Prof. Dr. H. Ercüment Erdem
Editor

NEWSLETTER 2014

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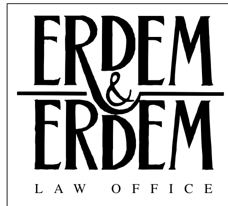

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PREFACE

We are very pleased to realize and present this published Newsletter 2014 book. As was the case in previous years, this Newsletter 2014, in book form, is the result of our systematic gathering of articles, published monthly on our firm's website. Since 2010, the considerable attention these publications have attracted from our business partners, clients, and other legal practitioners, have provided the impetus to pursue our efforts to further develop and expand our work.

We have not amended our systematic approach as adopted from our previous years in this Newsletter 2014 book. The enactment of secondary legislation under statute laws as amended since 2012 continued in 2014. Therefore, articles based on the relevant secondary legislation are preponderant in this Newsletter publication. In addition to company Law, Competition Law, Energy Law and Arbitration Law feature prominently in this publication. The legal developments section provides global insight into material developments in international agreements, laws, regulations, communiqués, decisions of the Competition Board and the Privatization Board, and energy laws that were passed in 2014, as well as material jurisprudence. We believe that this section provides a broad overview of the year.

This book is the accomplishment of a team that has been dedicated to this publication from the beginning, the members of which have worked with an extraordinary devotion and dedication, and who firmly believe in the importance of legal research and guidance through scientific data. We are sincerely grateful to, and truly appreciate, each and every author of these articles, as well as our colleagues who have edited, proofread, checked translations, and uploaded the articles to our website.

As we initiated our e-book Newsletter publication last year, we so continue in this tradition. This year's e-book may be accessed on our web-site, as well.

As a team who believes in constant development and progress, we welcome and value any feedback from our readers that will constitute valuable insight for us. Therefore, please do not hesitate to provide us with feedback and comments.

We trust that the contents of this publication will prove to be a useful resource for our clients and business partners, and we hope that 2015 brings prosperity, joy and contentment to all.

Nisantasi, January 2015

Att. Piraye Erdem	Prof. Dr. H. Ercüment Erdem
Founder and Managing Partner	Founding Partner

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LIST OF ABBREVIATIONS*

Art.	:	Article
BRSA	:	Banking Regulation and Supervision Agency
CC	:	Civil Chamber
CMB	:	Capital Markets Board
E.	:	File
EMRA	:	Energy Market Regulatory Authority
etc.	:	Et cetera
et seq.	:	Et sequentes
fn.	:	footnote
K.	:	Decision
No.	:	Number
p.	:	Page
s.	:	sentence
TCC	:	Turkish Code of Commerce
TCO	:	Turkish Code of Obligations
TTRG	:	Turkish Trade Registry Gazette
V.	:	Volume

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

COMMERCIAL LAW

Delegation of Duties of the Board of Directors*

Prof. Dr. H. Ercument Erdem

Introduction

The Turkish Commercial Code No. 6102[1] ("TCC") materially deviates from the abrogated Turkish Commercial Code No. 6762 ("ATC"), especially concerning the authorities and responsibilities of the board of directors. The TCC introduces important novelties governing the duties and authorities of the board of directors, and defines inalienable and nontransferable duties. There are important changes and innovations such as the separation of the top management and the day to day administration of the company, and the new system of delegation of powers. The board is now authorized to adopt any decision in order to realize any act falling within the scope of company activities.

The March 2011 newsletter article assessed in general the innovations which the TCC introduced concerning the board of directors[2]. This article will focus on the duties and authorities of the board of directors, as well as the delegation of such powers.

Nontransferable Duties

In General

The duties and powers of the general assembly and the board of directors and their distribution among the bodies of joint stock

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* ***Article of May 2014***

[1] Published on the Official Gazette dated 14 February 2011 and no. 27846, and entered into force on 1 July 2012.

[2] **Ercument Erdem**, Innovations in the Board of Directors of Joint Stock Companies, http://www.erdem-erdem.av.tr/en/articles/innovations-in-the-board-of-directors-of-joint-stock-companies/ (accessed on 3 June 2014).

companies were subject to debate under the ATC. In order to overcome this lack of clarity, the legislator expressly defines the inalienable and nontransferable duties of both the general assembly and the board of directors. Furthermore, Art. 394 TCC specifies that the board of directors is authorized to resolve any matter beyond those falling within the authority of the general assembly under the law or the articles of association; thus, the board of directors is designated as the main competent body. Thus, the principle of supremacy of the general assembly is abandoned.

Art. 375 TCC regulates the nontransferable duties and powers of the board of directors. This article specifies certain powers, including the top management of the company and the instructions regarding top management, determination of the management structure, establishment of a basis for financial planning, appointment and discharge of managers and signatories, surveillance of the management, the keeping of company ledgers and preparation of activity reports. Similarly to the ATC, the execution of general assembly resolutions and notification of the courts in the event of insolvency are also among the nontransferable duties of the board of directors. These duties may not be transferred to another body, committee, board or delegated to third persons, through the articles of association, a resolution or otherwise.

The nontransferable duties of the board of directors are not limited to those specified in Art. 375 TCC. Various other provisions stipulate tasks for which solely the board of directors is authorized. For example, the authority to appoint commercial representatives regulated under Art. 368 TCC should also be considered as a nontransferable duty based on Art. 375/1/d, which specifies the duty to appoint and discharge managers, persons having the same function and signatories among nontransferable duties.

Additionally, the preparation of the merger agreements for merger transactions (Art. 145), preparation of the agenda and convocation of the general assembly meetings (Art. 410), preparation of the annual activity report and a proposal to the general assembly on the areas in which the profit should be used (Art. 516), obtaining the approval of the Ministry of Customs and Trade for amendments to the articles of

association where necessary (Art. 435), providing consent or denying transfer of registered shares are also among the powers and duties of the board of directors. The articles of association or general assembly resolutions may assign further nontransferable duties to the board of directors.

Top Management and Signatories

Specific attention should be paid to the fact that the appointment and discharge of top management, managers and signatories are among the nontransferable duties of the board of directors. These duties mainly comprise of the determination of the company strategy and giving instructions for its application.

The board of directors is exclusively authorized to select the top management. Appointments to inferior positions under the top management may be delegated to the managers. Through emphasizing the word “top management” the code reiterates that the board of directors shall not be occupied with the day-to-day administration of the company, which is not included in the duties of top management.

Nonetheless, the wording of Art. 375/1/d TCC which reads “the appointment and discharge of managers, persons having the same function and signatories” can be construed to comprise all signatories, not just the top management when defining the scope of the nontransferable duty of the board. Accordingly, appointment of signatories is not among the powers which the board of directors can delegate.

The scope of managers and signatories with regards to the above provision is highly disputed among scholars. The selection and replacement of all signatories of every rank, who have been discharged, resigned or whose authorities are revoked for other reasons by the board of directors, acting as a board through adopting resolutions, will result in a large material workload, especially in large-scale companies (for example banks having a great number of branches). The narrow or broad interpretation of this wording by the courts will determine the scope of powers which the board of directors is entitled to delegate to third persons in practice. This provision has been adopted from Swiss legislation, and Swiss practice is to interpret this wording in a narrow manner to comprise the top management only. This provision could be

interpreted in a similar manner for practical reasons under Turkish law as well.

Distribution of Duties

Contrary to the ATC, the TCC regulates the transfer of management and representation of the company in separate articles, and introduces major changes with regards to both the internal distribution of duties within the board and the delegation of duties to board members or to third persons. In light of these provisions, the board of directors may determine its own organizational structure, the management, the distribution of powers and duties, and establish committees if needed.

Chairman and Deputy Chairman

Pursuant to Art. 366/1 TCC, the board of directors shall elect a chairman and at least one deputy chairman among its members each year. Thus, the TCC enables the election of more than one deputy chairman.

Committee and Commissions

The board of directors may establish committees and commissions for the surveillance of operations and administration, in which the board members may also participate (Art. 366/2). For example, although the TCC abandoned the internal audit system, if an internal audit is requested within a joint stock company, such an audit committee or commission may be established for this purpose. The establishment of committees or commissions is at the sole discretion of the board of directors. Nonetheless, Art. 378 TCC obliges companies traded on a stock exchange to have a committee for early detection of risk.

The committees may comprise of members of the board of directors, however there is no such obligation foreseen under the code.

The establishment of commissions is different from the distribution of tasks among the members of the board of directors or from the delegation of powers. The commissions and committees solely provide for a structure which assists the decision making process of the board of directors. Thus, contrary to the delegation of powers, there is no

requirement of having a provision in the articles of association in order to set up committees.

Delegation of Duties of the Board of Directors

Management

Management authority entails the management and operation of the company in line with the policies determined by the board of directors. Management concerns the internal structure of the company. Unless delegated, the management authority belongs to all members of the board of directors, who shall exercise this authority acting as a board (even if the board consists of one member only).

Pursuant to Art. 367 TCC, the board of directors may delegate the management authority (other than its nontransferable duties examined above) to one or more members of the board of directors or to third persons. The transfer referred to under this provision is the transfer of the corporate function of the board of directors.

The board of directors may, at its own discretion, decide to become a non-executive board of surveillance with no executive powers, through delegating all of its management power. Thus, it is possible for joint stock companies to be managed by professional managers and to freely choose and determine the most convenient management structure for themselves.

The first prerequisite in order for the management power to be delegated is to have a provision that enables such delegation of power in the articles of association. A mere general assembly resolution governing the delegation of powers is not sufficient. Second, if authorized by the articles of association, the board of directors may delegate the management through adopting an internal regulation governing the delegation of management. The internal regulation shall designate the distribution and delegation of management authorities, positions, definitions of positions and their rankings, the hierarchy and obligations to inform among positions; in compliance with the accountability and responsibility principles.

Representation

Unlike management authority, representative authority concerns the (external) relations of the company with third persons. Therefore, the possibility of delegating the representation of a company is regulated in a more limited manner under the TCC in comparison with the delegation of management.

The board of directors may delegate its representative powers to one or more members of the board of directors or to third persons. Pursuant to Art. 370/2, at least one member of the board of directors should have the right to represent and bind the company.

Art. 367 governing the transfer of management provides for the conditions of delegation of the management authority only. Art. 370 governing the transfer of representative authority does not expressly require a provision in the articles of association and the preparation of an internal regulation. Nonetheless, it is disputed among scholars whether this Art. 370 should be considered together with Art. 367 stipulating the conditions of transfer of the management authority. Besides this debate, in practice, the management and representative authorities usually are exercised and therefore transferred together as a whole.

