier expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier.

If an insufficient number of volunteers come forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

If boarding is denied to passengers against their will, the operating air carrier shall remedy the passengers in the below mentioned manner;

- give different amounts of compensation determined due to the nature of the flight route and length
- provide a right to reimbursement or re-routing, or
- provide a right to service

The amounts of compensation are indicated under the "Right to Compensation" heading herein below.

Cancellation of Flights

In case of cancellation of a flight, the below mentioned assistance shall be offered to the passengers concerned by the operating air carrier

- right to reimbursement or re-routing, or
- free of charge meals and refreshments and communication services (phone, facsimile, e-mail)

In the event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was

planned for the cancelled flight, in addition to above referred services, accommodation and transport to the place of accommodation should be offered to the passenger.

The relevant passengers have the right to claim compensation from the operating air carrier, unless (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

An operating air carrier shall not be obliged to pay compensation, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even all the reasonable measures have been taken. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier. In the case that the contact information of the passenger is not provided to the air carrier or the air carrier have been misinformed, even if such information is duly demanded by the operating air carrier; then such air carrier shall not be liable.

Delay in Flights

When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

- for two hours or more in the case of domestic flight and flights of 1500 km or less; or
- for three hours or more in the case of flights between 1500 km and 3500 km; or

- for four hours or more in the case of flights of 3500 km or more,

then free of charge meals and refreshments and communication services (phone, facsimile, e-mail) should be offered to the passengers concerned by the operating air carrier. When the reasonably expected time of departure is at least the day after the time of departure previously announced, accommodation and transport to the place of accommodation should be offered to the passenger. When the delay is at least five hours, the air carrier should offer a reimbursement and a free return ticket to the initial departure point.

Right to Compensation

In cases where the passengers are denied to a flight against their will or if a flight is cancelled, the air carrier shall pay compensation to the passengers in the TL amounts corresponding to the below mentioned Euro amounts calculated over the currency exchange rate announced by the TCMB at the date of the ticket sold.

- for domestic flights: 100 Euro,
- for international flights
  - of 1.500 km or less: 250 Euro,
  - between 1.500 km and 3.500 km: 400 Euro,
  - of 3.500 km or less: 600 Euro

If re-routing is offered to the passengers, than the operating air carrier may reduce the compensation by 50 %.

The compensation rights of the passengers arising out of other legislation or regulations are herein reserved. The compensation paid in the scope of this Regulation shall be deducted from the mentioned amount of compensation.

Upgrading and Downgrading

If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days,

reimburse the price difference between the tickets and in addition to that shall reimburse:

- 30 % of the price of the ticket for all flights of 1500 km or less,
- 50 % of the price of the ticket for all flights between 1500 km and 3500 km,
- 75 % of the price of the ticket for all flights of 3500 km or more.

Persons with Reduced Mobility or Special Needs

Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.

Legal Action and Other Sanctions

The passengers may directly apply to general courts if the provisions of the Regulation are violated by operating air carriers.

Moreover pursuant to Article 143 of the Civil Aviation Law, GDCA may impose monetary sanctions to air carriers who are violating the provisions of the Regulation.

Conclusion

As mentioned herein above, the legislative source of the Regulation is the EC Regulation No. 261/2004 dated 11.02.2004. Therefore, the operating air carriers are already applying these principles to their flights departing from the countries, which are members of EU and provide similar compensations and services to their passengers on these flights. However, as of the Regulation's entry into force on January 1, 2012, the application of these compensations and services shall be expanded so that they will be also applied to the scheduled or unscheduled flights of (i) the Turkish air carriers which depart from or arrive to an airport in Turkey or (ii) the foreign air carriers which depart from an airport in Turkey.

On the other hand, the obligation to inform the passengers of their rights, which is provided by the Regulation shall serve the passengers to become aware of their rights and to claim their rights from the operating air carriers.

LEGAL DEVELOPMENTS

Important International Agreements

- The Resolution of the Council of Ministers dated 20.12.2010 on the Ratification of the Workout Protocols Signed on 05.07.2010 in Skopje Between the Ministry of Health of the Republic of Turkey and the Ministry of Health of the Former Yugoslavian Republic of Macedonia was published in the Official Gazette dated 02.01.2011 and numbered 27803.
- The Law on the Approval of the Ratification of the Agreement signed on 11.10.2008 in Istanbul Between the Republic of Turkey and the League of Arab States Pertaining to Constitution of a Mission in Turkey was published in the Official Gazette dated 08.01.2011 and numbered 27809.
- The Law on the Approval of the Ratification of the Turkish-Arab Cooperation Forum Framework Agreement signed on 02.11.2011 in Istanbul was published in the Official Gazette dated 08.01.2011 and numbered 27809.
- The Law on the Approval of the Ratification of the Agreement between the Republic of Turkey and the Republic of the Philippines on the Prevention of Double Taxation Pertaining to the Taxes Levied on Income and on the Prevention of Tax Evasion, and of the Protocol Attached Thereto that was signed in Ankara on 18.03.2009 was published in the Official Gazette dated 08.01.2011 and numbered 27809.
- The Law on the Approval of the Ratification of the Agreement between the Republic of Turkey and Canada on the Prevention of Double Taxation Pertaining to the Taxes Levied on Income and on Wealth and on the Prevention of Tax Evasion, and of the Attached Protocol that was signed in Ottowa on 14.07.2009 was published in the Official Gazette dated 08.01.2011 and numbered 27809.

- The Law on the Approval of the Ratification of the Additional Protocol to the Agreement Signed on 28.06.2010 in Ankara Between the Republic of Turkey and the Turkish Republic of Cyprus Pertaining to Cooperation in Health was published in the Official Gazette dated 19.01.2011 and numbered 27820.
- The Resolution of the Council of Ministers dated 07.01.2011 on the Ratification of the Agreement between the Government of the Republic of Turkey and the Government of the Republic of Kosovo on Economic Cooperation that was signed in Pristine on 28.05.2009, was published in the Official Gazette dated 15.02.2011 and numbered 27847.
- The Resolution of the Council of Ministers dated 03.01.2011 on the Ratification of the Agreement on Cooperation in the field of Tourism between the Government of the Republic of Turkey and the Government of the Republic of Korea approved by the law dated 03.11.2010 and numbered 6051, signed in Ankara on 28.05.2009 was published in the Official Gazette dated 16.02.2011 and numbered 27848.
- The Resolution of the Council of Ministers dated 07.01.2011 on the Ratification of the Agreement between the Government of the Republic of Turkey and the Government of the Republic of Sudan on Cooperation and Mutual Assistance in Customs Matters approved by the law dated 02.11.2010 and numbered 6029, that was signed in Ankara on 14.03.2011 was published in the Official Gazette dated 16.02.2011 and numbered 27848.
- The Resolution of the Council of Ministers dated 10.02.2011 on the Ratification of Protocol No. 1 on the Amendment of the Protocol on Electric Energy Purchase and Sale dated 26.09.2006 that was signed in Ankara between Turkey and Georgia on 13.12.2010 was published in the Official Gazette dated 19.02.2011 and numbered 27851.
- The Resolution of the Council of Ministers dated 17.01.2011 on the Ratification of the Agreement on Cooperation in the Fields of Mining and Geology between the Government of the Republic of Turkey and the Government of the Republic of Tunisia signed was

published in the Official Gazette dated 04.03.2011 and numbered 27864.

- The Laws on the Approval of the Ratification of Some Agreements were published in the Official Gazettes dated 10.03.2011 and numbered 27870, dated 12.03.2011 and numbered 27872 and dated 29.03.2011 and numbered 27889. The laws are related to the approval of many agreements between Turkey and other states concerning issues such as legal and administrative aids, cooperation in the field of energy, and the prevention of double taxation.
- The Resolution of the Council of Ministers dated 30.03.2011 Pertaining to the Ratification of the Memorandum of Understanding regarding Development of the Motorways of the Sea in the Black Sea Economic Corporation Zone that was signed on 19.04.2007 in Belgrade was published in the Official Gazette dated 05.04.2011 and numbered 27896.
- The Resolution of the Council of Ministers dated 24.02.2011 Pertaining to the Ratification of Turkish-Arab Cooperation Form Framework Agreement that was signed on 02.11.2007 in Istanbul was published in the Official Gazette dated 12.04.2011 and numbered 27903.
- The Law on the Amendment of the Law Pertaining to Authorizing the Government for Participation to the International Monetary Fund and the International Bank for Reconstruction and Development, of the Law on the Approval of the Ratification of the Agreement for the Establishment of the European Bank for Reconstruction and Development and of the Law on the Approval of the Ratification of the Agreement on our Participation to the Agreement for the Establishment of the Asian Development Bank was published in the Official Gazette dated 14.04.2011 and numbered 27905.
- The Resolution of the Council of Ministers dated 13.04.2011 Pertaining to the Ratification of the Agreement between the Republic of Turkey and the Great Socialist People's Arab Jamahiriya of Libya on Mutual Incentives and Protection of

Investments that was signed on 25.11.2009 in Tripoli was published in the Official Gazette dated 14.04.2011 and numbered 27905.

- The Resolution of the Council of Ministers dated 18.04.2011 Pertaining to the Ratification of the Preferential Business Trade Between the D-8 Member States and its addendum, the Origin Rules concerning the Preferential Trade Agreement Between the D-8 approved Member States from 04 to 08.07.2008 in Malaysia was published in the Official Gazette dated 22.04.2011 and numbered 27913.
- The Resolution of the Council of Ministers dated 17.03.2011 Pertaining to the Ratification of the Agreement on the Prevention of Double Taxation and Tax Evasion concerning the Taxes Collected on Revenue and Assets and the Protocol which is the addendum of the aforesaid Agreement that were signed on 14.07.2009 in Ottawa was published in the Official Gazette dated 29.04.2011 and numbered 27919.
- The Resolution of the Council of Ministers dated 04.04.2011 pertaining to the Ratification of the Memorandum of Understanding between the Ministry of Energy and Natural Resources of the Republic of Turkey and Ministry of Electricity of the Syrian Arab Republic concerning the generation, transmission and distribution of Electricity, Renewable Energy and Energy Productivity that was signed on 21.12.2010 in Ankara was published in the Reiterated Official Gazette dated 29.04.2011 and numbered 27919.
- The Resolution of the Council of Ministers dated 08.04.2011 pertaining to the Ratification of the Agreement Between the Government of Turkey and the Government of Hellenic Republic for the Construction of a Second Border Crossing Road Bridge Between the two Countries in the Area of Ipsala-Kipi Border Crossing approved by law dated 23.02.2011 and numbered 6148 and signed in Istanbul on 10.06.2006 was published in the Official Gazette dated 11.05.2011 and numbered 27931.
- The Resolution of the Council of Ministers dated 07.04.2011 pertaining to the rectification of the Sale agreement No. TUR-

44 on Logistic Support of the TOW Weapon System approved by articles 3 and 4 of the Law dated 31.05.1963 and numbered 244, that was signed on 23.08.2010 was published in the Official Gazette dated 28.05.2011 and numbered 27947.

- The Council of Ministers Resolution dated 21.04.2011 on Ratification of Cooperation Agreement between Republic of Turkey and Arab Republic of Syria on Judicial Assistance in the Fields of Legal and Commercial Issues was published in the Official Gazette dated 15.06.2011 and numbered 27965.
- The Council of Ministers Resolution dated 08.04.2011 on Ratification of the Agreement between the Republic of Turkey and the United Arab Emirates on Mutual Incentives and Protection of Investments was published in the Official Gazette dated 15.06.2011 and numbered 27965.
- The Council of Ministers Resolution dated 05.05.2011 pertaining to Ratification of the Memorandum of Understanding between the Government of Republic of Turkey and the Government of the Arab Republic of Syria on Common Use of Border Gates was published in the Official Gazette dated 16.06.2011 and numbered 27966.
- The Council of Ministers Resolution dated 05.05.2011 pertaining to Ratification of the Memorandum of Understanding between the Government of Republic of Turkey and the Government of the Arab Republic of Syria on Cooperation in the Fields of Construction and Technical Consultancy Services was published in the Official Gazette dated 19.06.2011 and numbered 27969.
- The Council of Ministers Resolution dated 07.06.2011 pertaining to entry into force of Loan Agreement between Republic of Turkey and International Bank for Reconstruction and Development and Letter Annexed to it was published in the Official Gazette dated 19.06.2011 and numbered 27969.
- The Resolution of the Council of Ministers dated 28.06.2011 and numbered 2021 pertaining to the Ratification of the Agreement Between the United Nations and the Government of Turkey

regarding Arrangements for the Fourth United Nations Conference on the Least Developed Countries, approved by the articles 3 and 5 t of the law dated 31.05.1963 and numbered 244, that was signed in New York on 27.04.2011 was published in the Official Gazette dated 03.07.2011 and numbered 27983.

- The Resolution of the Council of Ministers dated 23.05.2011 and numbered 1906 pertaining to the rectification of the Agreement for the Establishment of the International Development Law Organization approved by the law dated 23.02.2011 and numbered 6149, was published in the Official Gazette dated 05.07.2011 and numbered 27985.
- The Resolution of the Council of Ministers dated 18.07.2011 on the Ratification of the Cooperation Protocol Pertaining to Supporting of the Partly Donated Support Aid Projects in the Turkish Republic of Northern Cyprus out of the Resources that are Provided by the Republic of Turkey signed on 15 November 2010 was published in the Official Gazette dated 04.08.2011 and numbered 28015.
- The Resolution of the Council of Ministers on the Ratification of The Agreement Between the Government of the Republic of Turkey and the Government of the State of Kuwait on Mutual Assistance and Co-operation in Customs Matters was published in the Official Gazette dated 24.08.2011 and numbered 28035.
- The Resolution of the Council of Ministers dated 01.08.2011 on the Ratification of the Convention for the Establishment of the European Communications Office was published in the Official Gazette dated 24.08.2011 and numbered 28035.
- The Resolution of the Council of Ministers dated 25.07.2011 on the Ratification of the Memorandum of Understanding between the Government of the Republic of Turkey and the Government of the State of Kuwait in the Field of Industrial Cooperation signed on 10.01.2011 was published in the Official Gazette dated 25.08.2011 and numbered 28036.

- The Resolution of the Council of Ministers dated 25.07.2011 on the Ratification of the Memorandum of Understanding on Cooperation in the Energy Sector between the Ministry of Energy and Natural Resources of the Republic of Turkey and the National Energy Administration of the People's Republic of China signed on 25.06.2009 was published in the Official Gazette dated 25.08.2011 and numbered 28036.
- The Resolution of the Council of Ministers dated 22.08.2011 on the Ratification of the Cooperation Protocol in the Field of Statistics between the Turkish Republic of Northern Cyprus and the Republic of Turkey was published in the Official Gazette dated 09.09.2011 and numbered 28049.
- The Resolution of the Council of Ministers dated 22.08.2011 on the Determination of the Dates for Entry into Force of Particular Agreements was published in the Official Gazette dated 10.09.2011 and numbered 28050.
- The Resolution of the Council of Ministers dated 22.10.2011 on the Ratification by Law regarding passports numbered 5682 and Law numbered 244 of the annexed "Protocol on the Additions and Amendments to the Visa Facility Agreement dated 4 April 1996 between the Government of the Republic of Turkey and the Government of Georgia" that was signed in Sarp on 31.05.2011 was published in the Official Gazette dated 22.10.2011 and numbered 28092.
- The Resolution of the Council of Ministers dated 24.10.2011 pertaining to the Ratification of the Convention of the Southeastern European Law Enforcement approved by the Law dated 19.10.2011 and numbered 6238, that was signed in Bucharest on 9 December 2009 was published in the Official Gazette dated 01.11.2011 and numbered 28102.
- The Law on the Approval of the Ratification of the Agreement between the Government of the Republic of Turkey and the Government of the State of Kuwait on Mutual Incentive and Protection of Investments entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.

- The Law on the Approval of the Ratification of Turkey-Azerbaijan Long-Term Economic and Commercial Cooperation Program and Executive Plan entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Law on the Approval of the Ratification of the Amendments to the Articles of Multilateral Investment Guarantee Agency Convention entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Resolution of the Council of Ministers dated 14.10.2011 on the Ratification of the European Convention on Contact with Children signed in Strasbourg on 15 July 2003 and approved by Law dated 09.11.2010 and numbered 6066 was published in the Official Gazette dated 17.11.2011 and numbered 28115.
- The Resolution of the Council of Ministers dated 31.10.2011 on the Ratification of the Cooperation Protocol on the Area of Petroleum between the Government of the Republic of Turkey and the Government of Russian Federation approved by Law dated 10.03.2011 and numbered 6201 was published in the Official Gazette dated 30.11.2011 and numbered 28128.
- The Resolution of Council of Ministers dated 14.11.2011 on the Ratification of the Protocol between the Government of the Republic of Turkey and the Government of Arab Republic of Egypt, in the Field of Information has been published in the Official Gazette dated 01.12.2011 and numbered 28129.
- The Resolution of Council of Ministers dated 29.11.2011 on the Rescindment of the Agreement between the Government of the Republic of Turkey and the Government of the Union of Soviet Socialist Republics on Shipment of Natural Gas from the Union of Soviet Socialist Republics to the Republic of Turkey Being Effective as of 05.06.2012 has been published in the Official Gazette dated 01.12.2011 and numbered 28129.
- The Resolution of Council of Ministers dated 05.12.2011 on the Ratification of the Maritime Partnership Agreement Signed between the Republic of Turkey and the Government of Romania

has been published in the Official Gazette dated 14.12.2011 and numbered 28142.

- The Law on the Approval of the Ratification of the Air Services Agreement between the Government of the Republic of Turkey and the Government of New Zealand entered into force through publication in the Official Gazette dated 15.12.2011 and numbered 28143.
- The Law on the Approval of the Ratification of the Air Transportation Agreement between the Government of the Republic of Turkey and the Government of Australia entered into force through publication in the Official Gazette dated 15.12.2011 and numbered 28143.
- The Law on the Approval of the Ratification of the Agreement between the Republic of Turkey and the Republic of Finland, on the Prevention of Double Taxation Pertaining to the Taxes Levied on Income as well as the Protocol and the Note Regarding this Agreement entered into force through publication in the Official Gazette dated 15.12.2011 and numbered 28143.
- The Law on the Approval of the Ratification of the Air Transportation Agreement between the Government of the Republic of Turkey and the Government of Russian Federation entered into force through publication in the Official Gazette dated 15.12.2011 and numbered 28143.
- The Law on the Ratification of the Agreement between the Government of the Republic of Turkey and the Government of the Republic of Senegal on Mutual Incentives and Protection of Investments entered into force through publication in the Official Gazette dated 15.12.2011 and numbered 28143.
- The Resolution of Council of Ministers dated 28.11.2011 on Entering into Force of the Loan Agreement Signed Between the Republic of Turkey and the Turkish Republic of Northern Cyprus has been published in the Official Gazette dated 21.12.2011 and numbered 28149.

- The Resolution of Council of Ministers dated 25.11.2011 on the Ratification of the Cooperation Agreement in the Field of Energy between the Government of the Republic of Turkey and the Government of Ukraine has been published in the Official Gazette dated 23.12.2011 and numbered 28151.
- The Law on the Approval of the Ratification of the Agreement between the Republic of Turkey and the Federal Republic of Germany on the Prevention of Double Taxation and Tax Evasion Pertaining to the Taxes Levied on Income and as well as the Protocol Annexed to it entered into force through publication in the Official Gazette dated 27.12.2011 and numbered 28155.

Important Council of Ministers Resolutions

- The Resolution of the Council of Ministers dated 31.01.2011 on the Ratification of the Memorandum of Understanding Between the Financial Intelligence Unit of Luxembourg and the Ministry of Finance, Financial Crimes Investigation Board of the Republic of Turkey Concerning Cooperation in the Exchange of Financial Intelligence Related to Money Laundering and Terrorism Financing was published in the Official Gazette dated 23.02.2011 and numbered 27855.
- The Resolution of the Council of Ministers dated 28.02.2011 Pertaining to the Setting up of the Firat Port Authority in the Province of Elazig, with Jurisdiction over Hazar Lake as well as over the Keban, Karakaya, Ataturk and Cat Reservoirs under the Regional Directorate of Mersin of the Provincial Organization of the Undersecretariat of Maritime Affairs was published in the Official Gazette dated 03.03.2011 and numbered 27863.
- The Resolution of Council of dated 04.02.2011 Ministers Annexed to the Resolution on Importation Regime was published in the Official Gazette dated 24.03.2011 and numbered 27884.
- The Resolution of Council of Ministers dated 15.03.2011 pertaining to the entry into force of the Resolution on the Amendment of the Resolution Pertaining to the Application of Relevant Articles of Customs Law was published in the Official Gazette dated 08.04.2011 and numbered 27899.
- The Resolution of Council of Ministers dated 05.04.2011 Pertaining to the Amendment of the Resolution Pertaining to State Aid for Investments was published in the Official Gazette dated 14.04.2011 and numbered 27905.
- The Resolution of Council of Ministers Pertaining to the Amendment of the Resolution on the Amendment of the Resolution Pertaining to State Aid for Investments was published in the Official Gazette dated 30.04.2011 and numbered 27920.
- The Resolution of the Council of Ministers dated 26.04.2011 pertaining to entry into force of the "Amendment of Articles of

Association of the Central Bank of the Republic of Turkey" was published in the Official Gazette dated 21.05.2011 and numbered 27940.