Conclusion

The TCC regulates the authorities of the board of directors and expressly specifies the nontransferable duties. The provision of a clear distinction and distribution of tasks between the bodies of the company is an important novelty of the TCC.

On the other hand, there are certain disputes governing the scope of nontransferable duties. The inclusion of the appointment and discharge of signatories and managers among nontransferable duties may cause serious obstacles in practice. The appointment and discharge of each signatory other than the persons in top management by the board of directors will result in an immense workload.

The TCC regulates the transfer of powers by the board of directors, which is another important novelty of the code. Accordingly, the articles of association should enable the delegation of the management

authority and the board of directors should adopt an internal regulation for the delegation of management. Although the management and representation usually are not separate from each other in practice, the transfer of representative power is regulated under a separate provision. Art. 370 does not require a provision in the articles of association or in the adoption of an internal regulation.

Amendments to the Turkish Commercial Code by Omnibus Law No. 6552*

Att. Tuna Colgar

A number of amendments have been made to the Turkish Commercial Code ("TCC") by Articles 131, 132, 133 and 134 of the Omnibus Law No. 6552 adopted by the Turkish Grand National Assembly on September 10th, 2014. The most outstanding of these amendments are the addition made to Art. 371 relating to the representative authority of companies and the amendment made to Art. 629 concerning limited liability companies with a reference to the paragraph added to Art. 371.

The paragraph added to TCC Art. 371 by Omnibus Law No. 6552 reads as follows;

> *"(7) The board of directors, with the exception of certain representatives referred to above, may appoint non-representative members of the board of directors or persons bound to the company by a labor contract as commercial representatives with limited representative authority or other commercial assistants. Powers and duties of persons appointed in this manner shall be clearly stated in the internal directive issued in accordance with Art. 367. In such a case, the internal directive shall be registered and announced. Commercial assistants or other commercial representatives shall not be appointed with the internal directive. Commercial assistants or other commercial representatives authorized by this paragraph shall be registered in the Trade Registry and announced. The board of directors shall be liable jointly and severally for any damages caused by these persons towards the company or third persons."*

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* ***Article of September 2014***

New regulations are introduced by the 7th paragraph added to Art. 371 concerning the function and scope of the internal directive regulated under Art. 367 TCC. According to the added paragraph, the board of directors may appoint non-representative members of the board of directors, or persons bound to the company by a labor contract as commercial representatives with limited authority, or other commercial assistants. This act of the board of directors and the powers and duties of the appointed persons shall be explicitly reflected in the internal directive issued in accordance with Art. 367. Following this addition made to TCC Art. 371, a new opportunity has arisen for the companies that would like to impose different kinds of limitations on the representative authorities of the company, but which are not able to do so by a signatory circular. Companies that wish to introduce a limitation or categorization for its representative authorities are able to do so through a registered and announced internal directive. The legislator aims to make the internal directive a means of proof by making its registration and announcement obligatory.

At this point, the reliability on trade registry records (the constructive function of the trade registry) must be analyzed. The addition of the 7th paragraph to Art. 371, enabling the thematic and pecuniary representative limitations; and determination of the appointed representatives in a registered and announced internal directive are important with regards to the fact that the company is bound by the transactions concluded with third parties or its right to recourse to its representative that carried out the transaction. In our opinion, with this new regulation, where transactions concluded with third parties on behalf of the company by a non-representative member of the board of directors or persons bound to the company by a labor contract as commercial representatives with limited representative authority or other commercial assistants, that are acting upon the internal directive issued in accordance with the board of directors resolution; the parties to the transaction will be bound by the limitations introduced with the internal directive as a result of the constructive function of the Trade Registry. However, in any case, in order to prevent any conflict, it is advised that the board of directors resolution, concerning the distribution and limitations of authority, and the Trade Registry Gazette issue in which the internal directive is announced must be shared with the

counter party during the transactions in accordance with the constructive function of the Trade Registry, which causes the "ought to know" principle to be utilized.

The reason underlying the need to differentiate between "company representatives" and "the non-representative members of the board of directors or persons bound to the company by a labor contract" is evident in the preamble of the TCC. As explained in the preamble of Art. 367 TCC, the TCC differentiates between the right to execute and representative authority. In this case, the board of directors is split into two groups as "executive" and "non-executive" members.

The 7th paragraph added to Art. 371 enables thematic and pecuniary limitations for commercial representatives or other commercial assistants who will be appointed by the board of directors, and selected within the non-representative members of the board of directors or persons bound to the company by a labor contract, other than the company representatives who are vested with execution and representation authorities. However, in accordance with the 3rd paragraph of Art. 371, such limitations shall not be applicable for representatives with execution and representation authorities.

"The board of directors shall be jointly liable for all types of damages of the company and third parties, created by these persons." is the last sentence of the aforementioned 7th paragraph. This sentence should be evaluated in unison with the second paragraph of TCC Art. 553, which reads as follows; *"The bodies or persons transferring a duty or power emanating from the Code or from the articles of association to others on a legal basis are not liable for their actions and decisions, providing that they prove that they displayed enough care while choosing those persons assigned to these functions and powers."*

In order for the aforementioned regulation on joint stock companies to be applied to limited liability companies, a third paragraph was added to TCC Art. 629 by the Omnibus Law numbered 6552:

"(3) Regarding the appointment of the persons bound to the company by a labor contract as commercial agents or other commercial assistants by the company managers, Art. 367 and Art. 371/7 shall be applied to the limited liability companies by analogy."

Thereby, Art. 367 and Art. 371/7 shall be applied to limited liability companies by analogy in the matter of the appointment of persons bound to the company by a labor contract as commercial agents with limited authorities or other commercial assistants, by the managers of limited liability companies.

In addition to the abovementioned regulations, Omnibus Law No. 6552 grants an extension of time and further opportunities, in order for companies to adopt the rules regulated under the TCC by the effective date of 01.07.2012 via transitional provisions.

In this context, the wording: *"As from the entry into force of this Code" in the TCC Temporary Art. 7, and "within two years starting from the effective date of the Code"* in the sub clause (b) of the same article are amended as *"until the date of 01/07/2015"*. Thus, in such a case where a circumstance laid out in temporary Art. 7 occurs, such as company capital not being decreased to the point of the minimum values, despite the fact that the liquidation process has been initiated, the inability of the removal of the company from the Trade Registry due to the lack of general assembly meeting or, general assembly meetings not having been conducted over the last five years, the effective period of the provision enabling joint stock and limited liability companies and cooperatives to liquidate without complying with the liquidation provisions stated in the Code has been extended from 01.07.2014 until 01.07.2015.

Additionally, via the regulation of TCC Temporary Art.10, an extension of time is granted to the companies in order for them to achieve the minimum amount of share capital stated in the Code.

> *"Temporary Article 10- The dissolution process shall not be executed where the companies obliged to increase their capital in accordance with TCC provisions have not yet increased their share capital by 14.02.2014, if such companies meet the capital increase conditions within three months following the publication date of this provision. The registration of companies with the trade registry, which were formerly removed from the trade registry due to the fact that they have not performed a capital increase shall take place ex officio, if the companies apply for a capital increase within the abovementioned period."*

In conclusion, it can be seen that the parliamentary committee's statements regarding the TCC eventually becoming a code, which satisfies the needs of commercial life via dynamic amendments compatible with the needs of commercial practice have been actualized. By virtue of these amendments, the need for distribution and limitation of the representative authority within company officials is satisfied via the addition of a new paragraph to Art. 371. Additionally, temporary articles grant extended opportunities for companies to adapt themselves to the TCC.

Liability of the Representative of a Legal Entity Board Member in a Joint Stock Company[*]

Att. Revan Sunol

Introduction

Pursuant to Turkish Commercial Law No. 6762, legal entities could not be elected to serve as a member of the board of directors in a joint stock company. Instead, representatives appointed by the legal entity were appointed as member. However, pursuant to the Turkish Commercial Code ("TCC") No. 6102, legal entities may be appointed to membership on the board of directors and shall be represented by a real person of their choosing. Whereas the Tax Procedural Code ("TPC") No. 3475, the TCC and the Procedures of Collection of Public Assets Code ("PCPAC") No. 6138 regulate the liability of the board of directors as the legal representative body of the company in relation to tax debts and their other obligations; there are no provisions for the liability of a legal entity board member's representative.

Legal Entity as a Member of the Board

As mentioned above, according to Art. 359 TCC, the member of the board of directors shall be the legal entity itself and not its representative. Thus, rights and duties that result from being on the board of directors, such as access to information, taking part in negotiations for the adoption of resolutions and voting rights, are executed by the representative appointed by the legal entity. The board member legal entity may only appoint one representative and the representative must be registered with the trade registry and identified on the company website (the company for which the legal entity serves as board of directors member).

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[*] ***Article of July 2014***

Liability of Board Members

The legal liability of the board of directors, as regulated within the TCC, is fault based and may result from non-compliance with the obligations arising from the law or the articles of association of the relevant company, as per Art. 553; non-compliance of the representations and documents with the law, as per Art. 549; misleading declarations regarding the share capital or knowledge of insolvency, as per Art. 550; or from value evaluation, as per Art. 551.

Liability Related to Tax Debts

As a rule, a tax claim is first collected from the original tax debtor. Therefore, tax debts and all related liability of a joint stock company belongs primarily to the company as a legal entity. However, tax debt that cannot be recovered from the corporate legal entity, may be collected from persons and institutions that are responsible for the company[1].

Pursuant to the Art. 10, par. 1 of the TPC, if a legal entity is a taxpayer or tax responsible, these obligations must be executed by its legal representatives. The second paragraph sets forth that taxes and debts that cannot be collected from the tax responsible may be collected from the assets of those persons who have a legal obligation to ensure payment on behalf of the taxpayer.

Liability Related to Public Debts

Pursuant to PCPAC, representatives of legal entities are liable for outstanding public debts since a legal entity as a board member doesn't have personal assets. According to Art. 35 of PCPAC, the representatives have strict liability if public receivables cannot be collected or if it may be anticipated that collection will not be possible beforehand.