- The Resolution dated 25.05.2011 pertaining to entry into force of the resolution regarding partially or entirely allocation of the parcel lands in the organized industrial zones was published in the Official Gazette dated 02.06.2011 and numbered 27952.
- The Resolution dated 26.04.2011 pertaining to entry into force of the resolution regarding declaration of some zones as touristic center and cultural and tourism protection and development regions was published in the Official Gazette dated 05.06.2011 and numbered 27955.
- The Resolution of Council of Ministers dated 08.08.2011 Pertaining to the Immediate Expropriation of Certain Immovable properties within the Scope of Bafra Plain Irrigation Project by the General Directorate of State Hydraulic Works was published in the Official Gazette dated 18.08.2011 and numbered 28029.
- The Resolution of Council of Ministers dated 08.08.2011 Pertaining to the Immediate Expropriation of Certain Immovable properties within the Scope of the Construction of Saraydüzü Barrage by the General Directorate of State Hydraulic Works was published in the Official Gazette dated 18.08.2011 and numbered 28029.
- The Resolution of Council of Ministers dated 01.08.2011 Pertaining to the Amendment of the Decision on the Application of Certain Articles of the Customs Law numbered 4458 was published in the Official Gazette dated 20.08.2011 and numbered 28031.
- The Resolution of Council of Ministers dated 08.08.2011 Pertaining to the Amendment of the Decision on Outward Processing Regime was published in the Official Gazette dated 20.08.2011 and numbered 28031.
- The Resolution of the Council of Ministers dated 07.10.2011 pertaining to approval of the Medium Term Plan (2012-2014) was published in the Official Gazette dated 13.10.2011 and numbered 28083.

- The Resolution of the Council of Ministers dated 12.10.2011 pertaining to entry into force of the resolution regarding deductions of Resource Utilization Support Fund and Private Consumption Tax applied to certain goods was published in the Official Gazette dated 13.10.2011 and numbered 28083.
- The Resolution of the Council of Ministers dated 13.10.2011 on the Amendment of the Resolution Pertaining to the Pricing of Pharmaceuticals was published in the Official Gazette dated 10.11.2011 and numbered 28108.
- The Resolution of the Council of Ministers dated 18.07.2011 Pertaining to Carriage of Crude Oil and Jet Fuel through Turkey via Highways or Railways was published in the Official Gazette dated 11.11.2011 and numbered 28109.
- The Resolution of the Council of Ministers dated 14.11.2011 on the Amendment of Resolution 32 Regarding the Protection of Turkish Currency was published in the Official Gazette dated 17.11.2011 and numbered 28115.
- The Resolution dated 26.08.2011 on the Proclamation of Some Areas as Tourism Centers, Culture and Tourism Protection and Development Zones has been published in the Official Gazette dated 02.12.2011 and numbered 28130.

Important Changes and Developments in Laws

- The Law on the Amendment to the Notification Law and to Some Laws was published in the Official Gazette dated 19.01.2011 and numbered 27820. Different dates for entry into force are determined for different articles.
- The Turkish Code of Obligations numbered 6098 was published in the Official Gazette dated 04.02.2011 and numbered 27836. This code will enter into force on 01.07.2012.
- The Law Pertaining to the Enforcement and Implementation of the Turkish Code of Obligations was published in the Official Gazette dated 04.02.2011 and numbered 27836. This law will enter into force on 01.07.2012.
- The Civil Procedure Law Numbered 6100 was published in the Official Gazette dated 04.02.2011 and numbered 27836. This law entered into force on 01.10.2011.
- The Turkish Commercial Code Numbered 6102 was published in the Official Gazette dated 14.02.2011 and numbered 27846. This code will enter into force on 01.07.2012 however different dates for entry into force are determined for certain articles.
- The Law Pertaining to the Enforcement and Implementation of the Turkish Commercial Code was published in the Official Gazette dated 14.02.2011 and numbered 27846. This law will enter into force on 01.07.2012.
- The Law on the Amendment of the Social Security and General Health Insurance Law and the Restructuring Certain Receivables and Certain Laws and Decrees was published in the Official Gazette dated 25.02.2011 and numbered 27857, and entered into force upon publication. Different dates for entry into force are determined for different articles.
- The Law Pertaining to the Regulation of Some Debts and the Claims of Some Public Institutions and Establishments entered into force through publication in the Official Gazette dated 03.03.2011 and numbered 27863.

- The Law Pertaining to the Foundation and Broadcasting Services of Radio and Television entered into force through publication in the Official Gazette dated 03.03.2011 and numbered 27863.
- The Law on the Amendment of the Technology Development Zones Law entered into force through publication in the Official Gazette dated 12.03.2011 and numbered 27872.
- The Law on the Amendment of the Constitution of the Republic of Turkey entered into force through publication in the Official Gazette dated 29.03.2011 and numbered 27889.
- The Law Pertaining to Foundation and Trial Procedures of the Constitutional Court was published in the Official Gazette dated 03.04.2011 and numbered 27894. Different dates for entry into force are determined for different articles.
- The Law Pertaining to Amendment of Relevant Laws with the Purpose of Accelerating of Judicial Services was published in the Official Gazette dated 14.04.2011 and numbered 27905. Different dates for entry into force are determined for different articles.
- The Legislative Decree KHK/656 on the Organization and Duties of the Presidency of Turkish Cooperation and Coordination Agency entered into force through publication in the Official Gazette dated 02.11.2011 and numbered 28103.
- The Legislative Decree KHK/660 on the Organization and Duties of Public Surveillance, Accounting and Audit Standards Board entered into force through publication in the Official Gazette dated 02.11.2011 and numbered 28103.
- The Law on the Amendment of Conscription Law entered into force through publication in the Official Gazette dated 15.12.2011 and numbered 28143.
- The Law on the Amendment of the Law Pertaining to the Prevention of Violence and Disorder in Sports Events entered into force through publication in the Official Gazette dated 15.12.2011 and numbered 28143.

Important Changes and Developments in Regulations

- The Regulation on the Private Education and Rehabilitation Centers of the Ministry of Education entered into force through publication in the Official Gazette dated 06.01.2011 and numbered 27807.
- The Regulation on the Amendment to the Regulation Pertaining to Private Health Establishments that Diagnose and Treat Outpatients entered into force by being published in the Official Gazette dated 06.01.2011 and numbered 27807.
- The Regulation on Principles and Procedures Regarding the Sale and Presentation of Tobacco Products and Alcoholic Beverages was published in the Official Gazette dated 07.01.2011 and numbered 27808. The article 12 of this Regulation entered into force 90 days after its publication and other articles entered into force through publication.
- The Regulation on Principles and Procedures Regarding Accreditation and Implementation of Accreditation Criteria of Institutions for Supporting Agricultural and Rural Development entered into force through publication in the Official Gazette dated 08.01.2011 and numbered 27809.
- The Regulation on Principles and Procedures Regarding Joint Financing, Payments and Other Financial Issues within the Scope of Financial Assistance Provided by the European Union entered into force through publication in the Official Gazette dated 08.01.2011 and numbered 27809.
- The Regulation on the Amendment to Private Hospitals Regulation entered into force through publication in the Official Gazette dated 14.01.2011 and numbered 27815.
- The Regulation on the Amendment to the Regulation on Incorporation and Activity Principles for Financial Leasing, Factoring and Financing Companies entered into force through publication in the Official Gazette dated 14.01.2011 and numbered 27815.

- The Regulation on the Amendment to the Regulation on Tenders for the Cultural Assets of Foundations entered into force through publication in the Official Gazette dated 19.01.2011 and numbered 27820.
- The Regulation on the Amendment to the Regulation on the Determination of Rates Regarding Incapacity to Work and to Earn in the Profession entered into force through publication in the Official Gazette dated 22.01.2011 and numbered 27823.
- The Regulation on the Amendment to the Istanbul Stock Exchange Equity Market Regulation entered into force through publication in the Official Gazette dated 29.01.2011 and numbered 27830.
- The Regulation on the Amendment of the Regulation on the Bank Transactions that are Subject to Permission and Indirect Share Participation by Banks entered into force through publication in the Official Gazette dated 04.02.2011 and numbered 27836.
- The Regulation on the Amendment of the Regulation on Eligible Consumers in the Electricity Market entered into force through publication in the Official Gazette dated 08.02.2011 and numbered 27840.
- The İzmit Port Regulation entered into force through publication in the Official Gazette dated 10.02.2011 and numbered 27842.
- The Karadeniz Eregli Port Regulation entered into force through publication in the Official Gazette dated 10.02.2011 and numbered 27842.
- The Regulation on the Amendment of the Regulation Pertaining to the Establishment and Activity Principles of Leasing, Factoring and Finance Companies entered into force through publication in the Official Gazette dated 24.02.2011 and numbered 27856.
- The Silivri Port Regulation entered into force through publication in the Official Gazette dated 04.03.2011 and numbered 27864.
- The Tekirdağ Port Regulation entered into force through publication in the Official Gazette dated 05.03.2011 and numbered 27865.

- The Regulation Pertaining to the Distance Sales Regulation entered into force through publication in the Official Gazette dated 06.03.2011 and numbered 27866.
- The Regulation on the Amendment of the Regulation Pertaining to the Procedures and Principles Pertaining to Door Step Sales entered into force through publication in the Official Gazette dated 07.03.2011 and numbered 27867.
- The Regulation on the Amendment of the Regulation Pertaining to the Equity Capital of Banks entered into force through publication in the Official Gazette dated 10.03.2011 and numbered 27870.
- The Regulation of the Istanbul Gold Exchange on Diamonds and Jewels entered into force through publication in the Official Gazette dated 15.03.2011 and dated 27875.
- The Regulation on the Amendment of the Implementation Regulation on Consultancy Service Procurement Tenders entered into force through publication in the Official Gazette dated 16.03.2011 and dated 27876.
- The Regulation on the Amendment of the Implementation Regulation on Construction Works Tenders entered into force through publication in the Official Gazette dated 16.03.2011 and dated 27876.
- The Regulation on the Amendment of the Implementation Regulation on Service Procurement Tenders entered into force through publication in the Official Gazette dated 16.03.2011 and dated 27876.
- The Regulation on the Amendment of the Implementation Regulation on the Purchase of Goods Tenders entered into force through publication in the Official Gazette dated 16.03.2011 and dated 27876.
- The Regulation on the Amendment of the Implementation Regulation on Framework Agreement Tenders entered into force through publication in the Official Gazette dated 16.03.2011 and dated 27876.

- The Regulation on the Amendment of the Regulation Pertaining to the General Assembly Meetings of Capital Corporations and to the Commissars of the Ministry of Industry and Trade entered into force through publication in the Official Gazette dated 18.03.2011 and dated 27878.
- The Regulation on the Principles and Procedures Pertaining to Support and Payments Effectuated from the Price Stabilization Fund in the Scope of State Subsidies Regarding Exports was published in the Official Gazette dated 19.03.2011 and dated 27879. The Regulation entered into force on the date of publication and is effective as of 25.02.2011.
- The Regulation on the Amendment of the Regulation on Commercial Air Freight Undertakings (SHY-6A) entered into force through publication in the Official Gazette dated 19.03.2011 and dated 27879.
- The Regulation on the Amendment of the Implementation Regulation on Electronic Tenders entered into force through publication in the Official Gazette dated 20.03.2011 and dated 27880.
- The Tuzla Port Regulation, the Şile Port Regulation, and the Karasu Port Regulation entered into force through publication in the Official Gazette dated 22.03.2011 and numbered 27882.
- The Regulation on the Amendment of the Regulation on the Implementation of Coastal Law entered into force through publication in the Official Gazette dated 25.03.2011 and dated 27885.
- The Regulation on the Amendment of the Customs Regulation entered into force through publication in the Official Gazette dated 26.03.2011 and numbered 27886.
- The Regulation on the Amendment of the Duty Free Shops Regulation entered into force through publication in the Official Gazette dated 31.03.2011 and numbered 27891.
- The Regulation on the Amendment of the Regulation on the Procedures and Principles Pertaining to the Notification, Oaths

and Declaration of Property by those who would be Appointed to the Top Management Positions at Banks and on Keeping of Banks' Resolution Books entered into force through publication in the Official Gazette dated 13.04.2011 and numbered 27904.

- The Regulation on the Amendment of the Regulation on the Foundation and the Duties of the Assembly of Exporters of Turkey as well as of the Union of Exporters entered into force through publication in the Official Gazette dated 14.04.2011 and numbered 27905.
- The Regulation on the Amendment of the Regulation Pertaining to the Criteria for Building Materials entered into force through publication in the Official Gazette dated 14.04.2011 and numbered 27905.
- The Regulation on the Amendment of the Application Regulation on Service Procurement Tenders entered into force through publication in the Official Gazette dated 20.04.2011 and numbered 27911.
- The Regulation on the Amendment of the Application Regulation of the Law on the Work Permits of Foreigners entered into force through publication in the Official Gazette dated 28.04.2011 and numbered 27918.
- The Regulation on the Amendment of the Customs Regulation entered into force through publication in the Official Gazette dated 30.04.2011 and numbered 27920.
- The Regulation on the Amendment of the Regulation Pertaining to Tenders Applications entered into force through publication in the Official Gazette dated 03.05.2011 and numbered 27923.
- The Regulation on the Amendment of the Regulation Pertaining to Establishment and Operation Principles of Insurance and Reinsurance Companies entered into force through publication in the Official Gazette dated 12.05.2011 and numbered 27932.
- The Regulation on the Amendment of the Customs Regulation entered into force through publication in the Official Gazette dated 23.05.2011 and numbered 27942.

- The Ship Agents' Delegated Legislation entered into force through publication in the Official Gazette dated 02.06.2011 and numbered 27952. Sub-paragraph 3 of Article 5 of the Regulation entered into force 6 months after its publication.
- The Medical Device Regulation entered into force through publication in the Official Gazette dated 07.06.2011 and numbered 27957.
- The Active Implantable Medical Device Regulation entered into force through publication in the Official Gazette dated 07.06.2011 and numbered 27957.
- The Regulation on the Amendment of Regulation Regarding Corporate Governance Rules of the Banks was published in the Official Gazette dated 09.06.2011 and numbered 27959. The Regulation entered into force on 01.01.2012.
- The Regulation on the Amendment of the Regulation Pertaining to Procedures and Principles of Appointment of Defense Counsels and Payments to be Made Pursuant to Penal Procedure Law entered into force through publication in the Official Gazette dated 10.06.2011 and numbered 27960.
- The Regulation on the Amendment of the Regulation Regarding Protective Measures for Importation entered into force through publication in the Official Gazette dated 11.06.2011 and numbered 27961.
- The Regulation on the Amendment of the Social Security Transactions Regulation was published in the Official Gazette dated 16.06.2011 and numbered 27966. Different dates for entry into force are determined for certain articles of the Regulation.
- The Regulation on the Amendment of the Regulation Pertaining to Procedures and Principles of Sale and Display of Tobacco Products and Alcoholic Beverages entered into force through publication in the Official Gazette dated 17.06.2011 and numbered 27967.
- The Regulation on the Amendment of the Regulation Pertaining to Procedures and Principles of Implementation of the Law on Prevention of Violation on Immovable’s Possession entered into

force through publication in the Official Gazette dated 18.06.2011 and numbered 27968.

- The Regulation on the Amendment of the Regulation Pertaining to Procedures and Principles for Qualification by the Banks of Credits and Other Receivables and the value of their consideration to be Reserved entered into force through publication in the Official Gazette dated 18.06.2011 and numbered 27968.
- The Regulation on the Amendment of the Regulation Pertaining to Calculation and Evaluation of Capital Adequacy ratio of the Banks entered into force through publication in the Official Gazette dated 18.06.2011 and numbered 27968.
- The Regulation on the Amendment of the Private Hospitals Regulation entered into force through publication in the Official Gazette dated 24.06.2011 and numbered 27974.
- The Regulation on the Amendment of the Regulation Pertaining to Allocation of Public Immovable to Tourism Investments entered into force through publication in the Official Gazette dated 25.06.2011 and numbered 27975.
- The Regulation on the Amendment of the Environmental Impact Assessment Regulation entered into force through publication in the Official Gazette dated 30.06.2011 and numbered 27980.
- The Regulation on the Amendment of the Building Inspection Practices Regulation entered into force through publication in the Official Gazette dated 01.07.2011 and numbered 27981.
- The Regulation on the Amendment of the Customs Regulation was published in the Official Gazette dated 16.07.2011 and numbered 27996. 1st, 2nd, 3rd, 5th and 7th articles of this Regulation entered into force on 05.08.2011 and other articles entered into force through publication.
- The Regulation Pertaining to the Documentation and Supporting Renewable Energy Resources entered into force through publication in the Official Gazette dated 21.07.2011 and numbered 28001.

- The Regulation Pertaining to the Power Generation in Electricity Market without Generation License entered into force through publication in the Official Gazette dated 21.07.2011 and numbered 28001.
- The Regulation on the Amendment of the Regulation Pertaining to the Authorization and Activities of the Independent Auditing Institutions for the Banks entered into force through publication in the Official Gazette dated 26.07.2011 and numbered 28006.
- The Regulation on the Amendment of the Oil Market License Regulation entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- The Regulation on the Amendment of the Electricity Market License Regulation entered into force through publication in the Official Gazette dated 30.07.2011 and numbered 28010.
- The Regulation on the Amendment to the Government Accounting Regulation entered into force through publication in the Official Gazette dated 04.08.2011 and numbered 28015.
- The Regulation on the Amendment of the Regulation on Highways Code entered into force through publication in the Official Gazette dated 10.08.2011 and numbered 28021.
- The Regulation on the Amendment of the Shipmen Regulation entered into force through publication in the Official Gazette dated 11.08.2011 and numbered 28022.
- The Regulation on the Amendment of the Foundations Regulation entered into force through publication in the Official Gazette dated 11.08.2011 and numbered 28022.
- The Regulation on the Amendment of the Electricity Market License Regulation entered into force through publication in the Official Gazette dated 11.08.2011 and numbered 28022.
- The Regulation on the Amendment of the Regulation Regarding Permission and Licenses Required by Environmental Act entered into force through publication in the Official Gazette dated 16.08.2011 and numbered 28027.

- The Regulation on the Amendment of the Environmental Auditing Regulation entered into force through publication in the Official Gazette dated 16.08.2011 and numbered 28027.
- The Regulation on the Amendment to the Istanbul Stock Exchange Regulation entered into force through publication in the Official Gazette dated 19.08.2011 and numbered 28030.
- The Regulation on the Amendment to the Istanbul Stock Exchange Stock Market Regulation entered into force through publication in the Official Gazette dated 19.08.2011 and numbered 28030.
- The Regulation on the Amendment of the Istanbul Stock Exchange Emerging Enterprises Regulation entered into force through publication in the Official Gazette dated 19.08.2011 and numbered 28030.
- The Regulation on the Amendment of the Istanbul Stock Exchange Listing Regulation entered into force through publication in the Official Gazette dated 19.08.2011 and numbered 28030.
- The Regulation on the Amendment of the Istanbul Gold Exchange Regulation entered into force through publication in the Official Gazette dated 19.08.2011 and numbered 28030.
- The Mersin Port Regulation entered into force through publication in the Official Gazette dated 23.08.2011 and numbered 28034.
- The Packing Wastes' Management Regulation is published in the Official Gazette dated 24.08.2011 and numbered 28035. Different dates for entry into force are determined for certain articles of the Regulation.
- The Regulation on the Principles and Procedures Regarding Registered E-Mail System is published in the Official Gazette dated 25.08.2011 and numbered 28036. The Regulation shall enter into force on 01.07.2012.
- The Regulation Regarding Allocation of the Parcels in Organized Industrial Zones to Real Persons and Legal Entities entered into force through publication in the Official Gazette dated 26.08.2011 and numbered 28037.

- The Regulation on Duty, Competence and Responsibility of General Directorate of Highways entered into force through publication in the Official Gazette dated 05.09.2011 and numbered 28045.
- The Regulation on the Amendment of the Press Announcement Institution Regulation entered into force through publication in the Official Gazette dated 08.09.2011 and numbered 28048.
- The Regulation on the Amendment of the Framework Agreement Tenders Regulation was published in the Official Gazette dated 08.09.2011 and numbered 28048. The Regulation entered into force on 15.09.2011
- The Regulation on the Amendment of the Highways Traffic Regulation entered into force through publication in the Official Gazette dated 09.09.2011 and numbered 28049.
- The Regulation on the Amendment of the Regulation Regarding General Control and Documentation of the Vessels was published in the Official Gazette dated 09.09.2011 and numbered 28049. The Regulation entered into force on 01.11.2011
- The Istanbul Port Regulation entered into force through publication in the Official Gazette dated 10.09.2011 and numbered 28050.
- The Kefken Port Regulation entered into force through publication in the Official Gazette dated 13.09.2011 and numbered 28053.
- The Regulation on the Amendment of the Regulation on Insurance Control Institution of Undersecreteriat of Treasury entered into force through publication in the Official Gazette dated 14.09.2011 and numbered 28054.
- The Regulation on Principles and Procedures Regarding Supervision and Control of Insurance and Private Retirement/ Pension Sector was published in the Official Gazette dated 14.09.2011 and numbered 28054. All articles of the regulation entered into force through publication, except for Article 31 which entered into force on 01.01.2012.
- The Regulation on the Amendment of the Regulation on Activity Principles of Precious Metals Exchange Intermediary Institutions

and Foundation of Precious Metals Exchange Intermediary Institutions entered into force through publication in the Official Gazette dated 14.09.2011 and numbered 28054.

- The Regulation on Utilization of Sound and Video Information System in Penal Procedure entered into force through publication in the Official Gazette dated 20.09.2011 and numbered 28060.
- The Regulation on the Amendment of the Authorization Regulation Regarding Electronic Communication Sector entered into force through publication in the Official Gazette dated 23.09.2011 and numbered 28063.
- The Regulation on the Amendment of the Regulation on Private Health Institution for Outpatients entered into force through publication in the Official Gazette dated 28.09.2011 and numbered 28068.
- The Regulation on the Amendment of the Private Hospital Regulation entered into force through publication in the Official Gazette dated 28.09.2011 and numbered 28068.
- The Regulation on the Amendment of the Regulation Regarding Savings Deposits Subject to Insurance and Premiums to be Collected by the Savings Deposit Insurance Fund entered into force through publication in the Official Gazette dated 29.09.2011 and numbered 28069.
- The Regulation on the Amendment of the Regulation Pertaining to the Business Licenses and Work Permits regarding Sanitary Workplaces and Terminals situated at the Civil Airports (SHY-33B) was published in the Official Gazette dated 01.10.2011 and numbered 28071, and entered into force by being published.
- The Regulation on the Amendment of the Regulation Pertaining to the Construction, Operation and Certification of Aerodromes (SHY-33B) was published in the Official Gazette dated 02.10.2011 and numbered 28072, and entered into force by being published.
- The Regulation on the Amendment of the Regulation Pertaining to Airports Ground Handling Services (SHY-22) was published in

the Official Gazette dated 02.10.2011 and numbered 28072, and entered into force by being published.

- The Regulation regarding Investigation and Audit of the Activities of Power Generation and Distribution Companies in Electricity Market was published in the Official Gazette dated 12.10.2011 and numbered 28082, and entered into force by being published.
- The Regulation on the Amendment of the Regulation Pertaining to Production and Commerce of Tobacco Products was published in the Official Gazette dated 16.10.2011 and numbered 28086, and entered into force by being published.
- The Regulation on the Amendment of the Regulation on Banking Cards and Credit Cards was published in the Official Gazette dated 19.10.2011 and numbered 28089, and entered into force by being published.
- The Regulation on Industrial, Scientific and Medical Equipment was published in the Official Gazette dated 23.10.2011 and numbered 28093, and entered into force by being published.
- The Regulation on the Amendment of the Regulation Pertaining to the Technical Criteria to be Implemented to the Oil Market was published in the Official Gazette dated 28.10.2011 and numbered 28098, and entered into force by being published.
- The Regulation on the Amendment of the Customs Regulation was published in the Official Gazette dated 02.11.2011 and numbered 28103. Different dates for entry into force are determined for certain articles of the Regulation.
- The Regulation on the Procedures and Principles of Broadcasting Services entered into force through publication in the Official Gazette dated 02.11.2011 and numbered 28103.
- The Regulation on the Amendment of the Regulation Pertaining to the Procedures and Principles on the Production, Processing, and Domestic and Foreign Trade of Tobacco entered into force through publication in the Official Gazette dated 02.11.2011 and numbered 28103.

- The Regulation on the Amendment of the Electricity Market Balancing and Conciliation Regulation was published in the Official Gazette dated 03.11.2011 and numbered 28104. Different dates for entry into force are determined for certain articles of the Regulation.
- The Regulation on the Amendment of the Petroleum Market Information System Regulation was published in the Official Gazette dated 03.11.2011 and numbered 28104. Different dates for entry into force are determined for certain articles of the Regulation.
- The Regulation on the Amendment of the Petroleum Market License Regulation entered into force through publication in the Official Gazette dated 04.11.2011 and numbered 28105.
- The Regulation Pertaining to Receiving of Support Services of the Banks entered into force through publication in the Official Gazette dated 05.11.2011 and numbered 28106.
- The Electronic Product Note Regulation entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Regulation on the Amendment of the Regulation on Licensed Storage of Hazelnuts entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Regulation on the Amendment of the Regulation of Licensed Storage of Grains, Leguminous Seeds and Oil Seed entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Regulation on the Amendment of the Regulation on Licensed Storage Compensation Fund entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Regulation on the Amendment of the Regulation on Licensed Storage of Cotton entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Regulation on the Amendment of the Regulation Pertaining to Licensing, Operations and Supervision of Authorized Classifiers entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.

- The Regulation on the Amendment of the Regulation on Licensed Storage of Olive Oil entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Regulation on the Amendment of the Regulation on Licensed Storage of Olive entered into force through publication in the Official Gazette dated 12.11.2011 and numbered 28110.
- The Regulation on the Amendment of the Regulation Pertaining to Pharmaceutical Warehouses and the Products that the Pharmaceutical Warehouses Keep in their Inventories was published in the Official Gazette dated 17.11.2011 and numbered 28115. The Regulation entered into force on 01.01.2012.
- The Regulation on the Amendment of the Regulation on Planned Areas Type Zoning Plan entered into force through publication in the Official Gazette dated 26.11.2011 and numbered 28124.
- The Regulation on the Amendment of the Regulation Pertaining to Foundations entered into force through publication in the Official Gazette dated 30.11.2011 and numbered 28128.
- The Regulation on the Amendment of the Hazardous Waste Control Regulation has been published in the Official Gazette dated 03.12.2011 and numbered 28131.
- The Regulation Pertaining to the Rights of the Passengers Travelling by Airways has been published in the Official Gazette dated 03.12.2011 and numbered 28131. The regulation entered into force on 01.01.2012.
- The Regulation on the Amendment of the Regulation on the Procedures and Principles Pertaining to the Payment out of the Support and Price Stabilization Fund under State Aid for Exports has been published in the Official Gazette dated 06.12.2011 and numbered 28134. The regulation entered into force on 01.01.2012.
- The Continuous Airworthiness and Maintenance Responsibility Regulation entered into force through publication in the Official Gazette dated 21.12.2011 and numbered 28149.
- The Regulation on the Amendment of the Customs Regulation entered into force as of 01.01.2012 through publication in the Official Gazette dated 28.12.2011 and numbered 28156.

Important Changes and Developments in Communiqués

- The Communiqué on the Prevention of Unfair Competition in Imports (No. 2011/3) entered into force through publication in the Official Gazette dated 04.01.2011 and numbered 27805.
- The Communiqué on the Amendment to the Communiqué on the Implementation of the Supervision of Imports Numbered 2007/5 was published in the Official Gazette dated 04.01.2011 and numbered 27805. The Communiqué entered into force on 30th day following its publication.
- The Communiqué on the Amendment to the Communiqué on the Implementation of the Supervision of Imports Numbered 2007/16 was published in the Official Gazette dated 04.01.2011 and numbered 27805. The Communiqué entered into force on the 30th day following its publication.
- The Communiqué on the Implementation of the Supervision of Imports (No. 2011/1) was published in the Official Gazette dated 09.01.2011 and numbered 27810. The Communiqué entered into force on the 30th day following its publication.
- The Communiqué on Protective Measures Regarding Importation, "Communiqué No. 2011/1" and "Communiqué No. 2011/2" entered into force through publication in the Official Gazette dated 13.01.2011 and numbered 27814.
- The Communiqué on the Implementation of the Supervision of "Communiqué No. 2011/2" and "Communiqué No. 2011/3" were published in the Official Gazette dated 13.01.2011 and numbered 27814. The Communiqué entered into force on the 30th day following its publication.
- The Communiqué (Serial I, No:2) Regarding the Abrogation of the Communiqué on Principles Regarding the Establishment of Türmob Independent Audit Center Numbered Serial I, No:1 entered into force through publication in the Official Gazette dated 18.01.2011 and numbered 27819.

- The Communiqué on the Amendment to the Communiqué on Using Principles Regarding the Securities Granted by Intermediary Firms (Serial: V, No: 120) entered into force through publication in the Official Gazette dated 22.01.2011 and numbered 27823.
- The Communiqué on Public Tenders (No: 2011/1) was published in the Offical Gazette dated 23.01.2011 and numbered 27824. The Communiqué entered into force on 01.02.2011.
- The Communiqué on the Amendment to the Communiqué Regarding the Forms of Chequebooks, the Amount that Banks are Obliged to Pay to Bearers, and Notification and Announcement of Decisions Concerning the Issuance of Cheques and Prohibitions against Opening Cheque Accounts (No: 2011/1) was published in the Official Gazette dated 25.01.2011 and numbered 27826. The Communiqué entered into force on 28.01.2011.
- The Communiqué on the Standardization of Foreign Trade Pertaining to the Status of International Survey Company (No: 2011/25) was published in the Official Gazette dated 08.02.2011 and numbered 27840.
- The Communiqué on the Repeal of the Communiqués Pertaining to the Procedures and Principles on the Display of Tobacco Products at Final Sale Points and Places of Sale; Pertaining to Sales of Tobacco Products and Alcoholic Drinks by Using Electronic Commerce Media Like Internet, Television, Fax and Telephone and; Pertaining to the Principles that Apply to Alcoholic Drink Advertisements entered into force through publication in the Official Gazette dated 10.02.2011 and numbered 27842.
- The Communiqué on the Amendment of the Communiqué Numbered 2009/5 Pertaining to the Implementation of the Supervision of Importation was published in the Official Gazette dated 17.02.2011 and numbered 27849. This Communiqué entered into force on 01.01.2011.
- The Communiqué on Standardization for Foreign Trade Pertaining to the Statute of the International Audit Company (Communiqué No: 2011/27) entered into force through publication in the Official Gazette dated 17.02.2011 and numbered 27849.

- The Communiqué Pertaining to the Prevention of Unfair Competition in Importation (Communiqué No: 2011/4) entered into force through publication in the Official Gazette dated 19.02.2011 and numbered 27851.
- The Communiqué Pertaining to Approved Establishments that would Operate in the Field of Medical Devices entered into force through publication in the Official Gazette dated 03.03.2011 and numbered 27863.
- The Communiqué on the Prevention of Unfair Competition in Imports (No: 2011/5) entered into force through publication in the Official Gazette dated 03.03.2011 and numbered 27863.
- The Communiqué Pertaining to the Protective Measures in Imports (N. 2011/3) entered into force through publication in the Official Gazette dated 05.03.2011 and numbered 27865.
- The Communiqué on the Repeal of the Compulsory Standard (N. OSG-2011/04) entered into force through publication in the Official Gazette dated 08.03.2011 and numbered 27868.
- The Communiqué on the Amendment of the Communiqué on the Principles Pertaining to the Recording and Sale of Borrowing Instruments on Behalf of the Board (Series: II, No:27) entered into force through publication in the Official Gazette dated 08.03.2011 and numbered 27868.
- The Communiqué Pertaining to the International Arbitration Fees Tariff was published in the Official Gazette dated 09.03.2011 and numbered 27869. The Communiqué entered into force on 15.03.2011.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Independent Audit Standards in the Capital Market (Series X; No: 26) and the Communiqué on the Amendment of the Communiqué Pertaining to the Principles Regarding Financial Reporting (Series: XI, No: 31) entered into force through publication in the Official Gazette dated 09.03.2011 and numbered 27869.

- The Communiqué on the Amendment of the Communiqué on Sea Tourism Applications entered into force through publication in the Official Gazette dated 10.03.2011 and numbered 27870
- The Communiqué Pertaining to the Protective Measures in Imports (No: 2011/4) entered into force through publication in the Official Gazette dated 11.03.2011 and numbered 27871.
- The Communiqué on the Procedures and Principles Pertaining to the use of Endnotes and Footnotes in Advertisements and Commercial Announcements was published in the Official Gazette dated 13.03.2011 and numbered 27873. The Communiqué entered into force 3 months after its publication.
- The Communiqué on the Amendment of the Communiqué Pertaining to Principles Regarding Exemption Conditions for Issuers and Exclusion from the Board Registry (Series: IV, No: 50) entered into force through publication in the Official Gazette dated 16.03.2011 and numbered 27876.
- The Communiqué on the Amendment of the Communiqué Pertaining to Principles that the Joint Stock Companies subject to Capital Markets Law Must Respect (Series: IV, No: 51) entered into force through publication in the Official Gazette dated 16.03.2011 and numbered 27876.
- The Communiqué Regarding Market Research and Support for Entry to the Market (Communiqué No: 2011/1) entered into force through publication in the Official Gazette dated 21.03.2011 and numbered 27881.
- The Communiqué on the Amendment of the Communiqué Regarding Maximum Interest Rates to be Applied to Credit Card Transactions (No: 2011/3) was published in the Official Gazette dated 24.03.2011 and numbered 27884. The Communiqué entered into force on 01.04.2011.
- The Communiqué on the Amendment of the Communiqué Regarding Required Reserves (No: 2011/5) was published in the Official Gazette dated 24.03.2011 and numbered 27884. The Communiqué entered into force on 01.04.2011.

- The Communiqué on the Amendment of the Communiqué Pertaining to Auditing Standards in the Capital Market (Series: X, No: 26) entered into force through publication in the Official Gazette dated 26.03.2011 and numbered 27886.
- The Communiqué Pertaining to the Protective Measures in Imports (N. 2011/5) entered into force through publication in the Official Gazette dated 31.03.2011 and numbered 27891.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Principles Regarding the Investment Funds (Series: VII, No: 40) entered into force through publication in the Official Gazette dated 01.04.2011 and numbered 27892.
- The Communiqué on the Principles Pertaining to Electronic Undersigning of the Information, Documents and Statements, and Their Dispatch to the Platform for the Enlightening of Public (Series: VIII, No: 75) entered into force through publication in the Official Gazette dated 01.04.2011 and numbered 27892.
- The Communiqué Pertaining to the Protective Measures in Imports (No: 2011/6) entered into force through publication in the Official Gazette dated 05.04.2011 and numbered 27896.
- The Communiqué on the Amendment of the Social Security Institution Health Applications Communiqué was published in the Official Gazette dated 06.04.2011 and numbered 27897. Different dates for entry into force are determined for certain articles of the communiqué.
- The Communiqué on the Amendment of the Communiqué on Compulsory Provisions (No: 2011/6) was published in the Official Gazette dated 22.04.2011 and numbered 27913. The Communiqué entered into force on 29.04.2011.
- The Communiqué on the Amendment of Social Security Institution Health Application Communiqué was published in the Official Gazette dated 24.04.2011 and numbered 27914. Different dates for entry into force are determined for the articles of the communiqué.

- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/6) entered into force through publication in the Official Gazette dated 03.05.2011 and numbered 27923.
- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/7) entered into force through publication in the Official Gazette dated 03.05.2011 and numbered 27923.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Principles regarding Intermediary Operations and Intermediary Companies Tenders Applications (Series: V, No: 46) entered into force through publication in the Official Gazette dated 06.05.2011 and numbered 27926.
- The Communiqué on the Implementation of Supervision on Importation (Communiqué No: 2011/5) was published in the Official Gazette dated 12.05.2011 and numbered 27932. This Communiqué entered into force on the 30th day following its publication.
- The Communiqué on the Implementation of Supervision on Importation (Communiqué No: 2011/6) was published in the Official Gazette dated 12.05.2011 and numbered 27932. This Communiqué entered into force on the 30th day following its publication.
- The Communiqué on the Amendment of the Communiqué with no: Export 96/31 Pertaining to the Export of Goods which is Prohibited and Subject to Preliminary Permission (Export No: 2011/8) entered into force through publication in the Official Gazette dated 17.05.2011 and numbered 27937.
- The Communiqué on the Amendment of the Communiqué with Sequence No:2 Pertaining to the Principles and Procedures that would Apply to Appointing Internal Auditor (Sequence No: 4) entered into force through publication in the Official Gazette dated 21.05.2011 and numbered 27940.
- The Communiqué on Prevention of Unfair Competition on Importation (Communiqué No: 2011/9) and Communiqué on Prevention of Unfair Competition on Importation (Communiqué

No: 2011/10) entered into force through publication in the Official Gazette dated 02.06.2011 and numbered 27952.

- The Communiqué on Amendment of Some Communiqués – Communiqué No: 2011/8 drafted upon the Resolution No. 2011/11 and dated 03.06.2011 of Money-Credit Coordination Council entered into force through publication in the Official Gazette dated 08.06.2011 and numbered 27958.
- The Communiqué on Prevention of Unfair Competition on Importation (Communiqué No: 2011/11) entered into force through publication in the Official Gazette dated 10.06.2011 and numbered 27960.
- The Communiqué on the Amendment of Communiqué Pertaining to Principles Regarding Registration with the Capital Markets Board and Sale of Shares (Series: I, No: 43) entered into force through publication in the Official Gazette dated 10.06.2011 and numbered 27960.
- The Communiqué on Protection Measures on Importation (No: 2011/7), Communiqué on Protection Measures on Importation (No: 2011/8), Communiqué on Protection Measures on Importation (No: 2011/9) entered into force through publication in the Official Gazette dated 11.06.2011 and numbered 27961.
- The Communiqué on Recycling of Some Non-Hazardous Wastes was published in the Official Gazette dated 17.06.2011 and numbered 27967. Different dates for entry into force are determined for articles of the Communiqué.
- The Communiqué on the Amendment of Communiqué Pertaining to Procedures and Principles Regarding Provisions to be Reserved by Financial Leasing, Factoring and Financing Companies entered into force through publication in the Official Gazette dated 18.06.2011 and numbered 27968.
- The Communiqué on Prevention of Unfair Competition on Importation (Communiqué No: 2011/8) entered into force through publication in the Official Gazette dated 21.06.2011 and numbered 27971.

- The Customs Exemption Communiqué (Sequence No: 1) entered into force through publication in the Official Gazette dated 06.07.2011 and numbered 27986.
- The Communiqué on the Amendment of the Communiqué No. 2010/6 Pertaining to the Establishment and Activities of Sectoral Promotion Groups (Exports: 2011/10) entered into force through publication in the Official Gazette dated 14.07.2011 and numbered 27994.
- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/17) entered into force through publication in the Official Gazette dated 15.07.2011 and numbered 27995.
- The Communiqué on the Implementation of Supervision on Importation (Communiqué No: 2011/8) entered into force through publication in the Official Gazette dated 20.07.2011 and numbered 28000.
- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/12) entered into force through publication in the Official Gazette dated 20.07.2011 and numbered 28000.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Required Reserves (No: 2011/7) was published in the Official Gazette dated 26.07.2011 and numbered 28006. This Communiqué entered into force on the 22.07.2011.
- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/13) entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/14) entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/15) entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.

- The Communiqué Pertaining to the Prevention of the Unfair Competition on Importation (Communiqué No: 2011/16) entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- The Communiqué on the Amendment of the Communiqués Pertaining to the Supervision on Importation entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Principles for the Portfolio Management and for the Institutions Aiming to Operate as Portfolio Manager (Series: V, No: 122) entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Principles Regarding Real Estate Investment Trusts (REIT) (Series: VI, No: 29) entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- The Communiqué on the Amendment to the Communiqué on the Standardization of Foreign Trade Pertaining to the Importation of the Products that are Subject to the Ministry of Health's Supervision (N.2011/20) entered into force through publication in the Official Gazette dated 03.08.2011 and numbered 28014.
- The Communiqué on the Amendment to the Communiqué on Prohibited or Restricted Goods Exportation numbered 96/31 (Exportation: 2011/14) entered into force through publication in the Official Gazette dated 05.08.2011 and numbered 28016.
- The Communiqué on the Principles Concerning Investment Trusts (Series: VI, No: 30) entered into force through publication in the Official Gazette dated 05.08.2011 and numbered 28016.
- The Communiqué on the Amendment to the Communiqué on Required Reserves (No: 2011/8) entered into force through publication in the Official Gazette dated 05.08.2011 and numbered 28016.