Liability of the Legal Entity's Representative as a Board Member

Representatives of legal entities are primarily obliged to protect the rights and benefits of the company whose board of directors they

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[1] **Veliye YANLI** – Banka ve Ticaret Hukuku Dergisi, Anonim Şirketlerin Vergi Borçlarından Kanuni Temsilcilerin Sorumluluğuna İlişkin Bazı Hususlar, p. 66.

work for[2]. However, at the same time they protect the rights and benefits of the company that they represent, and in most instances they follow their instructions. It is important to determine the liability of the representative of the legal entity board member in these situations. According to Tekinalp, the representative is the reflection of the legal entity in the board of directors and doesn't have an opinion or voting rights. Hence, representative opines and votes on behalf of the represented legal entity[3]. The losses and profits of the board belong to the represented legal entity and not the representative. In a similar manner, the preamble of the TCC expresses that the aim of the law in determining the legal entity as the board member and not the representative is to prevent big companies with ample resources from "hiding behind their representatives". These statements within the preamble may indicate the legislator's intention to place liability with the represented legal entity. Correspondingly, it is possible to say that the registration of the representative with the trade registry and the publication within the trade registry gazette and the web site of the company aims to provide public disclosure of the relationship between the representative and legal entity to reinforce the accountability of the legal entity's board member. If this view is adopted the legal entity is the liable party, as it is the board of directors member, whereas under the old Turkish Commercial Code, the representative was the registered and published board member, and therefore liable in certain cases.

However it must be maintained that the representation/proxy relationship between the representative and the legal entity is independent from all of this. The legal entity may seek recourse from its representative on the grounds of their contractual relationship.

On the other hand, the TPC and the PCPAC both consider the board members responsible as a result of their title as the legal representatives of the taxpayer company. Therefore, the liability is placed on the legal entity board member. However, as mentioned above, tax authorities may pursue the representative for tax debts, because although the taxpayer is the primary person responsible, tax debts which cannot be collected from the taxpayer company or from the

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2 **Bumin DOĞRUSÖZ** – Anonim Şirketlerde Temsilci Yönetim Kurulu Üyelerinin Sorumluluğu.

3 **TEKİNALP** - Sermaye ortaklıkları p.195 et seq. N.12-14.

board member legal entity shall be recoverable from the representative of the legal entity.

Pursuant to TPC Art. 8, par. 2, "tax responsible" is the person responsible before the tax office for payment. In this context, it is generally accepted that the board members of a company are tax responsible and collection from their personal assets is possible. This may be taken one step further to say that the representative of the legal entity board member would be its tax responsible legal representative, and therefore liable as well. However, there is no clarity in this respect. In any case, the tax responsible may seek recourse from the taxpayer as per their internal contractual relationship.

Conclusion

In light of the above explanations, it may be said that, as a principle, the legal entity is liable as a board member. However, there is no clarity in the relevant provisions and the subject will be clarified in practice.

Right to Request Special Audit*

Att. Ecem Cetinyilmaz

Introduction

A special audit mechanism is the extension of the right to request information that is granted to each shareholder. A special audit ensures that a shareholder obtains detailed information regarding a specific event, and enables such shareholder to consciously and accurately use his/her rights arising from his/her shareholding in the subject company. The Turkish Commercial Code no. 6102 ("TCC") sets forth that the appointment of the special auditor shall be made by the commercial court of first instance upon the request of any shareholder, notwithstanding the shareholding percentage, subject to certain conditions.

Request for Special Audit and Appointment

The right to request the appointment of a special auditor can be exercised by a shareholder, only when it is necessary, and if the right to demand information or examination has already been exercised regarding such specific point. In this regard, the requirement of necessity should be evaluated in terms of shareholding rights, and especially the voting rights. In other words, a special audit can be requested if obtaining the requested information is necessary for such shareholder to exercise his/her shareholding rights. The second requirement -first exhausting the right of information- is set forth in order to avoid any unnecessary requests, and to ensure that the relevant shareholder is already informed of the financial situation of the company, and makes a conscious request. A request can be made at the general assembly meeting of the subject company, even if it is not included within the agenda of such general assembly meeting. This provision constitutes a clear exception to the principle of commitment to the agenda.

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* *Article of October 2014*

Approval of the General Assembly

If the general assembly approves the request, either the company or each shareholder can request the commercial court of first instance to appoint a special auditor within the location of the company headquarters, and within 30 (thirty) days as of the date of such general assembly meeting.

At the time of the previous regime, the authority to appoint an auditor was held by the general assembly; therefore, the shareholders constituting the majority of the general assembly had the mandate to appoint their choice of auditor. Through the TCC, appointment of an auditor by the court, instead of the general assembly, brings functionality to the special audit mechanism, and prevents any arbitrary treatment.

Rejection by the General Assembly

In the event of rejection of the request by the general assembly, such request can be raised before the commercial court of first instance within 3 (three) months as of the date of such general assembly meeting, only by the shareholders constituting at least 10% of the share capital (20% of the share capital in public companies), or by the shareholders whose shares equal to at least TRY 1,000,000 in total. Therefore, refusal by the general assembly creates a minority right.

Decision of the Court

If the applicants can present convincing statements to the court that the founders, or the company organs, have caused damage to the company, or its shareholders, by way of breach of law or the company's articles of association, the court shall rule for the appointment of the special auditor after having heard the company and the applicants. In the case of affirmative decision, the court must determine the subject of the audit, and appoint one or more independent experts depending on such subject.

Duties and Audit Report

Duties of the Auditor

The board of directors of the company is required to allow the auditor to examine the books and records of the company together with

the assets - especially the negotiable instruments, safe deposit box and goods. Not only the board of directors, but also the founders, organs, representatives, employees, custodians and liquidators are also required to inform the auditor with respect to any significant facts.

It is essential that the special audit be conducted within an effective time period, and without causing unnecessary delays or disruptions to the company's operations. Considering that a special audit significantly relates to the exercise of shareholding rights, such audit must be completed within a time period that is useful for the fulfillment of its goal. Delay in the preparation of the audit report may render the mechanism non-functional.

Scope of the Audit Report

At the end of the audit period, the auditor shall submit a detailed report to the relevant court, subject to confidentiality, after having consulted the company in relation to the outcomes of the audit. Such consultation is stipulated in order to avoid any possible misunderstanding and misguidance. Thus, the auditor will be able to discuss the outcomes of the audit with the board of directors, so as to ensure that the information and findings in his/her report are accurate, not based on misunderstandings, and do not come to the wrong conclusions.

The auditor cannot include all of the company information in his/her report although he/she examines every document and all information submitted to him/her during his/her appointment. At the stage of preparation of the report, the company's secrets, especially the trade secrets, and other interests of the company must be considered.

Once the report is delivered to the company by the court, TCC grants to the company the right to request from the court the non-submission of the report to the applicants. The court is authorized to determine whether the disclosure of the report will cause damage to the company's secrets, or company interests which are worth protection and, therefore, whether the report will be submitted to the applicants. In this respect, the court may rule that some points of the report be eliminated, in such a way so as to create a balance between the interests of the applicants and the company.

It is important to state that the auditor cannot include a legal analysis in his/her report; the special audit mechanism aims only to reveal and clarify material facts regarding the operations of the subject company. A special auditor is not authorized to give advice to the company, nor to share his/her opinion on the matters that he/she has examined.

Submission of the Report

Subject to the elimination described, above, if any, the board of directors is required to submit the report and the evaluations in respect thereof to the first general assembly, even if it has not approved the request for special audit in the first place. Submission to the first general assembly is not to be construed as a requirement to call for an extraordinary general assembly meeting. Nevertheless, minority shareholders are entitled to call for such a meeting within the scope of the general provisions.

Each shareholder is entitled to request a copy of the report, and for the remarks of the board of directors, within one year following the relevant general assembly meeting.

Conclusion

As explained in detail, above, request for the appointment of a special auditor was only a minority right under the previous regime. The TCC expanded the scope of the right by way of entitling each shareholder to submit the request to the general assembly for approval. Requirement of a minimum shareholding percentage only arises in the event of the general assembly's disapproval, in which case the shareholders that constitute at least 10% of the share capital (20% of the share capital in public companies) or the shareholders whose shares equal to at least TRY 1,000,000 in total must convey their request for a special audit to the commercial court of first instance. This arrangement, together with the appointment of the auditor by the court instead of the general assembly, helps to constitute a functional and independent audit mechanism.

Special Committee of Preference Shareholders[*]

Att. Selen Ozturk

Introduction

Turkish Commercial Code No. 6102 (the "TCC") provides a number of provisions for the protection of preference shareholders. In this regard, the general assembly's right to amend the articles of association is restricted by the rights of the preference shareholders. In accordance with Art. 454 of the TCC entitled "Special Committee of Preference Shareholders," resolutions of the general assembly pertaining to amending the articles of association, authorizing the board of directors with respect to increasing the share capital, and the decision of the board of directors with respect to increasing the share capital that may potentially violate the rights of the preference shareholders shall result the convening of preference shareholders to meeting, and their subsequent approval.

TCC Art. 454 regulates the circumstances where the approval of the special committee of preference shareholders is required, the convocation procedure, the decision-making method, and the lawsuit to be filed against the special committee of preference shareholders by the board of directors.

Circumstances that Require Approval of Special Committee of Preference Shareholders

TCC Art. 454/1 stipulates the circumstances where the approval of the special committee of preference shareholders is necessary. These circumstances are listed in the relevant article; therefore, the implementation of the resolutions other than those listed in the article

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[*] ***Article of October 2014***

do not require the approval of the special committee of preference shareholders.

The first circumstance rises when the amendment of the articles of association by the general assembly violates the rights of the preference shareholders. This circumstance may occur as removal or restriction of the privilege by the amendment of the articles of association. For instance, if the articles of association withdraw the voting preference of the preference shareholders by the amendment of the articles of association, in order for this amendment to be implemented, the special committee of preference shareholders must grant its approval of such amendment. The circumstances regarding violation are not limited to this situation, and other circumstances where the rights of the preference shareholders are violated are considered to be within this scope.

Another circumstance is the general assembly's resolution concerning the authorization of the board of directors to increase the capital. In such a case, even though the board of directors has not yet adopted a resolution based upon the general assembly resolution, the possibility of adoption of a resolution is sufficient to convene the special committee of preference shareholders. If the authorization resolution of the general assembly enables the board of directors to issue preference shares, then it is probable that the rights of the preference shareholders may be violated[1].

The final circumstance that Art. 454/1 sets forth is the case where the board of directors' resolution to increase the capital infringes upon the rights of the preference shareholders. This infringement may occur when the registered capital system is in question.

In such cases, if the rights of the preference shareholders are violated, the resolution cannot be implemented unless the approval of the special committee of preference shareholders is obtained. The special committee of preference shareholders is comprised only of the preference shareholders whose rights have been infringed. Preference shareholders whose preferences are not infringed cannot attend the committee meeting.

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1 **Ünal Tekinalp**, Sermaye Ortaklıklarının Yeni Hukuku, p. 98.

More importantly, in order for the special committee of preference shareholders to be convened, the law specifically requires that the rights of the preference shareholders have been violated. The fact that the resolution of the general assembly or the board of directors was unlawful shall not suffice for the convening of the special committee.

Convening the Special Committee of Preference Shareholders

TCC Art. 454/2 stipulates that the special committee of preference shareholders shall be convened by the board of directors. In accordance with the relevant article, the board of directors shall convene the special committee of preference shareholders no later than one month following the announcement of the general assembly resolution. This authority of the board of directors is unassignable. Unless the special committee of preference shareholders is convened by the board of directors within this period, each preference shareholder is entitled to apply to the commercial court of first instance to convene the meeting within fifteen days following the last day of the convening period set forth for the board of directors. Therefore, the law entitles the preference shareholders to convene the meeting. The aim of this provision is to enable the court to make an unbiased decision in order to balance the conflicts of interest.

Meeting of the Special Committee of Preference Shareholders

Pursuant to Art. 454/3 of the TCC, the special committee of preference shareholders convenes with the presence of 60% or more of the share capital representing the preference shares, and the decision by the majority of the shares represented at the meeting. In addition, if the preference shareholders cast affirmative votes at the general assembly for the resolution in question, there will be no convening of a special committee meeting.

Moreover, TCC Art. 454/3 sets forth certain steps to be performed where the special committee decides that a violation has occurred with respect to the rights of the preference shareholders. Accordingly, the decision is confirmed with justified minutes, and the meeting minutes are delivered to the board of directors within ten days following the date of the decision. Therefore, if the preference shareholders decide that their rights have been infringed, they must provide sufficient reasoning with respect to the infringement. Additionally, the list of a min-

imum number of signatures of the preference shareholders who cast negative votes regarding the general assembly resolution, and a notification address suitable for the lawsuit that may be filed shall be delivered to the board of directors. TCC Art. 454/3 stipulates that the special committee decision shall be deemed non-existent unless the aforesaid conditions are met. Thus, these conditions laid out by the TCC shall be respected when adopting a decision.

If the special committee does not convene despite the call to convene, the general assembly resolution shall be deemed as approved.

Annulment of the Special Committee of Preference Shareholders' Decisions

The special committee of preference shareholders has the authority not to approve the general assembly resolution on the grounds that their rights have been infringed. In this case, if the board of directors finds the justification provided by the special committee to be unsatisfactory, it may file an action for annulment, and demand the registration of the general assembly resolution from the commercial court of first instance located at the headquarters of the company. The action shall be brought before the court within one month following the decision date of the special committee.

The annulment action shall be initiated against the preference shareholders who voted against the approval of the general assembly resolution. The purpose of this provision is to prevent unnecessary lawsuits to be filed against the preference shareholders who had cast affirmative votes[2].

Conclusion

The provision regarding the special committee of preference shareholders provides for certain guarantees for the protection of the rights of the privileged shareholders. TCC Art. 454 regulates the special committee of preference shareholders and, since this includes detailed provisions regarding the committee and the action for annulment of the decisions of the committee, it must be considered as an important provision.

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2 **Hasan Pulaşlı,** Yeni Şirketler Hukuk Genel Esaslar, p. 754.

Domination Agreements*

Att. Ecem Susoy

Introduction

Group companies are regulated for the first time under the Turkish Commercial Code No. 6102 ("TCC"). Although no definition of group companies is specified, its types and principles are expressed in the TCC. Group companies come into existence when there is more than two commercial companies that are directly and indirectly affiliated with a commercial company or an enterprise. In such cases, the parent company constitutes the dominant company and the dependent companies constitute the subsidiary companies.

The concept of dominance has been introduced with the regulation of group companies. Dominance may be established through shareholding, contractually and in other ways. This newsletter article treats contractual dominance and domination agreements, which establish such contractual dominance.

Definition of Domination Agreements

Domination agreements are defined in Article 106 of the Trade Registry Regulation ("Regulation") published in the Official Gazette dated 27.01.2013 and numbered 28541. A domination agreement is defined as an agreement whereby one of the parties has unconditional authority to instruct the managing body of the other party which is an equity company; without there being any direct or indirect participation relationship between said parties.

In the domination relationship, the company giving instructions is the dominant company and the one receiving instructions is the sub-

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* ***Article of January 2014***

sidiary company. As a result of the dominance relationship between the parties, the dominant company leads and manages the subsidiary company by giving instructions.

The domination relationship between the dominant company and the subsidiary company provides uniform management within the group companies. Therefore, the uniform management resulting from the domination agreement benefits the group companies[1].

The dominant company gives instructions to the subsidiary company on basic matters such as the management of the company, determination of targets, coordination of enterprises' activities and designation of high level management and does not interfere with the daily activities and operation of the subsidiary company[2].

The transfer of control of all the authority of the subsidiary company to the dominant company is not required in order to establish a domination relationship. When the dominant company leads and directs the management of the subsidiary company in one or more areas, a domination relationship may be considered to exist as well.

Legal Nature of Domination Agreements

The domination agreement between the dominant and subsidiary companies is formed pursuant to the law of obligations. Contractual rights and obligations arise from domination agreements. Domination agreements thereby constitute the basis for contractual group companies.

Domination in contractual group companies is based neither on capital nor on the majority of members in the managing body; it only depends on the domination agreement concluded pursuant to the law of obligations between two or more companies[3].

Approval of General Assembly in Domination Agreements

Domination agreements are subject to the approval of the subsidiary company's general assembly. When the domination agreement

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1 **YANLI, Veliye,** "*Hâkimiyet Sözleşmeleri*", Regesta Cilt: 3, Sayı: 1, Yıl: 2013, p. 6.

2 **YANLI, Veliye,** "*Hâkimiyet Sözleşmeleri*", Regesta Cilt: 3, Sayı: 1, Yıl: 2013, p. 6-7.

3 **PULAŞLI, Hasan**, Yeni Şirketler Hukuk Genel Esaslar, Ankara 2012, p. 226.

is concluded, the subsidiary company starts to act for the benefit of the group of companies by changing its management structure.

The subsidiary company, no longer being managed by its own bodies, is operated and controlled by another company and therefore becomes dependent through a domination agreement, which must be submitted for the approval of general assembly[4].

Moreover, as is frequently observed in practice, the dominant company may be the shareholder of the subsidiary company as well. In such cases, the shareholder dominant company is required to vote in the subsidiary company's general assembly. However, pursuant to Article 436 TCC, the shareholder of a company cannot vote with respect to personal acts and transactions between itself and the subsidiary company under its dominance. Therefore, the dominant company that is the shareholder of the subsidiary company can only vote on acts and transactions in which it holds no special interest.

Registration of Domination Agreements

As per Article 106/2 of the Regulation, in order to gain validity, domination agreements must be approved by subsidiary company's general assembly; and then registered and announced. This registration and announcement of the domination agreement enables third parties to become aware of such agreement.

Domination agreements shall not be considered valid and effective until registered and announced in the trade registry. However, the invalidity of a domination agreement shall not prevent the liabilities and responsibilities regulated under the provisions of the TCC and other Codes. Therefore, as per Article 198/3 TCC, even if the domination agreement is not registered and announced in the trade registry, the dominant company and its managing body shall be held liable and responsible.

Liability Arising from a Domination Agreement

Liability of the Dominant Company

The dominant company must not use its control illegally against the subsidiary company through the domination agreement. Preventive

[4] **PULAŞLI, Hasan**, Yeni Şirketler Hukuk Genel Esaslar, Ankara 2012, p. 225.

measures are foreseen against the dominant company's illegal use of domination with Article 202 TCC.

In cases where the dominant company causes its subsidiary to incur losses, the dominant company shall be obliged to compensate such losses. In the event that the determined compensation is not paid, each shareholder of the subsidiary company may claim compensation from the dominant company and from members of its board of directors. If the subsidiary company is not compensated, the shareholders and creditors of the subsidiary company may file suit for the damages incurred.

The illegality herein results from a transaction by the dominant company, which damages the subsidiary company, its shareholders and creditors.

The members of the subsidiary's board of directors are obliged to execute transactions as instructed by the dominant company even if they would prefer not to do so. In such circumstances, members of the subsidiary's board of directors may conclude an agreement with the dominant company in order to make the dominant company liable to shareholders and creditors for any legal results.

Liability of the Subsidiary Company

In accordance with the domination agreement, the subsidiary's board of directors shall be responsible for complying with the dominant company's instructions; otherwise they may be held liable. However, where the dominant company gives illegal instructions, the managing body of the subsidiary company shall neither be held responsible for nor obliged to exercise such instructions.

However, pursuant to Article 203 TCC, when the dominant company establishes full domination over the subsidiary company, which means, when the dominant company directly or indirectly holds one hundred percent of the shares and voting rights in the subsidiary company, the members of the dominant company's board of directors may give instructions to the subsidiary company with respect to its operations and management, even if such instructions cause the subsidiary company to incur losses; under the condition that such instructions stem from specific and concrete policies of the group of companies.

When directors of the subsidiary company obey the instruction of the fully dominant company, they shall not be held liable to the shareholders or subsidiary company.

Conclusion

The existence of contractual group companies may stem from a domination agreement established between the companies. As a result of the domination agreement concluded between the dominant company and subsidiary company, the beneficial aim of the group of companies can be reached by forming a uniform managing structure.

Capital Increase Through Capital Subscription*

Att. Selen Ozturk

The domestic or external increase of the amount stipulated in a company's articles of association is referred to as the "capital increase". Due to the fact that this amount is stipulated in the articles of association, in principle, the capital increase is considered as an amendment to the articles of association. However, the nature of the capital increase may differ due to the capital system adopted by the company. The capital increase through capital subscription in non-public joint stock companies and especially, capital increase in companies that adopted a registered capital system shall be examined in this newsletter article.