- The Communiqué on the Amendment to the Communiqué on Required Reserves (No: 2011/9) was published in the Official Gazette dated 06.08.2011 and numbered 28017. The Communiqué entered into force on 05.08.2011.
- The Communiqué on the Management of Quota in Importation and Tariff Contingent (No: 2011/3) entered into force through publication in the Official Gazette dated 12.08.2011 and numbered 28023.
- The Communiqué on the Prevention of Unfair Competition in Importation (No: 2011/19) and Communiqué on the Prevention of Unfair Competition in Importation (No: 2011/18) entered into force through publication in the Official Gazette dated 03.09.2011 and numbered 28043.
- The Communiqué Pertaining to the Implementation of Supervision of Imports (Communiqué No: 2011/9) was published in the Official Gazette dated 11.09.2011 and numbered 28051. The Communiqué entered into force on 30th day of its publication.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Statutory Reserves (No: 2011/10) was published in the Official Gazette dated 12.09.2011 and numbered 28052. Different dates of entry into force have been determined for certain articles of the communiqué.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Principles on Brokerage Operations and Broker Establishments (Series: V, No: 127) entered into force through publication in the Official Gazette dated 12.09.2011 and numbered 28052.
- The Communiqué on the Implementation of Protective Measures for Imports (Communiqué No: 2011/10) entered into force through publication in the Official Gazette dated 15.09.2011 and numbered 28055.
- The Communiqué Series: IV No: 54 regarding Designation and Application of Corporate Governance Rules entered into force through publication in the Official Gazette dated 11.10.2011 and numbered 28081.

- The Communiqué on the Amendment of the Communiqué No. 2007/3 on the Implementation of Supervision on Importation was published in the Official Gazette dated 12.10.2011 and numbered 28082. This Communiqué entered into force on the 30th day following its publication.
- The Communiqué regarding Preventive Measures in Importation (No: 2011/11) entered into force through publication in the Official Gazette dated 12.10.2011 and numbered 28082.
- The Communiqué regarding Preventive Measures in Importation (No: 2011/12) entered into force through publication in the Official Gazette dated 12.10.2011 and numbered 28082.
- The Communiqué regarding Preventive Measures in Importation (No: 2011/13) entered into force through publication in the Official Gazette dated 12.10.2011 and numbered 28082.
- The Communiqué on the Amendment of the Communiqué pertaining to the Classification of the Goods and Services related to the Applications for Register of Trademark (BİK/TPE: 2007/2) entered into force through publication in the Official Gazette dated 19.10.2011 and numbered 28089.
- The Communiqué on the Implementation of Supervision on Importation (Communiqué No: 2011/11) was published in the Official Gazette dated 23.10.2011 and numbered 28093. This Communiqué entered into force on the 30th day following its publication.
- The Communiqué on the Amendment of the Communiqué No. 2010/1 on the Implementation of Supervision on Importation was published in the Official Gazette dated 27.10.2011 and numbered 28097. This Communiqué entered into force on the 30th day following its publication.
- The Communiqué pertaining to Turkish Accounting Standard (TMS 27) regarding Personal Statements (Sequence No: 214) was published in the Official Gazette dated 28.10.2011 and numbered 28098. This Communiqué will enter into force through publication to be applied to the accounting periods that begin subsequent to the date of 31.12.2012.

- The Communiqué pertaining to Turkish Accounting Standard (TMS 28) regarding Investments in Affiliates and Joint Ventures (Sequence No: 215) was published in the Official Gazette dated 28.10.2011 and numbered 28098. This Communiqué will enter into force through publication to be applied to the accounting periods that begin subsequent to the date of 31.12.2012.
- The Communiqué pertaining to Turkish Financial Reporting Standard (TFRS 10) regarding Consolidated Financial Statements (Sequence No: 216) was published in the Official Gazette dated 28.10.2011 and numbered 28098. This Communiqué will enter into force through publication to be applied to the accounting periods that begin subsequent to the date of 31.12.2012.
- The Communiqué pertaining to Turkish Financial Reporting Standard (TFRS 11) regarding Joint Agreements (Sequence No: 217) was published in the Official Gazette dated 28.10.2011 and numbered 28098. This Communiqué will enter into force through publication to be applied to the accounting periods that begin subsequent to the date of 31.12.2012.
- The Communiqué pertaining to Turkish Financial Reporting Standard (TFRS 12) regarding Shares in other Enterprises (Sequence No: 218) was published in the Official Gazette dated 28.10.2011 and numbered 28098. This Communiqué will enter into force through publication to be applied to the accounting periods that begin subsequent to the date of 31.12.2012.
- The Communiqué on the Amendment of the Communiqué on the Principles Pertaining to the Conditions for the Exemption of Exporters and to their Unregistration from the Committee Records (Series No: IV, No: 55) entered into force through publication in the Official Gazette dated 01.11.2011 and numbered 28102.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Principles Regarding the Investment Funds (Series: VII No. 41) entered into force through publication in the Official Gazette dated 01.11.2011 and numbered 28102.

- The Communiqué on the Amendment of the Communiqué Pertaining to the Statutory Reserves (No: 2011/14) was published in the Official Gazette dated 02.11.2011 and numbered 28103. The Communiqué shall enter into force on its date of publishing, effective from 28.10.2011.
- The Electronic Customs Transactions Emergency Cases Communiqué (Series No: 1) entered into force through publication in the Official Gazette dated 04.11.2011 and numbered 28105.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Statutory Reserves (No: 2011/15) was published in the Official Gazette dated 04.11.2011 and numbered 28105. The Communiqué shall enter into force on its date of publishing, effective from 28.10.2011.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Principles Regarding the Merger Transactions (Series: I, No: 44) entered into force through publication in the Official Gazette dated 04.11.2011 and numbered 28105.
- The Communiqué (No: MHG/2011-04) Pertaining to the Publication of the Technical Specifications that would Apply within the Scope of the Construction Materials Regulation (89/106/EEC) entered into force through publication in the Official Gazette dated 05.11.2011 and numbered 28106.
- The Communiqué Pertaining to the Importation Quota and Tariff Allotment Administration (No: 2011/5, 2011/6, 2011/7) entered into force through publication in the Official Gazette dated 05.11.2011 and numbered 28106.
- The Communiqué on the Prevention of Unfair Competition in Imports (No: 2011/20) entered into force through publication in the Official Gazette dated 05.11.2011 and numbered 28106.
- The Communiqué on the Amendment of the Social Security Institution Health Applications Communiqué was published in the Official Gazette dated 05.11.2011 and numbered 28106. Different dates of entry into force have been determined for certain articles of the communiqué.

- The Communiqué on the Portable, Enfolded, Composite Gas Tubes (TS EN 14427-TS EN 12245) (No: MSG-MS-2011/15) was published in the Official Gazette dated 25.11.2011 and numbered 28123. The Communiqué shall enter into force after six months following its publication.
- The Communiqué on the Prevention of Unfair Competition on Importation (No: 2011/21-22-23) entered into force through publication in the Official Gazette dated 29.11.2011 and numbered 28127.
- The Communiqué on the Administration on Quota and Tariff Contingent on Importation (No: 2011/8) entered into force through publication in the Official Gazette dated 30.11.2011 and numbered 28128.
- The Communiqué Pertaining to the Suspension of Customs Taxes by our Country and the European Union Member Countries, and to the Products for which Appropriation of Autonomous Tariff Quotas are Requested (Import: 2011/23) entered into force through publication in the Official Gazette dated 01.12.2011 and numbered 28129.
- The Communiqué on the Amendment of the Communiqué 2007/5 Pertaining to the Implementation of Supervision of Imports entered into force through publication in the Official Gazette dated 06.12.2011 and numbered 28134.
- The Communiqué Pertaining to the Procedures and Principles to be Respected Regarding the Requests for Notifications at Abroad and Letters Rogatory has been published in the Official Gazette dated 12.12.2011 and numbered 28140. The provisions of the Communiqué shall be effective as of 01.01.2012.
- The Communiqué Pertaining to the Administrative Fines that would be Enforced in the Year 2012 According to Article 25 of Law 4077 Pertaining to the Protection of Consumers (No: TGM-2011/1) has been published in the Official Gazette dated 26.12.2011 and numbered 28154. The Communiqué entered into force on 01.01.2012.

- The Communiqué Pertaining to the Increase of the Monetary Limits Included in Article 22 of Law 4077 Pertaining to the Protection of Consumers, and in Article 5 of the Regulation on the Arbitration Boards for Consumer Problems (No: TGM-2011/2) has been published in the Official Gazette dated 26.12.2011 and numbered 28154. The Communiqué entered into force on 01.01.2012.

Important Changes and Developments in General Communiqués

- The General Communiqué on Income Tax (Serial No. 279) was published in the Official Gazette dated 13.01.2011 and numbered 27814.
- The General Communiqué on Tax Procedure Law (Sequence No: 403) was published in the Official Gazette dated 19.01.2011 and numbered 27820 and the General Communiqué on Tax Procedure Law (Sequence No:404) was published in the Official Gazette dated 20.01.2011 and numbered 27821.
- The General Communiqué on Money Limits and Rates (No: 2011/1) entered into force by being published in the Official Gazette dated 27.01.2011 and numbered 27828.
- The General Communiqué on National Estate (Series No: 333) was published in the Official Gazette dated 08.02.2011 and numbered 27840.
- The Communiqué on the Amendment of the General Communiqué of Public Tenders entered into force through publication in the Official Gazette dated 09.02.2011 and numbered 27841.
- The General Communiqué on Tax Procedure Law (Series No: 405) was published in the Official Gazette dated 19.02.2011 and numbered 27851. This Regulation entered into force on 01.03.2011.
- The Communiqué on the Amendment of the General Communiqué Pertaining to Customs (Custom Transactions) (Series No: 80) entered into force through publication in the Official Gazette dated 24.02.2011 and numbered 27856.
- The General Communiqué on Tax Procedure Law (Series No: 406) was published in the Official Gazette dated 02.03.2011 and numbered 27862.
- The General Communiqué of Customs (Customs Transactions) (Series No: 81) entered into force through publication in the Official Gazette dated 03.03.2011 and numbered 27863.

- The General Communiqué of Customs (Restructuring of Claims) (Series No: 1) entered into force through publication in the Official Gazette dated 08.03.2011 and numbered 27868.
- The General Communiqué on Tax Procedure Law (Series No: 407) was published in the Official Gazette dated 15.03.2011 and numbered 27875.
- The General Customs Communiqué (Customs Transactions) (Series No: 82) and the General Customs Communiqué (Customs Transactions) (Series No: 83) entered into force through publication in the Official Gazette dated 18.03.2011 and numbered 27878.
- The General Communiqué of Customs (Final Use) (Series No: 8) entered into force through publication in the Official Gazette dated 01.04.2011 and numbered 27892.
- The General Communiqué on National Estate (Series No: 334) entered into force through publication in the Official Gazette dated 02.04.2011 and numbered 27893.
- The General Communiqué Pertaining to the Law 5811 on Acquisition of Some Assets in for the National Economy (Series No: 4) was published in the Official Gazette dated 07.04.2011 and numbered 27898.
- The General Communiqué on National Estate (Series No: 335) was published in the Official Gazette dated 10.04.2011 and numbered 27901.
- The Communiqué on the Amendment of the Public Tender General Communiqué entered into force through publication in the Official Gazette dated 20.04.2011 and numbered 27911.
- The General Communiqué on Value Added Tax (Series No: 115) was published in the Official Gazette dated 22.04.2011 and numbered 27913.
- The Communiqué on the Amendment of the General Communiqué of Customs (Restructuring of Claims) (Series No: 2) entered into force through publication in the Official Gazette dated 22.04.2011 and numbered 27913.

- The General Communiqué of Customs on Collection Operations (Series No: 1) was published in the Official Gazette dated 22.04.2011 and numbered 27913. Different dates for entry into force are determined for certain articles of the general communiqué.
- The General Communiqué on Motor Vehicles Tax (Series No: 38) was published in the Official Gazette dated 29.04.2011 and numbered 27919.
- The General Communiqué on the Law No. 6111 Pertaining to the Restructuring of Some Receivables (Series No: 2) entered into force through publication in the Official Gazette dated 06.05.2011 and numbered 27926.
- The Communiqué on the Amendment of the General Communiqué Pertaining to the Customs (Customs Operations) (Series No: 84) entered into force through publication in the Official Gazette dated 12.05.2011 and numbered 27932.
- The Communiqué on the Amendment of the General Communiqué Pertaining to the Customs (Customs Operations) (Series No: 85) entered into force through publication in the Official Gazette dated 13.05.2011 and numbered 27933.
- The General Customs Communiqué (Temporary Storage Management) (Series No: 2) entered into force through publication in the Official Gazette dated 25.05.2011 and numbered 27944.
- The General Communiqué on Tax Procedure Law (Sequence No: 408) was published in the Official Gazette dated 27.05.2011 and numbered 27946.
- The Communiqué on the Amendment of the General Communiqué Pertaining to the Customs (Customs Operations) (Series No: 86) entered into force through publication in the Official Gazette dated 10.06.2011 and numbered 27960.
- The Tax Procedural Law General Communiqué (Sequence No: 409) was published in the Official Gazette dated 30.06.2011 and 27980.
- The Communiqué on the Amendment to the General Custom Communiqué (Investment Incentive) (Series No: 10) entered into

force through publication in the Official Gazette dated 17.08.2011 and numbered 28028.

- The General Customs Communiqué (Simplified Procedure) (Series No: 5) was published in the Official Gazette dated 20.08.2011 and numbered 28031. Different dates of entry into force have been determined for certain articles of the communiqué.
- The Communiqué on the Amendment of the General Communiqué on Public Tenders was published in the Official Gazette dated 20.08.2011 and numbered 28031. The Communiqué entered into force on 01.09.2011.
- The National Estate General Communiqué (Series No: 336) entered into force through publication in the Official Gazette dated 20.08.2011 and numbered 28031.
- The General Communiqué on Special Consumption Tax (Series No:2 1) was published in the Official Gazette dated 21.09.2011 and numbered 28061.
- The General Communiqué on Special Consumption Tax (Series No. 22) was published in the Official Gazette dated 01.11.2011 and numbered 28102.
- The Communiqué on the Amendment of the General Communiqué of Customs (Firms File Follow up System) (Series No: 1) entered into force through publication in the Official Gazette dated 03.11.2011 and numbered 28104.
- The General Communiqué of Customs (Tariff-Classification Resolutions) (Series N. 13) entered into force through publication in the Official Gazette dated 04.11.2011 and numbered 28105.
- The General Communiqué of Customs (Tariff-Classification Resolutions) (Series No: 14) entered into force through publication in the Official Gazette dated 05.11.2011 and numbered 28106.
- The Communiqué on the Amendment of the General Communiqué of Customs (Customs Transactions) (Series No: 88) entered into force through publication in the Official Gazette dated 05.11.2011 and numbered 28106.

- The General Communiqué on Tax Procedure Law (Series N.410) was published in the Official Gazette dated 17.11.2011 and numbered 28115.
- The General Communiqué on Electronic Books (Serial No: 1) entered into force through publication in the Official Gazette dated 13.12.2011 and numbered 28141.
- The General Communiqué of Customs (Customs Transactions) (Serial N. 89) has been published in the Official Gazette dated 16.12.2011 and numbered 28144. The provisions of the Communiqué entered into force through publication being effective as of 01.01.2012.
- General Communiqué on Excise Tax (Serial No: 88) has been published in the Official Gazette dated 17.12.2011 and numbered 28145.
- The General Communiqué on Inheritance and Transfer Tax Law (Series N.43) has been published in the Official Gazette dated 26.12.2011 and numbered 28154.
- The General Communiqué on Income Taxes (Series N.280) has been published in the Official Gazette dated 26.12.2011 and numbered 28154.

Important Changes and Developments in Other Legislation

- The List of Incentive Certificates for the Month of March of the Year 2011 was published in the Official Gazette dated 11.05.2011 and numbered 27931.
- The List of Investment Certificates Given for the Investments of Foreign Capital Companies for the Month of March of the Year 2011 was published in the Official Gazette dated 11.05.2011 and numbered 27931.
- The List of Incentive Certificates for the Month of May of the Year 2011 entered into force through publication in the Official Gazette dated 25.05.2011 and numbered 27944.
- The List of Investment Certificates Given for the Investments of Foreign Capital Companies for the month of April of the Year 2011 entered into force through publication in the Official Gazette dated 25.05.2011 and numbered 27944.
- Circular No. 2011/6 from Prime Ministry regarding Principles of Small Business Act for Europe was published in the Official Gazette dated 05.06.2011 and numbered 27955.
- The List of Incentive Certificates for the Month of May of the Year 2011 was published in the Official Gazette dated 07.07.2011 and numbered 27987.
- The List of Investment Certificates Given for the Investments of Foreign Capital Companies for the Month of May of the Year 2011 was published in the Official Gazette dated 07.07.2011 and numbered 27987.
- Civil Procedure Code Arbitrator Fee Tariff, Civil Procedure Code Witness Fee Tariff, Civil Procedure Code Expert Fee Tariff, Civil Procedure Code Expenses Advance Tariff are published in the Official Gazette dated 30.09.2011 and numbered 28070. The tariffs entered into force on 01.10.2011.
- The List of Incentive Certificates for the Month of September of the Year 2011 was published in the Official Gazette dated 25.10.2011 and numbered 28095.

- The decision of the Banking Regulation and Supervision Board dated 23.11.2011 was published in the Official Gazette dated 25.11.2011 and numbered 28123. The decision is related to the authorization of Turkish Bank A.Ş. on the sale and purchase of derivative agreements, option agreements, simple or complex financial instruments that include several derivative instruments, and brokerage activities based on economic and financial indicators, capital markets instruments, goods, precious metals and foreign currency.
- Minimum Fee Tariff for Attorneys-at-Law entered into force through publication in the Official Gazette dated 21.12.2011 and numbered 28149.

Important Legislation and Decisions regarding Competition

- In its meeting of December 16, 2010, the Competition Board (the "Board")decided to conduct an investigation concerning Kars Çimento San. ve Tic. A.Ş., Aşkale Çimento Sanayi T.A.Ş., Yurt Çimento San. ve Tic. A.Ş., Limak Çimento San. ve Tic. A.Ş., Elazığ Altınova Çimento Sanayi Tic. A.Ş., Çimko Çimento ve Beton San. Tic. A.Ş., Çimsa Çimento Sanayi ve Tic. A.Ş., Adana Çimento Sanayii T.A.Ş., KÇS Kahramanmaraş Çimento Beton San. ve Madencilik İşletmeleri A.Ş. and Mardin Çimento Sanayii ve Ticaret A.Ş. The investigation was initiated to determine whether the aforementioned undertakings infringed Article 4 of Act no 4054 on the Protection of Competition by engaging in anti-competitive activities, such as price increases, market and customer allocation, and the exchange of information on market conditions in the Eastern Anatolia and Southeastern Anatolia Regions, as well as in the Adana and Eastern Black Sea Sections. This decision was announced on the website of Competition Authority on 04.01.2011.
- The Board decided that the "Correspondence Services Agreement" signed between Citigroup Inc. and Akbank could be assessed under the exemption granted by the Board Decision dated 06.12.2006 and numbered 06-87/1120-325. (06.01.2011 11-02/17-M)
- The Board authorized a joint venture to be established as a result of the acquisition by AES Mont Blanc Holdings B.V. of 49.6159% of the shares in Entek Elektrik Üretimi A.Ş., previously held by Aygaz A.Ş. since it would not result in the creation or strengthening of a dominant position as described under Article 7 of Act No. 4054 and Communiqué No. 2010/4 and thus in significant lessening of competition. (06.01.2011 11-02/5-3)
- The Board authorized the transactions of the transfer, by Nova Chemicals International S.A., of 50% of the shares in Ineos Nova European Holding BV and Ineos Nova International S.A. as well as the transfer, by Nova Chemicals Corporation, of 50% of the shares of Ineos Industries US LLC to Ineos Industries Holdings Limited since it would not result in the creation or strengthening of a dominant position as described under Article 7 of Act No. 4054

and Communiqué No. 2010/4 and thus in significant lessening of competition. (06.01.2011 11-02/4-2)

- The Board decided that the acquisition, by Maersk Spain S.L.U., of 99.99% of the shares of Maersk Denizcilik A.Ş. held by Maersk A/S did not fall under the scope of Article 7 of Act no 4054 and Communiqué no 2010/4, since the parties to the transaction were parts of the same economic entity. (06.01.2011 11-02/14-7)
- As a result of the examination conducted based on the claim that competition was restricted due to the fact that the "F Kasko" product, launched by Güneş Sigorta A.Ş. following an agreement with Ford Otomotiv Sanayi A.Ş., was sold only through the authorized services of Ford Otomotiv Sanayi A.Ş., as well as the fact that discounts were provided to those buying the insurance at the Ford Otomotiv Sanayi A.Ş. authorized services, the Board decided that no investigation was necessary under Act no 4054 and that the complaint should be rejected. (12.01.2011 11-03/35-8)
- As a result of the examination conducted based on the claim that school buses operating within Kayseri province violated Act no 4054 by allocating markets and maintaining prices in collusion, the Board decided that; the School Allocation Model, which was prepared and implemented through the leadership of Kayseri Minibüsçüler ve Servis İşletmecileri Esnaf Odası constituted an anti-competitive association of undertakings under Article 4 of Act no 4054 and that the agreements signed between these undertakings were anti-competitive agreements under Article 4 of Act no 4054, that an exemption under Article 5 of Act no 4054 could not be granted to the decision of the association of undertakings, titled School Allocation Model or to the agreements between the undertakings, and within this framework, in order to terminate the relevant infringements, an opinion should be rendered to Kayseri Minibüsçüler ve Servis İşletmecileri Esnaf Odası and to the Kayseri Provincial Directorate for National Education concerning the establishment of a sustainable competitive environment within the relevant market. The issues to be in the opinions are also determined in this decision. (19.01.2011 11-04/56-21)

- As a result of the examination conducted based on the claim that the undertakings operating the Nemport and TCE Ege Ports did not want to let undertakings which provide the same services with the contracted companies, the Board decided that Nemport Liman İşl. & Özel Antrepo Nakliye Tic. A.Ş. and TCE EGE Konteyner Terminal İşletmeleri A.Ş. did not hold dominant positions within the container services market, that therefore the claims mentioned above could not be assessed under Article 6 of Act no 4054, that the contract signed between Nemport Liman İşl. & Özel Antrepo Nakliye Tic. A.Ş. and Selmarin Denizcilik Nakliye Turizm Ticaret ve Sanayi Ltd. Şti. could benefit from the exemption under the Block Exemption Communiqué on Vertical Agreements no 2002/2, provided that the non-competition obligation of the contract did not exceed 5 years, that no investigation was necessary under Act no 4054 concerning the relevant undertakings, and that the complaint should be rejected. (19.01.2011 11-04/55-20)

- As a result of the re-evaluation conducted following the annulment, from the point of the plaintiff, of the Board decision dated 26.07.2007 on undertakings operating within the chemical fertilizers sector by the 13th Chamber of the Council of State on 30.11.2010, the Board decided as follows: 1. Toros Gübre ve Kimya Endüstrisi A.Ş. (Toros Tarım San. Tic. A.Ş.) violated Article 4 of Act no 4054 by maintaining fertilizer sale prices in collusion with competing producers, by allocating certain regions and the amounts supplied to these regions in collusion with other undertakings between 1996 and 1999 in the mass procurement tenders initiated by Tarım Kredi Kooperatifleri Merkez Birliği (Central Agricultural Cooperative Credit Association¬TKKMB) and Türkiye Şeker Fabrikaları A.Ş., by not participating in the TKKMB's fall 1999 tender in collusion with other undertakings, and by making agreements with other producers in 1998 in order to complicate the operations of the competing importers, b) Toros Tarım San. Tic. A.Ş. (Toros Gübre ve Kimya Endüstrisi A.Ş.) should be levied an administrative fine of TL 2,445,956.16, in consideration of Article 16 of Act no 4054 as amended by Act no 5728 dated 23.1.2008 and numbered 5728, 2. Toros Tarım San.