General

Capital increase may be examined under two main branches; namely capital increase concluded through capital subscription and capital increase through internal funds. The increase through capital subscription requires the shareholders who made a commitment in order to subscribe to the capital increase, to bring capital in kind or capital in cash to the company. The TCC stipulates two conditions for the capital increase through external funds. Accordingly, the first condition is that the share prices shall be fully paid. However, in accordance with the second sentence of Turkish Commercial Code ("TCC") Art. 456, *"If the unpaid amount is insignificant in proportion to the share capital, it shall not prevent the capital increase"*. This provision is added to the new TCC in order to prevent doctrinal conflicts. Moreover, the second condition foreseen in the TCC stipulates that the funds allowed to be added to the capital by the legislation, shall not be

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* ***Article of August 2014***

on the balance sheet. This is a new provision regulated in the TCC that aims to protect shareholders who do not have enough financial power by prohibiting the high amount of capital increase concluded from external funds, even though there are enough domestic funds to conclude a domestic capital increase. Therefore it is a mandatory rule and there are no exceptions to it[1].

Common Provisions regarding the Capital Increase through Capital Subscription

As in the establishment, the capital increase shall be made through cash subscription and payment, through commitment in kind or through conversion of the debts of the company into capital.

Each shareholder has the right to purchase the newly issued shares in accordance with his capital-share ratio. If just causes exist, pre-emption rights may be restricted by the affirmative votes of shareholders representing at least sixty per cent of the share capital. Except for the regulation concerning quorum, the principals regarding the exercise and the restriction of pre-emption rights are also valid for the board of directors' resolution on the registered capital system.

Moreover, according to the Ministry Communique issued in line with TCC Art. 333, if the company in question requires the consent of the Ministry of Customs and Trade, such consent must be taken.

Another provision adopted by the TCC is the declaration of the board of directors. Accordingly, the board of directors should prepare and sign an explicit, complete and correct declaration in compliance with the principal of honest accountability. If there is capital in cash or an in kind contribution, the content of the declaration shall include that this procedure is dully fulfilled, legal and administrative obligations are abided by, the reasons for the abolishment of pre-emption rights in case of a removal and the names of the shareholders having pre-emption rights, including their justifications, in detail. This declaration shall be signed by all members of the board of directors. Any inadequacy in the declaration may provoke the annulation or even nullity of

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[1] **PULAŞLI Hasan**, *Şirketler Hukuku Genel Esaslar*, Ankara, 2013, p. 599.

the resolution, as it is considered a violation of transparency and the principle of accountability[2].

The general assembly or the board of directors' resolution regarding the capital increase shall be registered within three months following the resolution date. Otherwise, the resolution and the consent (if obtained) shall be deemed invalid. Additionally, this registration will have a constitutive affect.

Principal Capital System

In a principal capital system, a capital increase is concluded through the adoption of a general assembly resolution and this constitutes an amendment to the articles of association. Thus, if a higher quorum is not set forth in the articles of association, like any other amendment to the articles of association, the resolution must be adopted by the simple majority of the general assembly in which at least half of the shares are represented. The amendment must be approved by the board of directors. The approval resolution must be adopted by the simple majority of the board of directors, unless otherwise stated in the articles of association[3].

In the principal capital system, all of the shares representing the increased capital shall be subscribed in the amended version of the articles of association or in the letter concerning participation commitment. The commitment for participation must be unconditional.

Registered Capital System

In General

In a registered capital system, the board of directors is entitled to increase the capital up to the authorized capital amount stated in the articles of association. This system allows for a more flexible capital structure and quicker capital increases; it therefore addresses the needs for financing. In non-public joint stock companies with registered capital systems, the minimum initial capital cannot be less than one hun-

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2 **TEKİNALP Ünal**, *Sermaye Ortaklıklarının Yeni Hukuku*, Istanbul, 2013, p.107.

3 **TEKİNALP Ünal**, *Sermaye Ortaklıklarının Yeni Hukuku*, Istanbul, 2013, p.106.

dred thousand (100,000) Turkish Liras. This amount may be increased by the Council of Ministers.

The board of directors independently decides when and how much the capital will be increased within the framework of the authority it has been given. However, in order for the board of directors to issue preferential shares or shares with a higher value than their nominal values or to restrict pre-emption rights, an explicit provision in the articles of association is required. The board of directors shall indicate the amount of increase, nominal values of the newly issued shares, their quantity, type, whether the shares are preferential or premium, the time period in which the pre-emption right will be exercised and the method of exercise and whether or not the pre-emption rights are restricted. In the registered capital system, the shares are subscribed with a commitment for participation. The board of directors has to be expressly authorized by the articles of association in order to issue premium shares or shares with a higher value than their nominal values or to restrict pre-emption rights.

Another important point is that the members of the board of directors or shareholders may file an annulment action against this resolution. A reference is made to TCC Art. 445 with respect to the annulment of the resolution of the board of directors in a registered capital system which regulates the annulment of general assembly resolutions, since as a rule, the resolution regarding the increase of capital is adopted by the general assembly. The right to bring an action shall lapse after 1 month following the resolution to increase capital and TCC Art. 48-451 will be taken into consideration in this action by analogy[4].

Restrictions

There is no restriction with respect to the authorized capital cap under the TCC. Thus the only limit for the board of directors is the authorized capital stipulated in the articles of association. However, Article 5/5 of the Communiqué Pertaining to the Registered Capital System for Non-Public Joint Stock Companies, dated 19.10.2014, adopts the following restriction: *“Authorized capital shall not exceed*

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[4] **KENDİGELEN Abuzer**, *Türk Ticaret Kanunu Değişiklikler, Yenilikler ve İlk Tespitler*, İstanbul, 2011, p. 314.

five times of the initial share capital. … Following the adoption of the registered capital system by way of amendment or at the time of establishment, the authorized capital shall not exceed five times of the issued capital at the time of the general assembly concerning the amendment of the articles of association." Thus the limit for the authorized capital is determined as five times of the share capital.

No restrictions concerning the method of payment or the type of capital to be subscribed are stipulated for the registered capital system. However, such a restriction may be stipulated in the articles of association.

Finally, the authority to increase the capital granted to the board of directors is limited to five years by the TCC. Thus, in order to authorize the board of directors for another term, the articles of association shall be amended and the new term shall be determined. Change of the members of the board of directors shall not remove the authority granted and the board of directors shall maintain such authority until the end of the term determined. According to Swiss doctrine, the authority commences from the registration of the resolution but not from the adoption of the resolution by the general assembly. As the TCC does not have any regulation in this regard, the same solution may be adopted for Turkish law[5].

Conclusion

As is seen, non-public joint stock companies may adopt a principal capital system in which the general assembly decides to increase the capital or a registered capital system in which capital increase is adopted by the board of directors' resolution. Nevertheless, in order to adopt the registered capital system, a provision as such must be stipulated in the articles of association. In addition, the increase of the capital up to the authorized capital amount shall not qualify as an amendment of the articles of association, since the registered capital cap is already stipulated in the articles of association. Joint stock companies may adopt any of these systems according to their need for capital and size.

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5 **KARAHAN Sami**, *Şirketler Hukuku*, 2012, p. 573.

Conditional Capital Increase[*]

Att. Tuna Colgar

Introduction

The notion regarding the quick and easy fulfillment of the need for capital, which was adopted by the Turkish Commercial Code No. 6102 ("TCC" or "Law"), resulted in the formation of new capital types and the regulation of provisions on various capital increase procedures. Two types of capital systems existed in the former code that has been abrogated with the entry into force of the new Law. These were the principal capital system adopted in the former TCC and the registered capital system adopted in the Capital Markets Law. However, the new TCC, in preserving the principal capital system, made the registered capital system a system not only beneficial to public companies but also to other companies and diversified the instruments that may be used in the capital increase concluded from the domestic funds of the companies.

The conditional capital increase, which is the subject of this article, is a new capital increase system under Turkish law and finds its roots in the Swiss Code of Obligations. The conditional capital increase is a capital increase system that may be concluded depending upon the creditor's exercise of its conversion and purchase rights in the issuance of bonds replaceable with share certificates, and in capital increases directed at employees. This system will provide convenience in that it allows for the usage of capital in a more flexible and effective manner.

The Principles of Conditional Capital Increase

The basis of this capital increase system, foreseen as a funding instrument, is formed with the purpose of procuring the participation

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* *Article of March 2014*

to the capital of the creditors due to certain securities and the employees[1]. The principles regarding the conditional capital increase system are regulated between articles 463 to 472 of the TCC. Art. 463 TCC defines the application principle.

> *"Article 463 - (1) The general assembly may decide on a conditional capital increase by means of granting a right, in the company articles of association, to the creditors of the company or the group of companies, who became creditors by owning newly issued bonds or similar debt instruments, or the employees of the company or the group of companies, to own new shares through conversion or preemption rights.*
>
> *(2) The share capital shall automatically increase when and to the extent the conversion or purchase right is exercised and the obligation to pay the share capital is fulfilled by swap or payment."*

As understood by the article, in a conditional capital increase, the basic principles, which provide the grounds for the increase, are determined by the general assembly. The general assembly, in its decision, does not make a definite decision to increase the capital but it enables the capital increase by demonstrating the procedure for the capital increase and determining the basic provisions of the process[2]. In a conditional capital increase, the capital will be increased where conversion or purchase rights holders exercise said rights. Therefore, the capital increase shall take place over time through the decisions of the conversion or purchase rights holders or the employees and the exercise of such rights; it does not take place by action of the general assembly or the board of directors. Consequently, the amount of capital shall vary within the time in which the conversion and purchase rights are exercised.

In order to realize a conditional capital increase, a reference provision regarding this type of capital increase must be present. Otherwise,

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[1] **KENDİGELEN Abuzer**, Yeni Türk Ticaret Kanunu Değişiklikler, Yenilikler ve İlk Tespitler, XII Levha Yay., 2011, p. 320.

[2] **TEKİNALP Ünal**, Sermaye Ortaklıklarının Yeni Hukuku, Değiştirilmiş ve Düzenlemelerle Güncelleştirilmiş 3. Bası, Vedat Kitapçılık 2013, p. 113.

without the presence of a special provision containing such content, a conditional capital increase cannot be prompted by a general assembly decision. The content of this provision is specified under Art. 465 TCC in detail. The provision regarding conditional capital increase may be inserted after the establishment through an amendment to the articles of association or in the establishment of the company by inserting a provision regarding this issue.