Tic. A.Ş. (Toros Gübre ve Kimya Endüstrisi A.Ş.), Bagfaş and Ege Gübre's announcement that they stopped fertilizer sales in response to the Decree issued on 28.2.2000 and their ordering the dealers to stop sales following this date did not aim to prevent competition and did not lead to such an effect; thus, it did not constitute a violation, 3. Standard Sales Specifications, prepared by fertilizer producers to be presented to TKKMB and other organizations initiating mass fertilizer procurement tenders, did not constitute a violation with the nature of an agreement or a decision of an association of undertakings, 4. There was not sufficient evidence to suggest that the provisions of the agreement of 15.10.1996, which stipulate that organizations must refrain from granting dealerships to the dealers of other organizations, must not engage in FOT sales, must establish a joint monitoring group to supervise dealers, and must refrain from granting premiums or discounts to dealers under any name, were implemented, 5. Fertilizer producing undertakings should terminate these infringements of competition and the undertakings should not engage in practices that could lead to competition coordination through information exchange, etc. among themselves or via the Fertilizer Producers Association, 6. Since the obligation to notify agreements under Act no 4054 was repealed by Article 2 of Act no 5388, it was not necessary to come to a decision concerning the said undertaking or any real persons serving in the management bodies of the undertaking. (19.01.2011 11-04/64-26)

- As a result of the examination conducted based on the claim that Turkcell İletişim Hizmetleri A.Ş. complicated the operations of Türk Telekomünikasyon A.Ş. through its practices in the distribution system, as well as its anti-competitive and exclusionary practices in the voice transmission market, the Board decided that no investigation was necessary under Act no 4054. (27.01.2011 11-06/90-32)
- The Board, as a result of the investigation made upon the request that a decision be taken stating that the agreement between Opet Petrolcülük A.Ş. and Mavi Beyaz Akaryakıt İnş. Petrol Paz. San. ve Tic. A.Ş. benefits from the exception provision laid

down in Article 5 of Communiqué No. 2002/2 or the vertical relationship be given exemption for ten years as it is related to a station established on land where there were no liquid fuel sales activities and with the costs being met by Opet Petrolcülük A.Ş., decided that the vertical relationship consisted of the protocol dated 18.11.2002 between Opet Petrolcülük A.Ş. and Yayla Petrol Otomotiv Nakliyat Gıda İnşaat Ticaret Ltd. Şti., whose partners are the owners, İskender YILMAZ ve Faris YILMAZ, the related usufruct right dated 22.11.2002, the dealership agreement dated 02.01.2003 and the lease agreement dated 27.05.2003 was concluded before 18.09.2005 and as of that date the remaining term exceeds five years; therefore, it benefited from the exemption provided by Block Exemption Communiqué No. 2002/2 on Vertical Agreements until 18.09.2010, This vertical agreement will be exempt up to ten years as of 18.11.2002 according to Article 5 of Act No. 4054 taking into account that the agreement in question is related to a new oil station built on land where there has not been any liquid fuel dealership activity before, the investment peculiar to the station is made by Opet Petrolcülük A.Ş. and on condition that the parties agree that the dealer may terminate the agreement by paying the amount of the investment corresponding to the time left, if any, by Opet Petrolcülük A.Ş. (03.02.2011; 11-07/133-42)

- The Board, as a result of the examination made upon the claims that Türk Telekomünikasyon A.Ş. has abused its dominant position in tenders for repair and maintenance of access networks, and certain undertakings in the tender acted in concert, decided that it is not necessary to open an investigation according to Act No. 4054, and the complaint was dismissed. (16.02.2011; 11-09/167-56)

- As a result of the examination conducted in order to determine whether the private schools operating in Turkey and the associations of undertakings that are formed by the uniting of these schools infringed Article 4 of Act No. 4054 through agreements, concerted practices and the decisions of associations of undertakings in relation to salary and staff policy, the Board has decided that; 1- the fact that the foundation schools operating in Istanbul held meetings in April 2001 and discussed and exchanged information regarding

school fees, scholarships and salaries for the school year 2001-2002 can be deemed as infringement of Article 4 of Act No. 4054. However, the said infringement became time barred and thus there is no need for opening an investigation under Article 41 of Act No. 4054, 2- the fact that the officials of the private schools operating in the relevant market discussed and exchanged information regarding price policies during the meetings held under the aegis of the Association of Turkish Private Schools Union and Ankara Association of Private Schools can be deemed as infringement of Article 4 of Act No. 4054; furthermore, some provisions under the headings "Work Environment, Employees, Teacher Recruitment" and "Student Recruitment" of the "Principles of Private Schools" as determined by the Association of Turkish Private Schools Union, can be deemed within the scope of anticompetitive association of undertaking decisions under Article 4 of Act No. 4054, but there is no need to open an investigation under Article 41 of Act No. 4054 concerning the said infringements. (03.03.2011, 11-12/226-76)

- As a result of the examination conducted based on the claim that Mey İçki Sanayi ve Ticaret A.Ş. misinformed its points of sale regarding competing products and acted in violation of the decision of the Competition Board by continuing exclusivity practices in the away from home consumption channel, the Board decided that there is no need to open an investigation under Act No. 4054 and the complaint was dismissed. (03.03.2011, 11-12/215-69)
- During its meeting on 3 March 2011, the Competition Board arrived at a decision after evaluating the file regarding the privatizations of İstanbul Anadolu Yakası Elektrik Dağıtım A.Ş., Akdeniz Elektrik Dağıtım A.Ş. and Toroslar Elektrik Dağıtım A.Ş. In this framework, with regard to the transfer of İstanbul Anadolu Yakası Elektrik Dağıtım A.Ş. ("AYEDAŞ"), Akdeniz Elektrik Dağıtım A.Ş. ("AKDENİZ"), Toroslar Elektrik Dağıtım A.Ş. ("TOROSLAR"), Boğaziçi Elektrik Dağıtım A.Ş. ("BOĞAZİÇİ"), Gediz Elektrik Dağıtım A.Ş. ("GEDİZ"), Trakya Elektrik Dağıtım A.Ş. ("TRAKYA") and Dicle Elektrik Dağıtım A.Ş. ("DİCLE") through privatization, the Competition Board decided with reference to its decision regarding the privatizations

of BOĞAZİÇİ, GEDİZ, TRAKYA and DİCLE made on 16 December 2010 during the process of distribution privatizations that; 1 - with respect to the seven regions for which MMEKA and/or Aksa Elektrik made offers; in the event that the size to be reached if BOĞAZİÇİ, GEDİZ and TRAKYA are acquired, all three at once, is exceeded, the acquisitions will not be authorized, but acquisitions smaller than that size may be authorized; 2 - with respect to the six regions for which Yıldızlar SSS and /or Eti Gümüş made offers; in the event that the size to be reached if BOĞAZİÇİ, GEDİZ, TRAKYA and DİCLE are acquired, all four at once, is exceeded, the acquisitions may not be authorized, but acquisitions smaller than that size may be authorized; 3 - the acquisition by Park Holding A.Ş. of BOĞAZİÇİ, AYEDAŞ, TOROSLAR and AKDENİZ, all four at once, may not be authorized; however, in the event that out of these four regions only three are acquired by Park Holding A.Ş., those acquisitions may be authorized; 4 - the acquisitions by Enerjisa Elektrik Dağıtım A.Ş. of AYEDAŞ, AKDENİZ and/or GEDİZ may be authorized; 5 – with regard to the other undertakings making offers in the tender during the privatization process of AYEDAŞ, AKDENİZ and TOROSLAR, the Board decided that; a. there is no prejudice in authorizing the acquisition by Cengiz-Kolin-Limgaz Joint Venture Group of AYEDAŞ and/or TOROSLAR, on condition that the structure of this partnership is organized as the combination of electricity distribution activities, b. there is no prejudice in authorizing the acquisition by Türkerler İnşaat Turizm Madencilik Enerji Üretim Ticaret ve Sanayi A.Ş. of TOROSLAR, c. there is no prejudice in authorizing the acquisition by Emkat Joint Venture Group of AKDENİZ and/or TOROSLAR. (03.03.2011, 11-12/240-77)

- The investigation carried out by the Board into 8 banks based on the decisions it took on 19.08.2009 and 24.08.2009 has been finalized on 07.03.2011 and the decision was published on 08.03.2011. The investigation was initiated under Article 41 of Act No. 4054 on the Protection of Competition against Akbank T.A.Ş., Denizbank A.Ş., Finans Bank A.Ş., Türkiye Garanti Bankası A.Ş., Türkiye Halk Bankası A.Ş., Türkiye İş Bankası A.Ş., Türkiye Vakıflar

Bankası T.A.O. and Yapı ve Kredi Bankası A.Ş., which operate in the banking market, to determine whether the aforementioned Act was infringed by the above undertakings through colluding as part of a so-called "gentleman's agreement" to not offer promotions to private firms and for the other banks to not extend offers to those institutions/firms for which the protocols are continuing; and as concerns 6 of the above banks, through colluding and predetermining the promotion amount that they would bid in the tender by Erdemir T.A.Ş. for 2005 salary payments. The Board decided that Akbank T.A.Ş., Türkiye Garanti Bankası A.Ş., Türkiye İş Bankası A.Ş., Koçbank A.Ş., Pamukbank A.Ş., Yapı ve Kredi Bankası A.Ş. and Türkiye Vakıflar Bankası T.A.O., as of 2001; Finans Bank A.Ş., as of 2004; and Denizbank A.Ş., as of 2005, infringed competition under Article 4 of Act No. 4054 through the abovementioned act, that these undertakings will be given an administrative fine of 4 thousandths of the annual gross revenues that accrued by the end of the fiscal year 2010, and that although it was established that Koçbank A.Ş. and Pamukbank A.Ş. were part of the agreement during 2001 and 2002, because the five-year time limit provided under the abolished Article 19 of Act No. 4054, which was in force at the time of the infringement, ended, Türkiye Halk Bankası A.Ş. and Yapı ve Kredi Bankası A.Ş. need not be given administrative fines due to the acts of the said banks. (07.03.2011, 11-13/243-78)

- As a result of the examination conducted into Çimsa Çimento San. ve Tic. A.Ş. based on the claim that it increased the prices of cement without any justification and thus placed the ready-mixed concrete producers in a difficult position, the Board decided that there is no need to open an investigation under Act No. 4054 and that the complaint should be dismissed. (10.03.2011, 11-15/261-89)

- As a result of the examination conducted based on the claim that concerning the cars that were purchased to be operated by the Foundation for Strengthening the Judiciary Organization and that were given to the service of judiciary, the fees charged to travel for purposes of seizure proceedings are excessively priced compared

to commercial taxis and the requests to travel in commercial taxis instead, for purposes of seizure proceedings, are denied by the Seizure Directors, the Board decided that there is no need to open an investigation under Act No. 4054, and thus the complaint was dismissed. (17.03.2011, 11-16/292-94)

- As a result of the examination conducted based on the requests that the bottled LPG dealership agreements of İpragaz A.Ş. and the bottled LPG and auto LPG dealership agreements of Yıldırım Petrol Ticaret ve Nakliyat A.Ş. be granted exemption, the Board decided that the bottled LPG dealership contracts of İpragaz A.Ş. and Yıldırım Petrol Ticaret ve Nakliyat A.Ş. benefit from block exemption under Communiqué No. 2002/2, but the auto LPG dealership contracts of Yıldırım Petrol Ticaret ve Nakliyat A.Ş. do not benefit from block exemption in their current form, due to the period of non-compete obligation, and the non-compete obligation which was provided for over 5 years may not be granted an individual exemption since the conditions enumerated under Article 5 of Act No. 4054 are not fulfilled. (24.03.2011, 11-17/327- 100)

- As a result of the examination conducted based on allegations that GlaxoSmithKline İlaçları San. ve Tic. A.Ş. attempted to foreclose the market to its competitors in the denture care cream market, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (14.04.2011, 11-23/436-134)

- As a result of the examination conducted based on allegations that the firms titled Lundbeck İlaç Tic. Ltd. Şti., Servier İlaç ve Araştırma A.Ş., Pierre Fabre İlaç A.Ş., Guerbet Tıbbi ve Kimva Madde Tic. A.Ş., Opakim Tıbbi Ürünler Tic. Ltd. Şti., Schering-Plough Tıbbi Ürünler Tic. A.Ş., Merck Sharp Dohme İlaçları Ltd. Sti., Kansuk Laboratuarı San. ve Tic. A.Ş., GlaxoSmithKlein İlaçları San. ve Tic. A.Ş., Chiesi İlaç Ticaret A.Ş., Sandoz İlaç San. ve Tic. A.Ş., Bristol Myers Squibb İlaçları Inc. İstanbul Branch, Fako İlaçları A.Ş., Kurtsan İlaçları A.Ş. ve Wyeth İlaçları A.Ş., in cooperation with other pharmaceutical warehouses, engaged in

price discrimination against Emek Ecza Deposu İlaç ve Kimyevi Mad. Itr. İth. Ihr. ve Tic. A.Ş., the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (21.04.2011, 11-25/470-141)

- As a result of the examination conducted based on allegations that the profit margin from gasoline relinquished by decreasing gasoline prices was offset by increasing diesel prices, which led to unfair competition for those using diesel fuel, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (21.04.2011, 11-25/471-142)
- As a result of the examination conducted based on allegations that the TL 10 fee requested by the Republic of Turkey General Directorate of Post and Telegraph Organization in order to renew the lost and forgotten password for logging in to the Turkish e-government portal i was too high, it was decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (21.04.2011, 11-25/477-146)
- As a result of the examination conducted based on the allegations that Superonline İletişim Hizmetleri A.Ş. offered internet access service free of charge, it was decided that initiating an investigation was not necessary under the Act no 4054. (28.04.2011, 11-26/498-155)
- The Board, as a result of the examination made upon the claim that Lukoil Eurasia Petrol A.Ş. violated the Act No. 4054 and the Communiqué No. 2002/2 by its vertical agreements and various practices, decided that vertical agreements between Lukoil Eurasia Petrol A.Ş. and Hürrem Kosif, Hüdayi Kosif, Serdar Naim Kosif, Kosifler Petrol Tic. Ltd. Şti. are out of the scope of block exemption provided by the Communiqué No. 2002/2 as they extended the date 18.09.2010, therefore, under Article 9(3) of the Act No. 4054, the Presidency shall be assigned to send an opinion to the parties, stating that they must end the said agreements in 30 days as of the notification of the reasoned decision; otherwise proceedings shall be initiated according to the Act No. 4054. (04.05.2011; 11-28/561-174)

- The Board, as a result of the examination made upon the claim that Opet Petrolcülük A.Ş. violated the Act No. 4054 and the Communiqué No. 2002/2 by its vertical agreements and various practices, decided that regarding the application by Ali Rıza Onat, it is not necessary to make any proceedings according to the Act No. 4054 because an agreement was made again with Opet Petrolcülük A.Ş. and the application was withdrawn,regarding the application by Feriha Doyuran, vertical agreements between the parties are out of the scope of block exemption provided by the Communiqué No. 2002/2 as they extended the date 18.09.2010, therefore, under Article 9(3) of the Act No. 4054, the Presidency shall be assigned to send an opinion to the parties, stating that they must harmonize the said agreements with the Act No. 4054 in 30 days as of the notification of the reasoned decision; otherwise proceedings shall be initiated according to the Act No. 4054, and that is not possible to take the date when the station started to operate as a basis for the calculation of the block exemption period for the vertical agreement. (04.05.2011; 11-28/558-171)
- The Board, as a result of the examination made upon the claim that Lukoil Eurasia Petrol A.Ş. violated the Act No. 4054 and the Communiqué No. 2002/2 by its vertical agreements and various practices, regarding the application by Göl İnşaat Petrol Elektronik Otomotiv San. ve Tic. Ltd. Şti., vertical agreements between the parties are out of the scope of block exemption provided by the Communiqué No. 2002/2 as they extended the date 18.09.2010, therefore, under Article 9(3) of the Act No. 4054, the Presidency shall be assigned to send an opinion to the parties, stating that they must harmonize the said agreements with the Act No. 4054 in 30 days as of the notification of the reasoned decision; otherwise proceedings shall be initiated according to the Act No. 4054, regarding the application by Batınak Transit Taşımacılık Petrol ve Turizm Tic. Ltd. Şti., the said vertical agreement benefits from the exception provision laid down Article 5 of the Communiqué No. 2002/2 and the complaint shall be dismissed. (04.05.2011; 11-28/565-178)
- The Board, as a result of the examination made upon the request that the "Agency Contract for Non-life Insurance" signed between

Aksigorta A.Ş. and Akbank T.A.Ş. be granted negative clearance certificate or exemption, decided that individual exemption shall be given according to the Act No. 4054. (04.05.2011; 11-28/582-183)

- Hearing of the investigation about Efes Pazarlama ve Dağıtım Tic. AŞ. conducted regarding whether it complied with the decision of the Board dated 22.04.2005 in relation to withdrawing the exemption shall be held on 12.07.2011. Complainants and third persons who want to attend the meeting shall apply to the Board by the end of the working hours on Friday, July 1, 2011 with a petition containing information and documents that put forward their relation of interest with the subject matter of the meeting.
- As a result of the examination performed upon the claim that Eti Mine Enterprises General Directorate having a legal monopoly right in the area of producing and operating boron minerals abused this position by impeding competition, the Board decided that there is no need to open an investigation under Act No. 4054 and the complaint was dismissed. (02.06.2011, 11-33/726-229)
- As a result of the examination performed upon the claim that Türksat Uydu Haberleşme Kablo TV ve İşletme A.Ş. (Türksat Satellite Communication Cable TV and Operation Inc.) abused its dominant position in the area of satellite communication service infrastructure against those undertakings which offered satellite communication service to public agencies and organizations, the Board decided that an investigation was not required to be opened in accordance with the Act No. 4054, and the complaint was dismissed. (02.06.2011, 11-33/703-216)
- As a result of the examination performed upon the claim that Türkiye Vakıflar Bankası T.A.O. which solely conducts banking transactions of UYAP (national jurisprudence network project) service of the Ministry of Justice abused its dominant position by imposing a compulsory bank account with ATM card at the stage of taking cipher after internet banking contract, the Board decided that an investigation was not required to be opened in accordance with the Act No. 4054, that the complaint be rejected. (02.06.2011, 11-33/718-224)

- As a result of reassessing the subject matter of the file upon the annulment by the Council of State of the Board decision taken on 19.09.2007 with regard to detecting whether Istanbul Chamber of Jewellers infringed article 4 of the Act on the Protection of Competition No. 4054 by means of determining the buying and selling price of gold; the Board decided that due to the fact that Istanbul Chamber of Jewellers infringed the Act No. 4054 by means of determining the buying and selling price of gold, an administrative fine of TL 5800 be imposed on it, which was the minimum amount of penalty in accordance with the Communiqué No. 2005/2 that was in force as of the date of opening the investigation, having regard to article 16 of the Act and regulations that were in favour in a penalty. (02.06.2011, 11-33/712-219)
- As a result of the examination performed upon the claim that Peyman Kuruyemiş Gıda Aktariye Kimyevi Maddeler Tarım Ürünleri San. ve Tic. A.Ş. prevented the applicant from making dry fruit sales from the points referred to by means of extending financial support to the points of sale; the Board decided that; 1- in relation to the claims which were the subject of the file, opening an investigation was not required, 2- however, as to the Exclusive Distribution Contract signed between Peyman Kuruyemiş Gıda Aktariye Kimyevi Maddeler Tarım Ürünleri San. ve Tic. A.Ş. and its distributors a) its articles containing expressions that had the nature of being likely to lead to the practice of price fixing directly or indirectly be arranged such that they shall not prevent retailers from determining at their free will their own sale prices and similar elements likely to affect this, b) and its articles related to the duration of the non-compete obligation be arranged such that it be limited to a maximum of five years as regards the non-compete obligation to be applied as long as the contract would be in force and to a maximum of one year as regards the non-compete obligation to be applied from the end of the contract, the contract referred to would benefit from an exemption within the scope of the Block Exemption Communiqué on Vertical Agreements dated 2002/2. (09.06.2011, 11-36/745-232)

- As a result of the examination performed upon the claim that Turkcell İletişim Hizmetleri A.Ş. (Turkcell Communications Services Inc.) distorted competition by increasing monopoly dependence through discounts ensured by it for its subscribers during purchases of goods and services from third persons or firms, the Board decided that opening an investigation in accordance with the Act No. 4054 was not required, that the complaint be rejected. (09.06.2011, 11-36/756-233)
- As a result of the examination performed with a view to determining whether Traçim Çimento San. ve Tic. A.Ş., Nuh Çimento San. A.Ş., Çimentaş İzmir Çimento Fabrikası Türk A.Ş., Limak Batı Anadolu San. ve Tic. A.Ş., Aslan Çimento A.Ş. and Akçansa Çimento San. ve Tic. A.Ş. operating in the cement sector in the province of Istanbul infringed the Act No. 4054, the Board decided that opening an investigation was not required. (16.06.2011, 11-37/779-245)
- The Board has decided to grant an individual exemption within the framework of article 5 of the Act No. 4054 to the "Partnership Contract" signed between Air France KLM S.A and Alitalia-Compagnia Aera Italiana S.p.A on 12.01.2009, the "Cargo Contract" signed between Alitalia-Compagnia Aera Italiana S.p.A, Société Air France and KLM on 22.06.2010, and to the "Transatlantic Joint Venture Contract" signed between Alitalia-Compagnia Aera Italiana S.p.A, Air France KLM S.A and Delta on (05.07.2010, 16.06.2011, 11-37/768-236)
- The Board completed the investigation conducted about Anadolu Elektronik Aletler Paz. ve Tic. A.Ş. and Samsung Electronics Istanbul Paz. ve Tic. Ltd. Şti. in accordance with its decision dated 17.05.2011. As a result of the investigation made with a view to determining whether the undertakings cited infringed the Act No. 4054 by means of determining the resale price of their purchasers, the Board decided to an administrative fine of TL 1,066,669.72 be imposed on Anadolu Elektronik Aletler Paz. ve Tic. A.Ş. and that Samsung Electronics Istanbul Paz. ve Tic. Ltd. Şti. did not infringe competition within the scope of article 4 of the Act No. 4054. The

decision of the Board as to the investigation was announced on 27.06.2011.

- The Board, in its meeting dated 09.06.2011, commenced an investigation about Oflazlar Dayanıklı Tüketim Malları Tic. San. Ltd. Şti., Başmısırlı Dayanıklı Tüketim Mamülleri, Tekiş Ticaret, Çetinkara Dayanıklı Tüketim Malları, Yakut Dayanıklı Tüketim Malları Yakacak İnşaat Taahhüt ve Turizm San. Tic. Ltd. Şti., Ada Dayanıklı Tüketim Malları San. ve Tic. Ltd. Şti., Akkaş Dayanıklı Tüketim Malları Tekstil İnş. Taah. Yakacak Ürünleri ve Gıda Maddeleri Tic. San. Ltd. Şti., Özçınar Dayanıklı Tüketim Malları, Mesa Dayanıklı Tüketim Malları Tekstil İnş. Taah. Nak. ve Gıda Maddeleri Tic. ve San. Ltd. Şti., Hilal Dayanıklı Tüketim Mamülleri Tic. ve San. Ltd. Şti. that are engaged in the dealership of Bosch at the center of the province of Kayseri with a view to being able to determine whether they infringe article 4 of the Act No. 4054 by means of applying the same price.
- The Board, as a result of the examination conducted based on the request that - because the total market share of Aygaz A.Ş. and its affiliate Mogaz Petrol Gazları A.Ş. in the bottled LPG market in Turkey would exceed the market share threshold given under Article 2 of the Communiqué No. 2002/2 following the acquisition by Aygaz A.Ş. of the dealership contracts of Total Oil Türkiye A.Ş. related to its LPG distribution business - individual exemption shall be granted to the dealership contracts signed between these companies and their dealers, decided that because the total market share of the dealership agreements signed by Aygaz A.Ş., Mogaz A.Ş., and Total Oil Türkiye A.Ş. with bottled LPG dealers in the relevant product market would exceed the 40% threshold following the proposed acquisition, they are not within the scope of the Communiqué No. 2002/2; individual exemption shall be granted to the dealership contracts signed between Total Oil A.Ş. and bottled LPG dealers on condition that the provision under Article 6 thereof that imposes non-compete obligation to third parties is abolished and that the provision under Article 30 thereof that relates to duration is arranged whereby it expresses that it will not exceed 5 years. (14.07.2011; 11-43/925-294)

- The Board, as a result of the examination conducted upon the request that a negative clearance document to be given or exemption to be granted to the decision by the association of undertakings concerning the publication of information on the Automotive Distributors Association's website and database and in the reports drawn up for other reasons, decided that, there is no point in making a decision concerning such information bearing in mind that they do not include matters altering such assessments under this request; however, the decision to share information shall be evaluated within the framework of the provisions of the Act No. 4054, with respect to the number of staff, authorized sellers and service providers at the networks of brands which are to be published at miscellaneous times, overall and brand-differentiated number of sales on a provincial basis at three-month periods, tentative scheduling studies (launching) concerning the new models of brands at three-month periods, the share of brands in fleet sales of passenger and light commercial vehicles according to buyer groups which are classified as government, rental companies, taxis, leasing and private sales, the decision to share information regarding the number of staff, authorized sellers and service providers at the networks of brands at miscellaneous times shall be given a negative clearance document under Article 8 of the Act No. 4054, however, a negative clearance document under Article 8 of the Act No. 4054 may not be given to the decision to share information with respect to the three-month data showing the overall number of sales of passenger and light commercial vehicles on a provincial basis, the tentative scheduling studies (launching) concerning the new models of brands to be published at three-month periods, the share of brands in fleet sales of passenger and light commercial vehicles according to buyer groups which are classified as government, rental companies, taxis, leasing and private sales; however, on condition that province-based data do not include brand, model and sub-breakdown differentiation, whatever is shared relating to launching does not include recommended or final sales prices to be applied, sales strategy, target, supply amount etc. that are likely to lead to coordination, and that the differentiation of fleet sales

numbers by buyer groups do not include information as to the titles of the buyers; the decision of the association of undertakings for the sharing of the said information shall be granted individual exemption under Article 5 of the Act No. 4054. (14.07.2011; 11-43/916-285)

- As a result of the examination conducted based on the claim that the Act no 4054 as well the the Communiqué no 2002/2 were violated by Bölünmez Petrolcülük A.Ş. (M-Oil) through vertical agreements and various practices, the Board decided that Concerning the relevant pumping station, in light of the fact that the vertical relationship between Bölünmez Petrolcülük A.Ş. and Aligöz Nakliyat Zirai Ürünler Hayvancılık San. Tic. Ltd. Şti. was terminated and that the usufruct rights over the immovable might be deleted within the framework of the power of attorney drawn, no action was necessary under the Act no 4054 and the complaint should be rejected. (03.08.2011, 11-44/969-320)
- As a result of the examination conducted based on the claim that the Act no 4054 as well the Communiqué no 2002/2 were violated by Opet Petrolcülük A.Ş. and Aygaz A.Ş. through vertical agreements and various practices, the Board decided that the issues mentioned in the application by Rıfat Yurttaş - Şevket Yurttaş were out of the scope of the Act no 4054, concerning the application by Gezen Petrol Ürünleri Tic. Ltd. Şti., the vertical agreement between the parties benefited from the exception of article 5 of the Communiqué no 2002/2 and consequently the application should be rejected. (03.08.2011, 11-44/971-322)
- As a result of the examination conducted in response to the request for the grant of a certificate of negative clearance or exemption to the Bonus Credit Card Program Sharing Agreement, signed on 23.12.2010 between Türkiye Garanti Bankası A.Ş. and Alternatifbank A.Ş., the Board decided that a certificate of negative clearance could not be granted to the "Bonus Credit Card Program Sharing Agreement", signed on 23.12.2010 between Türkiye Garanti Bankası A.Ş. and Alternatifbank A.Ş., the relevant agreement could not benefit from block exemption under the Block

Exemption Communiqué no 2002/2 on Vertical Agreements, since Türkiye Garanti Bankası A.Ş. and Alternatifbank A.Ş. were competing undertakings, that, as a result of the assessment conducted within the framework of article 5 of the Act no 4054, the relevant Agreement should be granted exemption as of its date of signature of 23.12.2010 under the second paragraph of the same article, since all of the conditions listed in first paragraph of the aforementioned article were fulfilled. (03.08.2011, 11-44/991-337)

- As a result of the examination conducted based on the claim that Ak Sigorta A.Ş., Allianz Sigorta A.Ş., Anadolu Anonim Türk Sigorta Şirketi, Axa Sigorta A.Ş., Eureko Sigorta A.Ş., Groupama Sigorta A.Ş., Güneş Sigorta A.Ş. and Yapı Kredi Sigorta A.Ş. violated the Act no 4054 with their practices related to the provision of automobile insurance services for rental vehicles, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (03.08.2011, 11-44/993-339)
- As a result of the examination conducted based on the claim that the recent procurements of liquid fuel products Fuel Oil No: 5 and Fuel Oil No: 6 to be used in thermal power plants affiliated with EÜAŞ (Electricity Generation Inc.) through reciprocal contracts with TP Petrol Dağıtım A.Ş when this was previously done through a tender system was in violation of the Act no 4054, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (03.08.2011, 11-44/960-313)
- As a result of the examination conducted based on the claim that Arkas Group companies, operating in the ship brokerage business, complicated the commercial operations of other undertakings, the Board decided that no investigation was necessary under the Act no 4054 and the complaint should be rejected. (03.08.2011, 11-44/996-342)
- As a result of the examination conducted based on the claim that Turkcell İletişim Hizmetleri A.Ş., Vodafone Telekomünikasyon

A.Ş. and Bilkom Bilişim Hizmetleri A.Ş. agreed on a deal concerning the sale of iPhone 4 launched by Apple only in Turkcell and Vodafone distributors, based on a commitment and in exchange for excessive prices, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (17.08.2011, 11-45/1031-352)

- As a result of the examination conducted based on the claim that Mey İçki San. ve Tic. A.Ş. infringed the decision of the Board dated 08.07.2010 and numbered 10-49/900-314 and abused its dominant position on the sale of Burgaz Alkollü İçkiler Ticari ve İktisadi Bütünlüğü, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (17.08.2011, 11-45/1047-359)
- As a result of the examination conducted based on the claim that the undertakings ALJ Otomotiv A. Ş., Anadolu Araçlar Ticaret A.Ş., Baylas Otomotiv A.Ş., Borusan Otomotiv İthalat ve Dağıtım A.Ş., Doğuş Otomotiv Servis ve Tic. A.Ş., Ford Otomotiv San. A.Ş., General Motors Türkiye Ltd. Şti., Honda Türkiye A.Ş., Hyundai Assan Otomotiv San. ve Tic. A.Ş., MAİS Motorlu Araçlar İmal ve Satış A.Ş., Mercedes Benz Türk A.Ş., Mermerler Otomotiv Taşımacılık Turizm Tekstil İnşaat Gıda ve Paz. A.Ş.,Nissan Otomotiv A.Ş., Peugeot Otomotiv Pazarlama A.Ş., Temsa Global Sanayi ve Ticaret A.Ş., TOFAŞ Türk Otomobil Fabrikası A.Ş., Toyota Pazarlama ve Satış A.Ş. which are active in the sale of private automobiles applied the same prices for the automobiles of the same concept and infringed the Act no 4054, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (25.08.2011, 11-46/1122-391)
- As a result of the examination made upon the claim that only bottled water with the brand belonging to Coca-Cola Satış ve Dağıtım A.Ş. is sold in kiosks, restaurants, etc. in Atatürk Airport, and this restricts choices for consumers, the Board has decided that it is not necessary to open an investigation with respect to the claims according to the Act No. 4054. (14.09.2011, 11-47/1179-420)

- As a result of the examination made upon the request that dealership agreement between Petrol Ofisi A.Ş. and Han-Pet Petrol San. ve Tic. Ltd. Şti. be granted negative clearance certificate or individual exemption or deemed as being under the scope of the Communiqué No. 2002/2, the Board has decided that; 1- The vertical agreement consisted of the dealership agreement between Petrol Ofisi A.Ş. and Han-Pet Petrol San. ve Tic. Ltd. Şti. dated 16.10.2006 and the 15-year usufruct right dated 21.02.2007 given in favor of Petrol Ofisi A.Ş. cannot be granted negative clearance certificate, 2- The said agreement is under the scope of block exemption granted by the Communiqué No. 2002/2 as of 16.10.2006 for five years, 3- The requirements listed in Article 5 of the Act no. 4054 are not fulfilled as the station related to the notified agreement is not a new station established on land/field where a liquid fuel dealer has not operated before; therefore, the request that the vertical agreement between Petrol Ofisi A.Ş. and Han-Pet Petrol San. ve Tic. Ltd. Şti. be granted exemption longer than the five-year block exemption term provided in the Communiqué No. 2002/2 shall be rejected. (22.09.2011, 11-48/1214-427)
- As a result of the examination made upon the request that the process where certain information in the liquid fuel and LPG market will be collected weekly or monthly by Petroleum Industry Association or an agreed independent research institute and will be compiled by Petroleum Industry Association as statistical data and shared with the public together with comments be given negative clearance or exemption, the Board has decided that the procedure notified where certain information in the liquid fuel and automobile LPG market will be collected weekly or monthly and compiled by Petroleum Industry Association as statistical data and shared with the public together with comments shall be given negative clearance certificate within the scope of Article 8 of the Act No. 4054 provided that data will be collected and compiled by independent institution(s). (22.09.2011, 11-48/1215-428)
- As a result of the examination made upon the claim that GlaxoSmithKline İlaçları A.Ş. does not launch the product called "SERETIDE MDİ" in Turkey and by this way indirectly maintains

and strengthens its existing dominant position in the market; consequently restricts competition in the relevant product market in Turkey, the Board has decided that it is not necessary to open an investigation according to the Act No. 4054 and the complaint shall be dismissed. (22.09.2011, 11-48/1217-430)

- The decisions of the Board numbered 07-92/1191-461 and 08-39/507-184 regarding Turkcell İletişim Hizmetleri A.Ş. were annulled by the decision of the 13th Chamber of the Council of State dated 18.04.2011 and the said file was reevaluated. As a result, the incomplete points found in the decision of 13th Chamber of the Council of State numbered 2008/4519 E., 2011/1655 K. and 2008/13183 E., 2011/1656 K were resolved with the decision of the Competition Board dated 23.12.2009 and numbered 09-60/1490-379; therefore, the Board has decided that it is not necessary to take a decision related to the file again. (22.09.2011, 11-48/1219-432)

- As a result of the examination made upon the request that the decision of the Board dated 09.06.2011 which was taken upon the claim that Turkcell İletişim Hizmetleri A.Ş. distorted competition by increasing monopoly dependence due to discounts it provide to its subscribers while buying goods and services from third parties, be evaluated again, the Board has decided that the request of NETGSM İletişim ve Bilgi Teknolojileri A.Ş. that the Board decision be evaluated again shall be rejected. (29.09.2011, 11-50/1253- 442)

- As a result of the examination made upon the request that the transaction where a joint venture with the nature of an incorporated firm will be established by Kantara Havayolları Hava Taşımacılığı Ltd. Şti., Turkish Airlines and 25 real and legal persons be authorized, the Board has decided that 1-) the notified transaction is not a merger or an acquisition according to the Act No. 4054 or the Communiqué No. 2010/4, 2 - The joint venture, which constitutes an agreement restricting competition under the scope of Article 4 of the Act No 4054, shall be given individual exemption for 5 (five) years as it fulfills all

of the requirements in Article 5 of the Act No. 4054 (29.09.2011, 11-50/1257-446)

- The Communiqué on the Amendment of the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board, No:2010/4 (Communiqué No: 2011/2) entered into force through publication in the Official Gazette dated 30.09.2011 and numbered 28070.
- As a result of the examination conducted based on the claim that T.C. Ziraat Bankası A.Ş. distorted the competitive environment in the insurance sector by supporting Ziraat Sigorta A.Ş., which is a company in the same group, within the Tarsim (Agricultural Insurance Pool) system, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (02.11.2011, 11-55/1439-513)
- As a result of the examination conducted based on the claim that Kariyer.Net Elektronik Yayıncılık ve İletişim Hizmetleri A.Ş. violated the Act no 4054 by abusing its dominant position within the internet advertisements market aimed at human resources and training services, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (02.11.2011, 11-55/1442-516)
- As a result of the examination conducted upon the request that a negative clearance document be given or exemption be granted to the "Product Development, Manufacturing and Supply Agreement" concluded between Tofaş Türk Otomobil Fabrikası A.Ş. and Fiat Group Automobiles SpA, as amended with the participation of Adam Opel GmbH, the Board decided that having been evaluated together with the "Doblo Vehicle Supply Agreement" concluded between Fiat Auto S.p.A and Adam Opel GmbH, the amendment text signed in order to change and correct certain provisions and conditions of the "Product Development, Manufacturing and Supply Agreement" concluded between Tofaş Türk Otomobil Fabrikası A.Ş. and Fiat Group Automobiles SpA is an agreement between undertakings under Article 4 of the Act, however, the notified agreement shall be granted individual exemption since

it fulfills conditions under Article 5 of the Act. (05.10.2011; 11-51/1288-453)

- As a result of the examination conducted upon the claim that Borusan Otomotiv İthalat ve Dağıtım A.Ş. limits competition by not providing the inspection machinery on BMW brand devices of which it is the distribütor, and related training to private services, the Board decided that unless the demand for technical information, training and equipment of independent services are met by Borusan Otomotiv İthalat ve Dağıtım A.Ş., the exemption stipulated under article 5 of the Block Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector Communiqué No: 2005/4 may not be benefited from, that article 4.16. of the "Authorized Service Agreement" is in violation of article 6 of the Communiqué No: 2005/4, that no individual exemption shall be granted pursuant to article 5 of Act No. 4054 for the aforementioned article of the agreement and its application, that therefore the amendments made to such application and the relevant article of the agreement in pursuant to article 9 paragraph 3 of Act No. 4054 in order to ensure compliance with the Communiqué No: 2005/4 shall be documented to the Competition Authority in 60 days, and that otherwise the Presidency shall be appointed to issue an opinion to Borusan Otomotiv İthalat ve Dağıtım A.Ş. that relevant action shall be taken against them within the scope of Act No. 4054. (13.10.2011; 11-52/1309-460)
- The Board decided that the acquisition, by TEB Portföy Yönetimi A.Ş., of Fortis Portföy Yönetimi A.Ş. together with all of its assets and liabilities through dissolution without liquidation did not fall under the scope of Article 7 of the Act no 4054 or the Communiqué no 2010/4 since the parties were under a single economic entity, and that the transaction should be granted a certificate of negative clearance, on the request of the parties, in accordance with article 8 of the Act no 4054. (18.10.2011; 11-53/1360-485)
- As a result of the examination conducted concerning the "Closed Points of Sales Agreement" signed between Efes Pazarlama