The persons who may gain the title of shareholder in the company through conversion or purchase rights are counted as (i) the creditors of the company or the group of companies, who became creditors by owning newly issued bonds or similar debt instruments and (ii) the employees as defined under paragraph 1 of Art. 463 TCC. In addition, it has to be stipulated that conversion or purchase rights are provided not to any creditor of the company but only to creditors of the company or the group of companies who are the holders of the newly issued bonds or similar debt instruments.

The share capital shall automatically increase when and to the extent the conversion or purchase rights are exercised and the obligation to pay the share capital is fulfilled by swap or payment. (Art.463 f.2).

As it is clearly understood from the second paragraph of Art. 463 TCC, the obligation to pay the share capital via a conditional capital increase may be realized through swap in case of exercise of conversion rights and through payment in cash in case of the exercise of purchase rights. It is not possible to return new capital in-kind. The capital of the company shall be automatically increased when, and to the extent that, the conversion and purchase rights provided to the creditors or the employees are exercised through unilateral declaration of intention and the capital commitment arising due to this exercise is fulfilled by swap or payment[3].

The Statutory Restrictions on Conditional Capital Increase

Article 464 TCC sets forth certain restrictions with respect to conditional capital increase.

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[3] **KENDİGELEN,** p. 320.

Article 464 - (1) The total nominal value of the increased share capital through conditional capital increase may not exceed an amount equal to 50% of the share capital.

(2) The payment to be made shall be at least equivalent to the nominal value.

As expressed in the article, it is required that the payment made shall be at least equivalent to the nominal value of the newly acquired share. Moreover, the total nominal value of the capital increased conditionally may not exceed half of the total capital. According to the system of the TCC, since the words “principal” and “issued” are not used before the word “capital”, it shall be concluded that this wording includes both the principal and issued capital[4].

The Basis in the Articles of Association for Conditional Capital Increase

As explained above, a conditional capital increase may only be based on a provision in the articles of association. The content of this provision is specified in Art. 465 TCC in detail. Said provision in the articles of association has two significant features: (i) It must be a detailed explanatory text with respect to the increase; and (ii) Upon conclusion of the conditional capital increase, since this provision in the articles of association will be devoid of essence, the provision shall be removed from the articles of association in accordance with Art. 472 TCC. A new provision forming the basis of the transaction must be inserted into the articles of association any time a conditional capital increase is concluded[5].

Protection of the Shareholders

Another prerequisite regarding the exercise of conversion or purchase rights recognized for the creditors or employees is the abolishment of the right of first refusal of the current shareholders and the explicit recording of this issue in the articles of association in accor-

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4 **TEKİNALP,** p. 115.

5 **TEKİNALP**, p. 113.

dance with subparagraph (d) of Art. 465/1 TCC. Since this situation would affect the capital participation rate of the current shareholders (it would decrease their participation rate) the law maker, in order to not injure the interests of the shareholders, establishes the condition that the newly issued debt instruments made up of conversion and purchase rights shall primarily be offered to the shareholders pro rata to their shares. On the other hand, the "right to be the object of the offer" recognized for the shareholders may be abolished or restricted in the presence of just causes[6]. In case the purchase right is recognized for the employees, it is not required to recognize the right to be the object of the offer for them. However, in this case, the rights of the shareholders, whose right of first refusal is restricted, shall be protected within Art. 466/3 TCC.

Protection of Conversion and Purchase Rights Holders

The lawmaker places importance on the protection of persons entitled to conversion and purchase rights in conditional capital increase in accordance with Art. 467 TCC. In compliance with the first paragraph of Art. 467 TCC, creditors or employees entitled to acquire registered shares through conversion or purchase rights may not be prevented from exercising these rights based on the claim that the transfer of such shares is restricted, unless such a restriction is explicitly stipulated under the articles of association or in the offering circular.

Another arrangement protecting rights holders is stipulated in the second paragraph of the same article. In accordance with said paragraph it is set forth that conversion or purchase rights recognized for creditors or the employees may not be subject to any losses due to capital increase, the granting of new conversion or purchase rights or by any other means. However, along with said regulation the 2nd paragraph also stipulates that if the conversion fee is decreased, the rights holders have been provided with adequate consideration or the shareholders incur losses in the same manner, an action contrary to the protection defined in the previous sentence may be carried out.

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[6] **KENDİGELEN**, p. 322.

Conclusion

The Turkish Commercial Code No. 6102 sets forth provisions regarding new capital types and various capital increase procedures in order to fulfill the need for capital urgently and readily, and to render a dynamic commercial life. The conditional capital increase is a capital increase method mostly applied by public companies whose shares are publicly traded. Besides this, the implementation of the conditional capital increase has been made possible for non-public companies or small and medium sized companies. In particular, the conditional capital increase may be implemented through the exchange of the credits of the employees or certain creditors during the restructuring of the companies with their right to be a shareholder in the company. This condition, which is a new provision under Turkish law, corresponds to the idea that the structure of companies may change quickly, in line with the dynamism of business life.

The Contribution of Receivables as Capital in Commercial Companies*

Att. Tuna Colgar

Introduction

Before we step into the examination of the subject of contributing receivables as capital to corporations, which has been an issue in dispute since the entry into force of Turkish Commercial Code numbered 6102 ("TCC" or "Law"), it is important to briefly mention what may be contributed as capital to companies. Article 127 TCC sets forth the types of assets that may be contributed as capital to commercial companies. In accordance with paragraph 1 of article 127, the following may be contributed as capital to commercial companies:

> *"Unless otherwise provided by law, a) Cash, receivables, negotiable instruments and shares owned by corporations, b) intellectual property rights, c)movable and any kind of immovable property, d) usufruct rights with respect to movable and immovable property, e) personal effort, f) commercial reputation, g) commercial enterprises, h) transferrable electronic media, domain names and signs which are rightfully used, i) mining licenses and other rights having economic value, j)any other value which is appraisable and transferable"*

As understood from the article, the items listed in the provision are not listed using the numerus clausus approach. The legislator provides that values other than the values listed in the above-mentioned article may be contributed as capital by stating that any such item is appraisable and transferrable[1].

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* ***Article of January 2014***

[1] **GİRAY Eda (Prof. Dr. KARAHAN Sami),** Şirketler Hukuku, 1nci Bası, p. 113.

The capital contributed to a company may be in cash or in kind. Capital in cash must be in Turkish Liras and shall be fulfilled by payment. Capital in kind consists of certain elements. Assets without any encumbrances, attachment and measure on them, which are appraisable and transferable, including intellectual property rights and virtual environments, may be contributed as capital in kind.

Art. 127/1(a) TCC regulates that cash, receivables and negotiable instruments, as well as corporate shares may be contributed as capital to companies. However, the 2nd paragraph of Article 127 refers to Articles 324 and 581 of the TCC. These articles, in detailing the types of assets which may be contributed as capital to joint stock and limited liability companies, regulate that non-monetary assets with encumbrances, attachments and measures, as well as service performances, personal effort, commercial reputations and non-due receivables, which cannot be appraised or transferred, may not be contributed as capital.

Conditions Required for the Addition of Receivables to Capital

Through evaluating the reference to Article 342 in Article 127, and the qualities of being appraisable and transferable stipulated under Article 342 together, it may be concluded that receivables may be contributed as capital in kind to corporations. Moreover, this issue is explicitly regulated in the last sentence of Art. 342/1 and it is ruled that non-due receivables may not be contributed as capital. Accordingly, it may be assessed that there is no obstacle to contributing a due receivable of the shareholder from a third party, with no restricted real right, attachment and measure on it, as capital in kind to a corporation.

Moreover, Article 343 stipulates that enterprises and non-monetary assets to be acquired during incorporation with capital in kind shall be appraised by experts assigned by the commercial court of first instance at the location of the company's headquarters, and it regulates the method of appraisal and the items that the expert report shall cover in detail. The article also provides that the founders and stakeholders are entitled to object to the report prepared by the experts and that the expert report approved by the court is final. In this regard, the expert report must contain, in detail and with justifications, the selected

appraisal method, the information with regards to the existence of the receivable and the ability to collect it[2]. Furthermore, pursuant to the references in Articles 459 and 590, for the capital increase of joint stock and limited liability companies, the rules explained above regarding capital contributions in kind shall be applicable.

Another issue which is discussed in this stage is that the report prepared by experts is expected to confirm the collectability of the receivable along with its existence. Opinions from experts regarding the collectability of a receivable may become cause for concern, since it may lead to the liability of the experts in terms of liability chain[3].

In practice, especially certain difficulties are experienced in the court phase with regards to the shareholder's contribution of its receivables from the company to that company as capital in kind and the registration of such transaction; thus the Domestic Trade General Directorate of Ministry of Customs and Trade, ("Ministry") felt the need to develop new regulations in order to overcome those difficulties. In this respect, pursuant to the Ministry opinion in terms of procurement of reliable finalization with respect to the shareholder's contribution of its receivables from the company to the company as capital in kind and the capital increases concluded in this manner;

It is stipulated that if the shareholder contributes his receivable from the company as capital in kind to the establishment of another company or towards the capital increase of another company, in order to determine the existence of the receivable the report prepared by the experts assigned by the commercial court of first instance at the location of the company's headquarters pursuant to article 343 of the Law must be submitted in order to register the transaction.

Besides this, in case the shareholder contributes his receivable from the company as capital in kind to the capital increase of the company in which he is already a shareholder, for determining the existence of receivable, the report prepared by the experts assigned by the

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2 **TEKİNALP Ünal,** Sermaye Ortaklıklarının Yeni Hukuku, Değiştirilmiş ve Düzenlemelerle Güncelleştirilmiş 3. Bası, Vedat Kitapçılık 2013, p. 157.

3 **KENDİGELEN Abuzer**, Yeni Türk Ticaret Kanunu Değişiklikler, Yenilikler ve İlk Tespitler, XII Levha Yay., 2011, p. 198.

commercial court of first instance at the location of the company's headquarters pursuant to article 343 of the Law may be submitted. Additionally, the Ministry delivered an opinion stating that the reports of certified public accountants or independent accountants, financial advisors or auditors for the companies subject to auditing may also be submitted for registration. Consequently, transactions have begun to be applied in line with this opinion.

However, even though a convenience has been brought with respect to capital in kind contributions of the shareholder of its receivable from the company which he is a shareholder of to that same company for its capital increase transaction, the fact that this implementation is not set forth under the law raises the question whether the regulation of the Law may be extended with the Ministry opinion.