Dağıtım ve Ticaret A.Ş. and closed points of sales, revised under the obligations introduced by the Board decision numbered 11-42/911-281 in order to grant a certificate of negative clearance/ exemption to the Agreement as well as to determine the compliance of the contract with the aforementioned decision, the Board decided that obligations specified by the Board decision numbered 11-42/911-281 were implemented by Efes Pazarlama Dağıtım ve Ticaret A.Ş., and a certificate of negative clearance should be issued for the notified agreement since it did not include any provisions which could fall under articles 4, 6 and 7 of the Act no 4054. (17.11.2011, 11-57/1474-530)

- As a result of the examination conducted based on the claim that Mey İçki San. ve Tic. A.Ş. complicated the operation of its competitors within the market through its practices, abused its dominant position, and signed exclusive contracts with open points of sales, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (17.11.2011, 11-57/1476-532)
- As a result of the examination conducted based on the claim that Trakya Cam Sanayii A.Ş. violated competition by complicating the operations of competing companies through various means such as undertaking all or part of freight costs against commercial custom and implementing predatory and selective pricing practices via various discounts and by forcing double-glaze producing companies to make exclusive glass purchases from Trakya Cam Sanayii A.Ş. through the authorized manufacturer system it established, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint should be rejected. (17.11.2011, 11-57/1477-533)
- As a result of the examination conducted based on the claim that Turkcell İletişim Hizmetleri A.Ş. restricted the competition by taking advantage of its dominant position on the GSM services market and imposed restrictions on the distributors on the distribution network, conducted discriminatory practices between those undertakings, determined fixed prices and profit margins

concerning campaign devices, the Board decided that initiating an investigation was not necessary under the Act no 4054 and the complaint and request of provisory measure should be rejected. (24.11.2011, 11-59/1516-541)

- Communiqué on the Increase of the Lower Thresholds for Administrative Fines Specified in Paragraph 1, Article 16 of the Act No 4054 on the Protection of Competition, to be valid until 31/12/2012 (Communiqué No: 2012/1) has been published in the Official Gazette dated 12.12.2011 and numbered 28140. The Communiqué entered into force on 01.01.2012

- As a result of the examination made upon the request that "Vehicle Transportation Contract and Its Attachments" signed between Zer Merkezi Hizmetler ve Ticaret A.Ş. and Ford Otomotiv Sanayi A.Ş., and "Vehicle Transportation Agreement and Its Attachments" signed between Zer Merkezi Hizmetler ve Ticaret A.Ş. and Tofaş Türk Otomobil Fabrikası A.Ş. on 03.05.2011 be granted exemption, the Board decided that the said agreements and attachments are regarded as horizontal cooperation agreements within the scope of Article 4 of the Act No. 4054; moreover, the said agreements shall be granted individual exemption as they fulfil all of the conditions listed in Article 5 of the Act No 4054. (07.12.2011, 11-60/1559-552)

- As a result of the examination made upon the claim that TP Petrol Dağıtım A.Ş. violated the Communiqué No. 2002/2 via the sales tonnage commitment imposed to the dealer by agreement and abused its dominant position over the dealer, the Board decided that the vertical relationship between Kazovalılar Motorlu Araçlar Petrol Ürünleri Nak. Taah. San. ve Tic. Ltd. Şti. and TP Petrol Dağıtım A.Ş., which is consisted of the protocol dated 12.09.2007 and dealership agreement together with usufruct right of the same date benefits from exemption within the scope of the Block Exemption Communiqué No. 2002/2 on Vertical Agreements until 12.09.2012 and it is not necessary to open an investigation about TP Petrol Dağıtım A.Ş. within the framework of the Act No. 4054 and the complaint shall be dismissed. (07.12.2011, 11-60/1567-558)

- As a result of the examination made upon the claim that BP Petrolleri A.Ş. violated the Act No. 4054 and the Communiqué No. 2002/2 by its vertical agreements and various practices, the Board decided that the license of the liquid fuel station on the immovable that is the subject of the complaint was annulled by the Energy Market Regulatory Authority and as a consequence, the agreement between the parties ended; the vertical relationship that is the subject of the application benefits from block exemption within the scope of the Communiqué No. 2002/2 and it was found that BP Petrolleri A.Ş. sent mandates to the parties for cancelling the usufruct; therefore, it is not necessary to make any proceedings about BP Petrolleri A.Ş. (07.12.2011, 11-60/1569-560)
- As a result of the examination made upon the claim that Düze Denizli Chamber of Tradesmen for Shuttle Bus Operators obtained a document called "Commitment" and a bond of TL 20000 from its members, rigged bids in tenders and restricted competition, the Board decided that; preventing work opportunities and creating a pool by Denizli Chamber of Tradesmen for Shuttle Bus Operators under the maximum fee tariff were deemed as decisions of associations of undertakings infringing competition according to Article 4 of the Act No. 4054, however, taking into account the facts that the said Chamber provided evidence related to the practices in question, the practices were recent and there was a decision that 2011-2012 school year was accepted as a transition period and noncompliance with the practices constituting an infringement was possible for the members, it was not necessary to open an investigation according to the Act No. 4054. Moreover, an opinion would be sent to Denizli Chamber of Tradesmen for Shuttle Bus Operators, pursuant to Article 9 of the Act No. 4054, stating that it should terminate the practices in questions otherwise proceedings would be initiated according to the same Act. (21.12.2011, 11-62/1636-573)

Important Legislation and Decisions regarding Mergers and Acquisitions

- The Competition Board (the "Board") decided that acquisition of 50% of the shares of Baymak Makina Sanayi ve Ticaret Ltd. Şti. by the partner of the company, Baxi Holding GmbH, has been authorized as the transaction would not result in creating a dominant position, or strengthening an existing dominant position as specified in Article 7 of Act No. 4054 and in Communiqué No. 1997/1, and thus in decreasing competition. (09.02.2011; 11-08/149-4)

- The Board decided that acquisition of all of the shares of Filmed Tıbbi Cihazlar Pazarlama ve Tic. A.Ş. by FUJIFILM Europe GmbH, FUJIFILM Europe B.V., FUJIFILM Holdings France SAS, FUJIFILM UK Ltd. and FUJIFILM Italia S.p.A. is under the scope of Article 7 of Act No. 4054 and Communiqué No. 2010/4 and is authorized since it would not result in creating a dominant position, or strengthening the existing dominant position as specified in the said Article. (16.02.2011; 11-09/165-54)

- The Board decided that acquisition of nine offices rented by Greens Alışveriş Hizmetleri Ltd. Şti. by Migros Ticaret A.Ş. via leasing has been authorized as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of Act No. 4054 and in Communiqué No. 1997/1, and thus in decreasing competition. (23.02.2011; 11-10/186-62)

- The Board decided that the transfer of 13,958,998 of the shares owned by STFA and held in Energaz Gaz Elektrik Su Dağıtım A.Ş., to Enerji Yatırım Holding A.Ş., and the transfer of 1 share owned by STFA to Global Yatırım Holding A.Ş. are not within the scope of Article 7 of Act No. 4054 and Communiqué No. 2010/4, due to the fact that no change in control occurs. (03.03.2011, 11-12/222-72)

- The Board decided that the acquisition of Cine 5 TV Ticari ve İktisadi Bütünlüğü by Al Jazeera Turk Yayıncılık Hizmetleri A.Ş., as a result of the sales tender opened by the SDIF, is within the

scope of Article 7 of Act No. 4054 and Communiqué No. 1998/4. However, the acquisition is not subject to authorization since the turnover thresholds provided in the said Communiqué are not exceeded. (03.03.2011, 11-12/218-71)

- The Board decided that the acquisition of Erdemir Çelbor Çelik Çekme Boru Sanayi ve Ticaret A.Ş., with all of its assets and liabilities, by Erdemir Çelik Servis Merkezi Sanayi ve Ticaret A.Ş., is not within the scope of Article 7 of Act No. 4054 and Communiqué No. 2010/4 since the parties are within the same economic entity. (10.03.2011, 11-15/252-81)
- The Board authorized the establishment of a joint venture between Türk Hava Yolları Teknik A.Ş. and Zorlu O/M Enerji Tesisleri İşletme ve Bakım Hizmetleri A.Ş. since it would not result in the creation or strengthening of a dominant position as described under Article 7 of Act No. 4054 and the Communiqué No. 2010/4 and thus in significant lessening of competition. (17.03.2011, 11-16/295-95)
- The Board authorized the transfer of all of the shares of Set Group Holding A.Ş. to Limak Anadolu Çimento İnşaat Malzemeleri San. ve Tic. A.Ş. since it would not result in the creation or strengthening of a dominant position as described under Article 7 of Act No. 4054 and the Communiqué No. 2010/4 and thus in significant lessening of competition. (17.03.2011, 11-16/300-96)
- The Board decided that the acquisition of 95% of the shares of Süd-Chemie AG by Clariant AG fell under the scope of Article 7 of the Act no 4054 and the Communique no 201/4; but that was not subject to authorization since no market was affected as a result of the transaction. (07.04.2011, 11-22/401-128)
- The Board decided that the acquisition of the shares of ING Menkul Değerler A.Ş. by ING Bank A.Ş. did not fall under article 7 of the Act no 4054 or under the Communiqué no 2010/4, since the undertakings were parts of the same economic entity and therefore there was no change in control. (07.04.2011, 11-22/390-123)
- The joint venture transaction planned between Türk Hava Yolları A.O., Türk Hava Yolları Teknik A.Ş. and TUSAŞ-Türk Havacılık

ve Uzay Sanayi A.Ş. has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (14.04.2011, 11-23/430-130)

- The Board decided that the acquisition of 80% of the shares of İmpo Motor Pompa San. ve Tic. A.Ş. by Franklin Electric BV fell under the scope of article 7 of the Act no 4054 as well as the Communiqué no 2010/4; but that it was not subject to authorization since the thresholds prescribed in the same Communiqué were not exceeded. (21.04.2011, 11-25/474-143)
- The Board decided that the acquisition, by Çankaya Doğalgaz Dağıtım A.Ş. or Celal SEVER, of 20% of the shares of Başkent Doğalgaz Dağıtım A.Ş. did not fall under the scope of Article 7 of the Act no 4054 or the Communiqués no 1998/4, 2010/4 since this did not cause a change in the control structure of Başkent Doğalgaz Dağıtım A.Ş. (28.04.2011, 11-26/532-159)
- The acquisition, by International Petroleum Investment Company, of 48.83% of the shares of Compania Espanola de Petroleos S.A., which were previously under the indirect ownership of Total S.A., and the related transfer of sole control over Compania Espanola de Petroleos S.A. to International Petroleum Investment Company has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (28.04.2011, 11-26/494-151)
- The transfer of sole control over EKY – Eczacıbaşı-Koramic Yapı Kimyasalları San. ve Tic. A.Ş., which was previously under the joint control of Eczacıbaşı Group and Koramic Investment, to Koramic Holding N.V. through the acquisition of 50% of its shares by Koramic Holding N.V. affiliates has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (28.04.2011, 11-26/496-153)

- The acquisition, by DK Gazetecilik ve Yayıncılık A.Ş., of all trademarks and royalties and Internet domain names owned by Milliyet Newspaper published under the body of Doğan Newspaper Business as well as 99.99% of the shares of Bağımsız Gazeteciler Yayıncılık A.Ş. which contains all trademarks and royalties and Internet domain names of Vatan Newspaper has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (28.04.2011, 11-26/528-158)
- The Board authorized the acquisition by Ageas Insurance International N.V. of 30.99% shares of Aksigorta A.Ş., controlled by Hacı Ömer Sabancı Holding A.Ş. and therefore establishing joint control over Aksigorta A.Ş. as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (04.05.2011; 11-28/581-182)
- The Board authorized the acquisition of 83% shares of Gitti Gidiyor Bilgi Teknolojileri Sanayi ve Ticaret A.Ş. by the partner, eBay Inc. as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (12.05.2011; 11-30/588-185)
- The Board authorized the acquisition by TransAtlantic Worldwide Ltd. of the shares and the entire control of Thrace Basin Natural Gas Turkiye Corporation owned by Mustafa Mehmet Corporation since the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (17.05.2011; 11-31/620-191)
- The Board authorized the transaction where GB Retail Investments Holding B.V. acquires about 75% shares of Yargıcı Konfeksiyon İhracat ve Ticaret A.Ş. and therefore a joint venture

will be established as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (26.05.2011; 11-32/660-205)

- The Board authorized the acquisition of the control of Bulgari S.p.A. by LVMH Moét Hennessy - Louis Vuitton as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (26.05.2011; 11-32/659-204)
- The Board authorized the transaction of acquisition by Atos Origin S.A. of the sole control of Siemens AG's information technology services activities (also including assets to be transferred in Turkey) conducted by Siemens IT Solutions and Services GmbH due to the fact that it would not result in creating a dominant position or strengthening an existing dominant position and hence in reducing competition significantly of a nature mentioned in article 7 of the Act No. 4054 and in the Communiqué No. 2010/4. (02.06.2011, 11-33/702-215)
- The Board decided that the transaction of transferring to Zhejiang Longsheng Group Co. Ltd. of 62.4% of the capital of Kirl Holding Singapore Private Limited and therefore the control of Dystar Colours Distribution GmbH 1- be authorized due to the fact that the transaction which was the subject matter of the notification would not result in creating a dominant position or strengthening an existing dominant position and hence in reducing competition significantly of a nature mentioned in article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, 2- however, due to the fact that the transaction cited has been carried out without the authorization of the Competition Board, an administrative fine of TL 1.697,92 be imposed on Zhejiang Longsheng Group Co. Ltd. by one per thousand of its gross revenue that formed by the end of the financial year 2010 in accordance with the Act No. 4054. (02.06.2011, 11-33/723-226)

- The Board authorized the transaction of acquisition by Robert Bosch GmbH and its participations of the entire shares of Hüttlin GmbH and all assets belonging to Manesty since it would not result in creating a dominant position or strengthening an existing dominant position and hence in reducing competition significantly of a nature mentioned in article 7 of the Act No. 4054 and in the Communiqué No. 2010/4. (16.06.2011, 11-37/776-242)
- The Board authorized the acquisition by Aygaz A.Ş. of part of the assets related to the bottled LPG distribution business owned by Total Oil Türkiye A.Ş. and of the relevant dealership contracts has been authorized since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué 2010/4 and thus in significant lessening of competition. (06.07.2011; 11-41/873-274)
- The Board, as a result of the examination in relation to the authorization of the transfer of Burgaz Alkollü İçecekler Commerical and Economic Entity to Antalya Alkollü İçecekler San. ve Tic. A.Ş. in fulfillment of the obligation under the Competition Board decision dated 8.7.2010 to sell all of the assets Mey İçki acquired as part of Burgaz with the exception of the trademark of İstanblue and together with the trademark of Vodka 1967 to an appropriate buyer within a given period of time, decided that authorization be given to the transaction filed with the Competition Authority by Mey İçki Sanayi ve Ticaret A.Ş. concerning the transfer of Burgaz Alkollü İçecekler Commerical and Economic Entity to Antalya Alkollü İçecekler San. ve Tic. A.Ş. in fulfillment of the obligation under the Competition Board decision dated 8.7.2010 and numbered 10-49/900-314 to sell all of the assets Mey İçki acquired as part of Burgaz with the exception of the trademark of İstanblue and together with the trademark of Vodka 1967 to an appropriate buyer within a given period of time. (06.07.2011; 11-41/865-M)
- The Board authorized the establishment of two joint ventures through the transfer of 50% of the shares of Milangaz LNG Toptan Satış Tic. ve San. A.Ş. by Demirören Enerji Madencilik

San. ve Tic. A.Ş. to EGL Holding Luxembourg AG; and 50% of the shares of EGL Elektrik Toptan Ticaret A.Ş. by EGL Holding Luxembourg AG to Demirören Enerji Madencilik San. ve Tic. A.Ş., on a reciprocal basis, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué 2010/4 and thus in significant lessening of competition. (14.07.2011; 11-43/920-289)

- The Board decided that the acquisition of the shares of Tekkale Elektrik Üretim Tic. San. A.Ş. by Nuh Enerji Elektrik Üretim A.Ş. and other Nuh Çimento Group companies fell under the scope of article 7 of the Act no 4054 as well as the Communiqué no 2010/4; but that it was not subject to authorization since the thresholds prescribed in the same Communiqué were not exceeded. (03.08.2011, 11-44/957-310)
- The Board decided that the acquisition, by Yöntem Dış Ticaret Ltd. Şti. and Musa Kazım ENGİN, of 100% of the shares of Wella Kozmetik Sanayi ve Ltd. Şti. owned by Procter & Gamble International Operations S.A. and Walter Ludwig fell under the scope of article 7 of the Act no 4054 as well as the Communiqué no 2010/4; but that it was not subject to authorization since the thresholds prescribed in the same Communiqué were not exceeded. (03.08.2011, 11-44/986-332)
- The acquisition of control over MAN SA company by Volkswagen AG through mandatory share purchase bids has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (03.08.2011, 11-44/990-336)
- The acquisition of 55% of the 99% of shares held by BNP Paribas IP BE Holding S.A. in Fortis Portföy Yönetimi A.Ş. has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (17.08.2011, 11-45/1059-364)

- The acquisition of 99.86% of shares held by Denizbank A.Ş.in Deniz Emeklilik ve Hayat A.Ş. by Metlife Alico Türkiye has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (25.08.2011, 11-46/1115-386)
- The Board has authorized the acquisition of the entire issued and outstanding shares of Transatlantic Holdings, Inc. by Validus Holdings, Ltd., without any demand from Transatlantic Holdings, Inc. since the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (14.09.2011, 11-47/1157-403)
- As a result of the examination made upon the request that individual exemption be given to "Filling Service Agreement" between Aygaz A.Ş. and İpragaz A.Ş., the Board has decided that "Filling Service Agreement" between Aygaz A.Ş. and İpragaz A.Ş. is under the scope of Article 4 of the Act No. 4054, the agreement shall be granted individual exemption as it fulfills all of the conditions listed in Article 5 of the Act No 4054. (22.09.2011, 11-48/1213-426)
- The Board authorized the acquisition by Robert Bosch GmbH of starting motor, alternator, heat control components and wiper production activities of Unipoint Group, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué 2010/4 and thus in significant lessening of competition. (05.10.2011; 11-51/1287-452)
- The Board decided that the transfer of the shares of Adabank A.Ş. - which have been seized in accordance with the Banking Act No. 5411 article 134 paragraph 5 and the provisions of the Act No. 6183 on the Procedure for the Collection of Public Receivables and which belongs to Kemal Uzan, Cem Cengiz Uzan, Murat

Hakan Uzan, Yapı ve Ticaret A.Ş., Ayşegül Uzan, Basıntaş Anadolu Basın End. A.Ş., Bahattin Uzan, Melahat Uzan, Yavuz Uzan, Rumeli Holding A.Ş., Merkez Yatırım ve Tic. A.Ş., Doğan Kardeş Mat. San. A.Ş., Neşriyat A.Ş., Matbataş MatbaAcılık San. Tic. A.Ş., and Hayat Yayınları A.Ş. - to G Capital Danışmanlık A.Ş. - which was the highest bidder in the tender organized by the SDIF for its sale - is not subject to authorization since the market share and turnover thresholds provided under article 7 of the Act No. 4054 and article 5 of the Communiqué No. 1998/4 are not exceeded. (13.10.2011; 11-52/1322-473)

- The transfer of all of the shares of Koç.net Haberleşme Teknolojileri ve İletişim Hizmetleri A.Ş. to Vodafone Holding A.Ş. by Koç Holding A.Ş., Temel Ticaret ve Yatırım A.Ş., Zer Merkezi Hizmetler ve Ticaret A.Ş., İnventram Fikri Mülkiyet Hakları Yönetim Ticaret ve Yatırım A.Ş. and Koç Yapı Malzemeleri A.Ş. has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (02.11.2011, 11-55/1440-514)
- The acquisition of all of the shares of Işıl Televizyon Yayıncılık A.Ş. by Doğuş Yayın Grubu A.Ş. has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (02.11.2011; 11-55/1456-517)
- The acquisition of some of the assets of Mobil Oil Türk A.Ş. by THY Opet Havacılık Yakıtları A.Ş. has been authorized by the Board, since it would not result in the creation or strengthening of a dominant position as described under Article 7 of the Act No. 4054 and the Communiqué No. 2010/4, and thus in significant lessening of competition. (17.11.2011, 11-57/1465-522)
- The Board authorized establishing joint control through transferring Uçak Koltuk Üretim Sanayi ve Ticaret A.Ş., which is controlled by Türk Hava Yolları A.O., to joint control of the said

undertaking and Assan Hanil Otomotiv Sanayi ve Ticaret A.Ş. as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (07.12.2011, 11-60/1558-551)

- The Board authorized acquisition of the assets, dealership agreements and some of the brands related to cylinder and bulk LPG distribution business of Shell Gaz Ticaret ve Sanayi A.Ş. by İpragaz A.Ş. as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (14.12.2011, 11-61/1583-566)
- The Board authorized the transfer of the operating rights of Izmir Adnan Menderes Airport International Flights Terminal Building together with its complementary parts, CIP and Domestic Flights Building together with its complementary parts, which belong to the General Directorate of State Airports Authority, to TAV Havalimanları Holding A.Ş. by way of leasing according to the Act No. 5335 as the transaction would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition. (14.12.2011, 11-61/1629-568)
- The Board authorized the acquisition of the shares corresponding to 50% of İpek Kağıt Sanayi ve Ticaret A.Ş.'s capital by Eczacıbaşı Holding A.Ş. as the transaction would not result in creating a dominant position, or strengthening the existing dominant position and thus in decreasing competition. (21.12.2011, 11-62/1644-580)

Important Publications and Decisions regarding Privatization

- The decisions of the Supreme Council of Privatization dated 30.12.2010 and numbered 2010/115, dated 07.01.2011 and numbered 2011/01, dated 07.01.2011 and numbered 2011/02 were published in the Official Gazette dated 08.01.2011 and numbered 27809.
- Resolution 2011/10 of 08.02.2011 of the Supreme Council of Privatization regarding the inclusion of Kısık Hydroelectric River Plant within the scope of privatization and that the transactions related to the privatization will be finalized before 31.12.2012, was published in the Official Gazette dated 09.02.2011 and numbered 27841.
- Resolution 2011/14 of 21.02.2011 of the Supreme Council of Privatization regarding the inclusion of the participation shares at the rate of 28.2% of Eti Maden İşletmeleri Genel Müdürlüğü in Hidrojen Peroksit Sanayi ve Ticaret A.Ş. within the scope of privatization and that the transactions related to the privatization will be finalized within 2 years, was published in the Official Gazette dated 22.02.2011 and numbered 27854.
- A tender notice related to the privatization of Mazıdağı Fosfat Facilities held by Sümer Holding A.Ş. was published on the website of the Supreme Council of Privatization.
- The Resolution 2011/22 of 07.03.2011 of the Supreme Council of Privatization was published in the Official Gazette dated 01.04.2011 and numbered 27892. This Resolution is related to the inclusion of Göksu Elektrik Dağıtım A.Ş. within the scope and program of privatization.
- The Resolutions 2011/26-32 of 11.04.2011 of the Supreme Council of Privatization were published in the Official Gazette dated 12.04.2011 and numbered 27903. These Resolutions are related to the privatization of Boğaziçi Elektrik Dağıtım A.Ş., Dicle Elektrik Dağıtım A.Ş., Gediz Elektrik Dağıtım A.Ş., Trakya Elektrik Dağıtım A.Ş., Akdeniz Elektrik Dağıtım A.Ş., İstanbul Anadolu Yakası Elektrik Dağıtım A.Ş. ve Toroslar Elektrik Dağıtım A.Ş.

- In the process concerning the acquisition, via privatization, of 80% of the shares of Başkent Doğalgaz Dağıtım A.Ş. by MMEKA Makine İthalat Pazarlama ve Ticaret A.Ş., The Competition Board (the "Board") decided that the acquisition of the aforementioned shares by ÇANKAYA Doğalgaz Dağıtım A.Ş., established by MMEKA Makine İthalat Pazarlama ve Ticaret A.Ş. did not fall under the Act no 4054 or the Communiqué no 2010/4. (14.04.2011, 11-23/457-135)
- The Board, with respect to privatization of the shares belonging to Istanbul Metropolitan Municipality, Affiliated Undertakings and Shareholdings of Istanbul Metropolitan Municipality via block sale, decided that acquisition by Tepe İnşat Sanayi A.Ş.-Akfen Holding A.Ş.-Souter Investments LLP-Sera Gayrimenkul Yatırım ve İşletme A.Ş. Joint Venture Group or Torunlar Gıda Sanayi ve Ticaret A.Ş. of the shares belonging to Istanbul Metropolitan Municipality, Affiliated Undertakings and Shareholdings of Istanbul Metropolitan Municipality via block sale is subject to authorization according to Article 7 of the Act No. 4054 and the Communiqué No. 1998/4, possible acquisition by one of the said bidders would not result in creating a dominant position, or strengthening the existing dominant position as specified in Article 7 of the Act No. 4054 and in the Communiqué No. 2010/4, and thus in decreasing competition; therefore there are not any concerns about the authorization of the transaction, with respect to the application by Alpay Alkan related to the transfer, it is not necessary to make any proceedings according to the Act No. 4054. (04.05.2011; 11-28/548-166)
- The Resolution 2011/70 of 18.08.2011 of the Supreme Council of Privatization was published in the Official Gazette dated 20.08.2011 and numbered 28031. This Resolution is related to the inclusion of the immovable in the City of Muğla owned by TTA within the scope and program of privatization.
- The Board decided that the privatization of the Acıpayam Selüloz San. ve Tic. A.Ş. through the acquisition, by Verusa Girişim Sermayesi A.Ş. or Sürtaş Maden San. Tic. A.Ş. of the 76.83% of its

capital shares held by the General Directorate of the Development Bank of Turkey fell under the scope of article 7 of the Act no 4054 as well as the Communiqué no 1998/4; but that it was not subject to authorization since the thresholds prescribed in article 5 of the same Communiqué were not exceeded. (18.10.2011; 11-53/1348-477)

- Resolution dated 12.09.2011 of the Supreme Council of Privatization pertaining to the privatization of certain immovable of Turkish State Railways was published in the Official Gazette dated 19.10.2011 and numbered 28089.

Important Changes and Development regarding Energy Law

- The Technical Security and Environmental Regulation Regarding the Construction and Operation of Pipeline Facilities for Crude Oil and Natural Gas of Petroleum Pipeline Corporation entered into force through publication in the Official Gazette dated 06.01.2011 and numbered 27807.
- The Law on the Amendment to the Law Pertaining to the Use of Renewable Energy Resources for the Generation of Electrical Energy entered into force through publication in the Official Gazette dated 08.01.2011 and numbered 27809.
- The Draft Regulation on Amendment to the Electric Market Distribution Regulation concerning electric vehicles was published on the official website of Energy Market Regulatory Authority on 18.01.2011.
- The Energy Market Regulatory Agency (the "EMRA") Board (the "EMRA Board") decided in its meeting dated 06.01.2011 that there will be no promotion under the names of gift, sample, campaign and similar names in sales of LPG auto gas as of 31.01.2011.
- The Law Pertaining to the Regulation of Some Debts and Claims of Some Public Institutions and Establishments entered into force through publication in the Official Gazette dated 03.03.2011 and numbered 27863. The scope of the Law is determined as Petroleum Pipeline Corporation ("BOTAŞ"), Electricity Generation Co. Inc. ("EUAŞ") and its affiliates, Turkish Electricity Transmission Company ("TEİAŞ"), Turkish Electricity Trade and Contracting Company ("TETAŞ"), Turkish Electricity Distribution Company ("TEDAŞ") and the distribution companies whose capital is held by TEDAŞ.
- The Communiqué on the Amendment of the Communiqué Pertaining to the Price Equalizing Mechanism that would Apply to the Electricity Distribution Zones entered into force through publication in the Official Gazette dated 03.03.2011 and numbered 27863.

- The Regulation on the Principles and Procedures that would Apply to Purchases of Goods and Services by TEİAŞ, as per Article 3/g of Public Tenders Law 4734 entered into force through publication in the Official Gazette dated 04.03.2011 and numbered 27864.
- The Communiqué on the Amendment of the Compulsory Standard Communiqué (No: OSG-2011/03) pertaining to standards for storage of LPG entered into force through publication in the Official Gazette dated 10.03.2011 and numbered 27870. The Communiqué entered into force after the lapse of 15 days following its publication.
- The Regulation on the Amendment of the Petroleum Market License Regulation entered into force through publication in the Official Gazette dated 15.03.2011 and numbered 27875.
- The Draft Regulation on Procedures and Principles Regarding Main Use of Underground Natural Gas Storage Facility was published on the website of EMRA on 22.03.2011 in order for the provision of related opinions until 05.04.2011.
- The Board resolution regarding the wholesale tariff to be applied in the electricity market by TETAŞ was published on the website of EMRA on 25.03.2011.
- Regulation on the Amendment of the Electricity Market License Regulation entered into force through publication in the Official Gazette dated 05.04.2011 and numbered 27896.
- Regulation on the Amendment of the Natural Gas Market License Regulation entered into force through publication in the Official Gazette dated 09.04.2011 and numbered 27900.
- Regulation on the Amendment of the Petroleum Market License Regulation entered into force through publication in the Official Gazette dated 21.04.2011 and numbered 27912.
- Regulation on the Amendment of National Marker Implementation on Oil Market Regulation entered into force through publication in the Official Gazette dated 17.05.2011 and numbered 27937.

- Report on the Electricity Market of the year 2010 was published by the EMRA Board on 13.05.2011.
- Sector Report on Oil Market Regarding First Trimester of the year 2011 was published by the EMRA Board on 27.05.2011.
- The Regulation on Importation and Exportation in Electricity Market entered into force through publication in the Official Gazette dated 01.06.2011 and numbered 27951.
- The Regulation on the Amendment of the Regulation Pertaining to Auditing of Real and Legal Persons Active in Energy Market by Independent Auditing Firms entered into force through publication in the Official Gazette dated 04.06.2011 and numbered 27954.
- The Regulation Pertaining to Procedures and Principles Regarding Basic Utilization of Underground Storage Facilities for Natural Gas entered into force through publication in the Official Gazette dated 04.06.2011 and numbered 27954.
- The resolutions of EMRA Board dated 31.05.2011 regarding ratification and publication of "Board Resolution on Explanations of License Application in Oil Market", "Board Resolution on Information and Documents to be Sought in Applications for License Modification in Oil Market", "Board Resolution on Information and Documents to be Sought in Applications for Extension of License in Oil Market" entered into force through publication in the Official Gazette dated 09.06.2011 and numbered 27959.
- The Procedures and Principles Regarding Determination and Following Realization of Investment Expenditures based on Configuration of Electricity Market Distribution System entered into force through publication in the Official Gazette dated 17.06.2011 and numbered 27967.
- The Procedures and Principles Regarding Capacity Allocation and Secondary Commercial Transmission Right Market Pursuant to the Regulation on Importation and Exportation in Electricity Market entered into force through publication in the Official Gazette dated 17.06.2011 and numbered 27967.

- The Regulation on the Amendment of the Electricity Market Distribution entered into force through publication in the Official Gazette dated 18.06.2011 and numbered 27968.
- The Regulation Pertaining to Electricity Generation Facilities Based on Solar Energy entered into force through publication in the Official Gazette dated 19.06.2011 and numbered 27969.
- The Regulation Pertaining to Domestic Production of Components Utilized in Facilities Generating Electricity Energy from the Renewable Energy Resources entered into force through publication in the Official Gazette dated 19.06.2011 and numbered 27969.
- The Regulation on the Amendment of the Regulation Pertaining to Technical Criteria to be Applied in Petroleum Market entered into force through publication in the Official Gazette dated 25.06.2011 and numbered 27975.
- The Sector Report on Oil Market for May 2011 was published on 12.07.2011 by Energy Market Regulatory Board.
- The Report on the Electricity Market for the year 2010 was published by the EMR Board on 19.07.2011.
- Regulation Pertaining to the Documentation and Supporting Renewable Energy Resources entered into force through publication in the Official Gazette dated 21.07.2011 and numbered 28001.
- Regulation Pertaining to the Power Generation in Electricity Market without Generation License entered into force through publication in the Official Gazette dated 21.07.2011 and numbered 28001.
- Regulation on the Amendment of the Oil Market License Regulation entered into force through publication in the Official Gazette dated 28.07.2011 and numbered 28008.
- Regulation on the Amendment of the Electricity Market License Regulation entered into force through publication in the Official Gazette dated 30.07.2011 and numbered 28010.

- The Regulation on the Amendment of the Oil Market License Regulation entered into force through publication in the Official Gazette dated 10.08.2011 and numbered 28021.
- The Regulation on the Amendment of the Electricity Market License Regulation entered into force through publication in the Official Gazette dated 11.08.2011 and numbered 28022.
- The Communiqué on the Amendment of the Communiqué on Technical Regulations Regarding Diesel Fuel (Liquid Fuel Series No: 22) entered into force through publication in the Official Gazette dated 27.09.2011 and numbered 28067.
- The Communiqué on the Amendment of the Communiqué on Technical Regulations Regarding Liquid Fuel (Liquid Fuel Series No:23) entered into force through publication in the Official Gazette dated 27.09.2011 and numbered 28067.
- Regulation on the Amendment of the Regulation Pertaining to the Technical Criteria to be Implemented to the Oil Market entered into force through publication in the Official Gazette dated 28.10.2011 and numbered 28098.
- Regulation on the Amendment of the Petroleum Market Information System Regulation was published in the Official Gazette dated 03.11.2011 and numbered 28104. Different dates of entry into force have been determined for the articles of the Regulation.
- Regulation on the Amendment of the Electricity Market Balancing and Conciliation Regulation was published in the Official Gazette dated 03.11.2011 and numbered 28104. Different dates of entry into force have been determined for the articles of the Regulation.
- Regulation on the Amendment of the Petroleum Market License Regulation entered into force through publication in the Official Gazette dated 04.11.2011 and numbered 28105.
- Communiqué on the Auditing of Real and Legal Entities Active on the Energy Market by Independent Audit Institutions (Series No: 6) was published in the Official Gazette dated 29.11.2011 and

numbered 28127. Different dates of entry into force have been determined for certain articles of the communiqué.

- Regulation on the Amendment of the Electricity Market Peripheral Services Regulation has been published in the Official Gazette dated 17.12.2011 and numbered 28145. The Regulation entered into force on 01.01.2012.
- Communiqué on Fines that would Apply in the Year 2012 as per Article 19 of the Petroleum Market Law has been published in the Official Gazette dated 23.12.2011 and numbered 28151.
- Communiqué on the Fines that would Apply in the Year 2012 as per Article 9 of the Law on the Amendment of Electricity Market Law and on Natural Gas Market has been published in the Official Gazette dated 23.12.2011 and numbered 28151.
- Communiqué on Fines that would Apply in the Year 2012 as per Article 11 of the Electricity Market Law has been published in the Official Gazette dated 23.12.2011 and numbered 28151.
- Communiqué on the Fines that would apply in the Year 2012 as per Article 16 of the Law on the Amendment of the Liquidated Petroleum Gas (LPG) Market Law and of the Electricity Market Law has been published in the Official Gazette dated 23.12.2011 and numbered 28151.

Important Case Law

- The decision dated 21.04.2005 of Constitutional Court regarding the unconstitutionality and annulment of the first paragraph of article 32 of the Law on Amendment of Some Laws and Decree Laws dated 21.04.2005 and numbered 5335 was published in the Official Gazette dated 08.03.2011 and numbered 27868. This article authorized the board of directors to determine the procedures and principles regarding the privatisation of immovables of the General Directorate of Turkish State Railways.
- The Judgment of the Constitutional Court dated 20.01.2011 pertaining to the unconstitutionality and annulment of the Article 7/1 of the Law dated 29.06.2001 and numbered 4706 on the Amendment of the Law on the Assessment of Immovable Properties of Treasury and Value Added Tax Law was published in the Official Gazette dated 02.04.2011 and numbered 27893.
- The Judgment of the Constitutional Court dated 30.12.2010 pertaining to the rejection of unconstitutionality claim of the Articles 1, 2 and 4 of the Law dated 28.03.2007 and numbered 5614 on the Amendment of Some Laws and Decree Laws was published in the Official Gazette dated 06.04.2011 and numbered 27897.
- The Judgment of the Constitutional Court dated 20.01.2011 pertaining to the unconstitutionality and annulment of the Article 15 paragraph (7) subparagraph (b) of the Banking Law numbered 4389 was published in the Official Gazette dated 14.04.2011 and numbered 27905.
- Judgment of the Constitutional Court, E: 2009/5, K: 2011/31 pertaining to the Annulment of the article 112 of Tax Procedure Law Numbered 213 was published in the Official Gazette dated 14.05.2011 and numbered 27934. This judgment of Constitutional Court regarding annulment will enter into force at the end of one year following its publication.
- The First Chamber Resolution of Supreme Council of Judges and Public Prosecutors dated and numbered 16.05.2011/879 was

published in the Official Gazette dated 02.06.2011 and numbered 27952. Pursuant to this Resolution, Commercial Courts of First Instance shall be composed of sole judge as of 25.07.2011.

- The Resolution of High General Council of High Court of Appeals dated 12.05.2011 regarding division of works between Civil and Penal Chambers was published in the Official Gazette dated 02.06.2011 and numbered 27952.
- Judgment of the Constitutional Court, E: 2009/82, K: 2011/32 pertaining to the annulment of the part "10% of the sale of goods and services of Turkish Petroleum Corporation" of the article 3, paragraph (h) of the Law Pertaining to the Authorization of the Collection of Public Revenues and Realization of the Expenses Until the Entry into force of the Law regarding Financial Year General and Supplementary Budget was published in the Official Gazette dated 06.07.2011 and numbered 27986.
- Judgment of the Constitutional Court, E: 2009/58, K: 2011/52 pertaining to the annulment of the word "dead" in the article 713, paragraph 2 of Civil Code was published in the Official Gazette dated 23.07.2011 and numbered 28003.
- Judgment of the Constitutional Court, dated 28.04.2011 and numbered E: 2009/39, K: 2011/68, pertaining to the annulment of the temporary article 1 of Law on the Amendment of the Law dated 04.06.2008 and numbered 5766 on Procedure of Collection of Public Receivables and Certain Laws was published in the Official Gazette dated 15.10.2011 and numbered 28085.
- Judgment of the Constitutional Court, dated 30.06.2011 and numbered E: 2010/52, K: 2011/113, pertaining to the annulment of the article 278 of Turkish Penal Code dated 26.09.2004 and numbered 5237 was published in the Official Gazette dated 15.10.2011 and numbered 28085. This judgment of Constitutional Court regarding annulment will enter into force in six months following its publication.
- Judgment of the Constitutional Court numbered E: 2010/75, K: 2011/42, pertaining to the stay of execution pertaining to Law

dated 30.06.2004 and numbered 5205 on the Amendment of Law dated 29.06.2001 and numbered 4708 was published in the Official Gazette dated 15.11.2011 and numbered 28113.

- Judgment of the Constitutional Court numbered E: 2009/11, K: 2011/93, pertaining to the annulment of Law dated 03.06.2007 and numbered 5684 was published in the Official Gazette dated 16.11.2011 and numbered 28114.
- The decision of annulment for sake of the law of 13th Civil Chamber of High Court of Appeals dated 18.07.2011 has been published in the Official Gazette dated 06.12.2011 and numbered 28134. According to this decision, the claims to take return the amounts paid to the bank for the credit cards shall be subject to a lapse of time of 10 years pursuant article 125 of Code of Obligations and not 1 year applied for unjust enrichment.
- The decision of annulment for sake of the law of 13th Civil Chamber of High Court of Appeals dated 18.07.2011 has been published in the Official Gazette dated 07.12.2011 and numbered 28135. According to this decision, even the debts of the non-merchant party to a subscription agreement of which other party is a merchant shall be subject to commercial interest rate for default.

Important Changes and Developments in the European Union

- The decision of the European Central Bank of 13 December 2010 on the increase of the European Central Bank's capital (ECB/2010/26) (2011/20/EU) was published in the Official Gazette dated 15.01.2011. Pursuant to this decision, the ECB's capital will be increased by EUR 5 000 million from EUR 5 760 652 402,58 to EUR 10 760 652 402,58. This decision entered into force on 29.12.2010.
- The Communication from the Commission Technical Guidance Notes for Implementation of Regulation (EC) No 689/2008 concerning the export and import of dangerous chemicals was published in the Official Journal dated 01.03.2011 numbered C 65/1.
- The Energy Efficiency Plan 2011 and a Roadmap for moving to a low carbon economy in 2050 was drafted by European Commission on 08.03.2011.
- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC was published in the Official Journal dated 11.03.2011 numbered L 64/1.
- The Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships was drafted in Brussels on 16.03.2011.
- The Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes was drafted in Brussels on 16.03.2011.
- The Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) was drafted in Brussels on 16.03.2011.
- The Resolution of Council of Ministers dated 22.03.2011 pertaining to the ratification of the Financing Agreement concerning the

Cross-Border Cooperation Program within the Pre-Participation Assistance Instrument (IPA) between the Turkish Republic Government and European Communities Commission signed on behalf of the Turkish Republic on 26.05.2009 was published in the Official Gazette dated 29.04.2011 and numbered 27919.

- Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest is published on 08.06.2011.
- The Council Directive 2011/70/EURATOM of 19 July 2011 pertaining on the establishment of a Community framework for the responsible and safe management of spent fuel and radioactive waste was adopted on 02.08.2011.
- Turkey 2011 Progress Report was published by European Commission on 12.10.2011.
- Framework on State Aid to Shipbuilding has been published in the Official Journal of European Union dated 14.12.2011 and numbered C 364/9.
- Guideline of The European Central Bank of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem has been published in the Official Journal of European Union dated 14.12.2011 and numbered L 331/1.
- Regulation (EU) No 1227/2011 of The European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency has been published in the Official Journal of European Union dated 08.12.2011 and numbered L 326/1.

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