Where the receivables are subscribed as capital after all of these stages, pursuant to Article 130 TCC, if they are not collected by the company, the shareholder shall not be relieved of his capital contribution obligation. The receivable, unless otherwise determined, must be collected within one month as of the due date if it is not due and within one month as of the date of the registration of articles of association if it is due and payable. Also according to the same article, if the receivable is not collected within such period, the shareholder is obliged to pay the default interest with respect to the days lapsing as of the expiry of the period, without prejudice to the company's right to indemnity due to delay. In case the receivable is partially collected, the explanations above shall be valid for the outstanding amount. Moreover, the capital in kind may be guaranteed in accordance with Article 128/2 TCC[4].

Conclusion

Even though the issue of contributing receivables or adding receivables as capital is one of the technical issues of commercial law, this

[4] TCC art. 128/2 The immovable The immovable property having the value determined by the experts in its articles of incorporation or articles of association with the annotation onto the title deed, the intellectual property and other values, if any, with the registration to their exclusive registry in accordance with this article and the movables with the entrustment to a trustee shall be accepted as capital in kind. The registration with the special registries shall remove the good faith.

issue is encountered and discussed greatly in practice. We are of the opinion that the institution of contribution or addition of receivables as capital, which has been commenced to be applied in a more reliable method either with the Ministry opinion or the practices of the Registry of Commerce, will be well grounded in time, with the increase of transactions and the precedents to be formed and the discussions regarding this issue will be unified around certain opinions.

Capital Reduction within the Scope of the Turkish Commercial Code*

Prof. Dr. H. Ercument Erdem

General

Capital reduction is regulated under articles 473-475 of the Turkish Commercial Code No. 6102 ("TCC"). The capital of a joint stock company can be reduced in order to (i) return some of the capital to the shareholders, and (ii) recover the company's loss.

A capital reduction may also be made concurrently with the capital increase where fully paid new shares will be issued in the amount of the reduced capital.

Capital reduction requires an amendment to the Articles of Association. Board of directors shall prepare an amendment text concerning the reduction.

Decision regarding capital reduction is reserved to the competence of the general assembly. Pursuant to Article 408/1,a TCC, the general assembly cannot delegate said power to another body.

The Board of directors shall prepare and submit to the general assembly a report stating the purpose, scope and procedure of the capital reduction. This report shall be registered and announced together with the resolution for capital reduction.

There are certain limitations regarding the amount of the capital which can be reduced. According to Article 332 TCC, basic capital representing the entire capital subscribed in the articles of association may not be less than fifty thousand Turkish Liras and the initial capital may not be less than one hundred thousand Turkish liras in joint

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* ***Article of August 2014***

stock companies which have adopted the authorized capital system and not open to the public. Capital shall not be reduced under the amounts stated in the above written article. Capital will be reduced either by annulling some share certificates of the shareholders or reducing the nominal value of the shares provided by the General Assembly. In either procedure the issued share certificates shall be returned to the company.

Pursuant to Article 475 the required documents shall be submitted for registration with the trade registry.

Capital Reduction in order to Return the Reduced Amount to the Shareholders

If the capital is more than the company requires, or if a certain part of the capital is not used, the general assembly may decide to reduce the capital and return the reduced amount to its shareholders.

The board of directors shall prepare a detailed report stating the purpose, scope and procedure of the capital reduction. The company auditor shall also prepare a report, which states that there are enough assets to cover the rights and receivables of the creditors. Both reports shall be submitted by the board of directors to the general assembly for approval. Following the approval of the resolution for capital reduction, the report stating the purpose and the procedure of the reduction shall be registered and announced.

Following the general assembly resolution for capital reduction, the creditors shall be invited three times at intervals of seven days by the board of directors. An announcement shall be made pursuant to the relevant article of the Articles of Association. If a joint stock company is audited in accordance with Article 397/4 TCC, the announcement shall also be published on the company's website. The creditors shall be invited to notify their receivables and to make a security claim with said announcement within two months following the third announcement published in the Turkish Trade Registry Gazette.

In order to execute the resolution for capital reduction, the receivables that are due and payable have to be paid or secured. It should be noted that since the board of directors submitted a report stating that there are enough assets to cover the debts or claims, a creditors request to secure the receivable should be evidenced and justified.

If the claims of the creditors are not paid or secured, the creditors can claim the cancellation of the general assembly resolution for the capital reduction within two years following the publication of the resolution.

Capital Reduction to Recover a Company's Loss

Capital reduction may be exercised to remedy losses or the balance sheet. In order to reduce the capital for such purposes, the following conditions shall be fulfilled: the loss of the company must be an actual loss and the company must have lost 2/3 of its capital, in other terms, the company should be insolvent. The company should be able to cover its debts with its assets after the reduction and this shall be determined by a board of directors' resolution. The capital should be reduced equal to the amount of the adverse balance or the loss; said amount should not be exceeded.

Pursuant to Article 474/2 TCC, in the case of a capital reduction to recover the company's losses, the board of directors can renounce to notify the creditors, to secure or to pay their claims. Therefore, the invitation procedure is not applicable herein. The general procedure explained above is also applicable to this type of reduction.

Quorums under TCC for Capital Reduction

Pursuant to Article 421/3 TCC, the resolution for capital reduction shall be adopted by the affirmative votes of shareholders, or their representatives, holding at least seventy five percent of the share capital. In the event that the quorums regulated under Article 421/3 cannot be reached in the first meeting, the same quorums shall apply to the following meetings.

Conclusion

The TCC regulates capital reduction, in cases where the company aims to return the reduced capital to its shareholders and to recover the company's loss. A joint stock company can also reduce its capital concurrently with the capital increase. In both types of capital reduction, the board of directors prepares a report stating the aim, purpose and the procedure for the reduction and submits it to the general assembly. It's

important that an auditor's report put forth that there are enough assets to cover the debts and claims of the creditors. There is a significant difference between various types of capital reduction; in cases where the company aims to recover the loss, the board of directors may refrain to invite the creditors and to pay or to secure their claims and rights.

Duties, Obligations and Liabilities of Liquidators*

Att. Nilay Celebi

The duties, obligations and liabilities of liquidators who play a major role in the dissolution and liquidation of companies are briefly explained below.

Liquidators, Their Duties and Obligations

The duties to be performed by liquidators are determined in the relevant articles of the Turkish Commercial Code (TCC). In principle, liquidators shall exercise their authority themselves and cannot transfer their authority to third persons. However, in case there is more than one liquidator, a liquidator may grant representative authority to his co-liquidator or to a third person for the purposes of fulfillment of some specific transactions (TCC Art. 539/1).

Liquidators represent companies with regard to the issues on liquidation before courts or in external relations. In this respect, they can appoint attorneys, conclude settlement agreements, or bring the dispute to arbitration.

The liquidator shall act as a diligent director.

First Inventory and Balance Sheet

The liquidators shall first examine the status of the company concerning the liquidation at the time of their appointment. They shall prepare an inventory and balance sheet disclosing the financial and asset status of the company by consulting with experts for the assessment of assets, and submit these to the approval of the general assembly.

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* ***Article of June 2014***

Following the approval of the inventory and balance sheet by the General Assembly, the liquidators shall seize all of the assets, documents and books of the company that are included in the inventory.

Invitation and Protection of Creditors (TCC Art. 541)

Concerning a company in liquidation, the creditors shall be invited to notify their receivables to the liquidators. The liquidators shall invite the creditors, via registered letter with return receipt, whose addresses can be obtained from the company's books or other relevant documents. Other creditors shall be informed of the liquidation of the company and invited to claim their receivables by announcing the liquidation of the company 3 times (once a week) on the web site of the company and in the Trade Registry Gazette. If the creditors who are known do not make any claim, the amount of their receivables shall be reserved in the account of a bank to be determined by the Ministry of Customs and Commerce.

Unless the debts of the company, which are not due and which are not subject to any dispute, are guaranteed by sufficient sureties, or in case the distribution of the company assets among shareholders is not subject to the condition of the payment of these debts, such amount equivalent to such debt shall be deposited with the notary public. Liquidators who act contrary to the aforesaid and unjustly distribute funds to the shareholders shall be held liable pursuant to Art. 553 TCC.

Other Liquidation Transactions (TCC Art.542)

The duties of liquidators concerning other liquidation transactions are briefly provided below (TCC Art. 542):

- Liquidators conduct daily business of the company and conclude work already begun before their arrival. They cannot engage in new transactions that are not necessary in terms of liquidation.
- Unpaid portions of shares shall be collected. The assets are turned into cash. The liquidators have the authority to sell the assets one by one or in whole. Unless otherwise provided in the general assembly, the liquidators can sell the assets at a bargain price (TCC Art. 538/1).

- The debts shall be paid and the obligations shall be fulfilled. The liquidators are obliged to pay the company's debts, if the debt does not exceed company assets, which will be turned into cash pursuant to the first liquidation balance sheet and in accordance with the situation after the creditors have been paid.
- Where a company's debts exceed its assets, the liquidators shall immediately notify this situation to the court. If the court decides in favor of bankruptcy, the liquidation shall be made pursuant to the provisions of bankruptcy law.
- The transactions of liquidation shall be concluded as soon as possible and the liquidators shall keep necessary records/books for the good conduct and protection of transactions.
- Pursuant to the accountability principle, in case the liquidation is not concluded within a year, the liquidators shall prepare the financial statements relevant to the liquidation at the end of every year. They shall also prepare the final statement at the end of the liquidation, submit it to the general assembly and answer questions, if any.
- The liquidators shall deposit the balance of the necessary expenses of the company to a bank account in the name of the company.
- The liquidators shall immediately pay debts that are not due, by applying a discounted interest rate as for a short-term loan as determined by the Central Bank of the Republic of Turkey.
- The liquidators shall provide information to the shareholders on the status of liquidation transactions and must provide signed documents in this respect, if requested.

Distribution to Shareholders (TCC Art. 543)

Following the payment of debts and the return of share prices, the distribution to shareholders shall be realized, upon a general assembly resolution, on the proportion of the capital they paid and their concession rights.

For the distribution to be made, one year shall have passed as of the third announcement made to the creditors. However, where there is no risk for the creditors, a request can be submitted to the court for the authorization of distribution before the1-year term.

In principle, the distribution shall be in principle made in cash but it may be made in kind if determined under the articles of association of the company (TCC Art. 543/3).

Preservation of Books (TCC Art. 544)

The liquidators are obliged to keep the commercial books and other relevant documents (including liquidation transactions) in accordance with TCC Art. 82. The last company general assembly shall declare and ensure that company books are kept by the Civil Court of Peace for 10 (ten) years.

Cancellation of Registration of Trade Registry (TCC Art. 545)

The liquidators shall apply to the relevant trade registry for the cancellation of the company trade name at the end of liquidation.

Notifications

The liquidators shall notify tax offices, banks and other relevant official institutions and submit them a statement of liquidation.

Liabilities of the Liquidators

Concerning the liabilities of liquidators, Art. 546/2 refers to Art. 553, which stipulates the liabilities of directors in joint-stock companies.

Pursuant to the said Article, in case the founders, members of the board of directors, managers and liquidators violate their obligations as provided in law and in the Articles of Association by fault, they are liable for the damages incurred to the company, the shareholders and creditors of the company.

The liquidators, who pay money unjustly by violating the provisions relevant to the invitation and protection of creditors, shall be liable as per Art. 553 TCC (TCC Art. 541/4). Additionally, the liquida-

tors, who do not deposit the equivalent of disputed credits to a notary pursuant to Art.541/4 of the TCC, shall be liable as per Art.553 of the TCC.

The liability stipulated in said Article is based on the fault of the liquidators and it shall be determined if the liquidators have performed their duties in diligence. The claimant shall prove if the liquidators are in fault.

Although said liability in the relevant Article is a joint liability in principle, the joint liability occurs only when the liquidators manage and represent jointly. Where the distribution of duties is realized by a general assembly resolution and liquidators are separately authorized to execute actions with regard to the liquidation, each is only liable for the results of the action they executed.

The company, shareholders or creditors of the company can file a liability suit against the liquidators in case they violate their obligations as provided in law or the company articles of association. The lawsuit shall be initiated within two years from the date of becoming aware of the damage and responsibility, and in any case, within five years from the date of the act causing the damage. These time limitations constitute a prescription for the right of action. However, if the action causing the damage constitutes a crime pursuant to Turkish Criminal Law No. 5237 where there is a longer time limit on the right to take action, then the liability lawsuit may be opened within such term. (TCC Art.560)

Conclusion

Liquidators shall be appointed to a company that enters into liquidation pursuant to the TCC. Within this scope, liquidators do not only play a major role, but also hold important responsibilities in this process.

Termination of a Joint Stock Company by Just Cause[*]

Prof. Dr. H. Ercument Erdem

Introduction

The notion of termination of a joint stock company by just cause has entered into Turkish Company Law through Turkish Commercial Code No. 6102 ("TCC"). Although set forth in Art. 736/Sub Clause b.4 of the Swiss Code of Obligations ("Swiss CO"), there was no provision regarding termination by just cause in the Turkish Commercial Code No. 6762 ("Former TCC").

The termination of joint stock companies by just cause, as stipulated in Art. 531 TCC, requires detailed examination as it will be subject to court decisions and academic examination in the future. In this article, termination by just cause as regulated under Art. 531 TCC shall be analyzed.

Termination by Just Cause pursuant to Art. 531 TCC

A new way of termination emerges for joint stock companies due to TCC Art. 531, which regulates the termination of joint stock companies by just cause. As is known, no exit right exists for joint stock companies. At this point, the termination of joint stock companies by just cause is of vital importance for joint stock companies where shareholding relations are no longer tolerable. It may be concluded that the termination of joint stock companies by just cause is based on the main principle that continuous contractual relations may be terminated for just cause.

Parties to the Lawsuit

Where just cause arises based on Art. 531 TCC, shareholders representing at least ten percent of the capital and five percent in public

[*] ***Article of February 2014***

companies, may request the termination of the company from the relevant court. It is observed that the lawmaker assessed this right of action as a minority right, but has not granted this right to a shareholder holding only one share. The shares representing at least ten percent of the capital (five percent in public companies) may be held by one shareholder or by more than one shareholder as well. Where there is more than one shareholder, these shareholders shall act jointly.

The focal point of this regulation is that in light of corporate governance principles, it provides an efficient and proportionate protection to minority shareholders against the majority.

The lawsuit shall be filed against the legal entity of the company.

Jurisdiction

The competent jurisdiction in a lawsuit of this type is the commercial court of first instance where the headquarters of the company is located.

Just Cause

A just cause appears as a notion that enables the termination of a continuous contractual relationship, where one exists. While termination by just cause has significant importance for simple shareholdings in which the personal characteristics of the shareholders and their relationships play a major role, this notion is approached prudently in terms of joint stock companies.

Although Art. 531 TCC sets forth that a joint stock company may be terminated where just cause exists, it does not define just cause, and does not introduce restrictions on the causes which may be assessed as just. In fact, the reasoning of the TCC, by stating that *"Just cause is not defined in the Draft, nor are any examples of just cause provided; but defining the notion of just cause and determining its nature are left to court decisions and the doctrine"*, stipulates that the content of said notion shall be determined by the academics and legal precedent.

The misuse of majority power in a company is the most fundamental event requiring the termination of a joint stock company for just cause under Swiss and Turkish laws. It is stipulated by Swiss acade-

mics that the most important purpose of a lawsuit regarding the termination of joint stock companies by just cause is to prevent the violation of minority shareholder's rights, which are violated through majority shareholder's placing their benefits over the benefits of the company and using the voting rights therein for this reason. The violation of the financial rights of the shareholders may also be regarded as a reason for the justified termination of a joint stock company.

In terms of balancing the rights and interests of the shareholders in joint stock companies, the right to demand information and examination is of vital importance. Protecting the interests of shareholders and their ability to retrieve information in the course of affairs is not possible without the right to demand information and examination. Moreover, it may be stated that the systematic rejection of the shareholder's right to demand information constitute just cause. For instance, not being able to effectively exercise the right to examine company documents and records, and having requests rejected for the detailed control of company statements may constitute just cause.

As is known, the individual relationships between the parties are not as important in joint stock companies as in limited companies. However, it should be kept in mind that the individual relationships between the shareholders may play an important role in the operation of the company in small joint-stock companies in which the shares are not distributed to many shareholders. Therefore, it is possible to say that the judge may, exceptionally or together with the other just causes, pay attention to the personal reasons while deciding on termination of a joint stock company by just cause, or at least for the squeezing out the claimant shareholder(s).

Requests and Solutions Which may be Decided by the Court

Pursuant to Art. 531 TCC, a claimant may request termination of a joint stock company by just cause from the court. However, even if there is just cause, the court is not obliged to decide in favor of terminating the company. Legal scholars agree that termination by just cause shall be perceived as a last option, as it is an exceptional solution and it does terminate the legal personality of the company. Therefore, the court shall first resort to other solutions which may eliminate just

cause, and shall decide on the termination of the company in case a solution may not be reached in this way or there is no alternative solution. This approach is more appropriate procedurally and for the continuity of the company.

Pursuant to Art. 531 TCC, the court may decide in favor of the squeeze-out of the claimant shareholders upon the payment of the real price of their shares on the date nearest to the decision. However, the judge may decide for another appropriate and acceptable solution. It is observed that a broad power of discretion is given to the judge. Over time, solutions put forth through rulings handed down by the court will serve to diversify and clarify the notion of what may be considered an appropriate and acceptable solution. However, the solution decided by the judge must be appropriate with regards to the concrete case and must be acceptable. The appropriate solution is a solution which remedies the concrete case and provides a balanced protection between the interests of the claimants and the company. Any alternative solution shall be determined in accordance with the features of the concrete case and the solution must remove the just cause and satisfy the claimants. Moreover, the solution ruled by the court must be acceptable; meaning a balance between the interests of the claimant shareholders and the company is ensured. Proportionate solutions are evaluated as acceptable solutions.

Within this scope, examples of decisions rendered by Swiss courts with respect to appropriate solutions may be emphasized. Some of these solutions take the form of an obligation to distribute dividends or partial liquidation through capital reduction. In addition, the option to establish a new company may be considered; in which the claimant will be a shareholder, following the division of the former company and where the capital of the new company is equal to the real value of the claimant's shares. Turkish doctrine generally holds that courts may decide for the division as a result of a lawsuit for termination by just cause.

Temporal Application of Termination by Just Cause

As explained above, termination by just cause of joint stock companies entered into Turkish Law with the TCC. The temporal application of the relevant provision is another subject to examine.

Art. 2 of Law No. 6103 on the Entry into Force and Application of the Turkish Commercial Code ("Law on Application") sets forth time periods for applying provisions of the Former TCC and the TCC. Pursuant to said article, concerning the legal consequences for events that occurred before the entry into force of the TCC, the provisions of the Law that were in effect when the events took place shall be applicable.

In accordance with Art. 3 of the Law on Application, the provisions of the TCC shall apply to legal relationships regulated by law irrespective of the parties' consent, even if they were established before the entry into force of the TCC.

Certain events which took place prior to the entry into force of the TCC and other events which took place after its entry into force may derive from the same ongoing practice, and may, only if these events are regarded as a whole, be deemed to constitute just cause for termination of a company. In this case, the question arises as to whether or not events that took place prior to the entry into force of the TCC may serve as grounds for a termination lawsuit for just cause under the TCC. Considering the nature of just cause, it is rightfully admitted by academics that legal events or transactions that occurred while the Former TCC was in force, but which are connected to facts which took place after the entry into force of the TCC, can be acknowledged within the scope of Art. 531 TCC. Moreover, the Court of Cassation comes to the same conclusion in one of its decisions rendered based on the Art. 3 of the Law on Application with respect to limited liability companies (11th Civil Chamber, 13.6.2013, File No. 2011/14131, Decision No. 2013/12400, Batider, 2013, C. XXIX, S. 2, p. 331-335). Otherwise, the result would be the non-application of said provision for a long time after the entry into force of the TCC.

Conclusion

The termination of joint stock companies by just cause shall apply for the first time in Turkish Law with the TCC. Through this regulation, the possibility emerges for minority shareholders to request that the court terminate a joint stock company where there is just cause. The courts may decide for the termination or any other appropriate and

acceptable solution with regards to the concrete case. It is obvious that Art. 531 TCC will create significant court decisions, as it gives judges the power of discretion when examining just cause and when deciding to impose another appropriate solution.

Withdrawal and Expulsion from Limited Liability Companies ("LLC") Incorporated by Two Shareholders*

Prof. Dr. H. Ercument Erdem

Turkish Commercial Code No. 6102 ("TCC") brought many innovations and formed many new entities. One of the innovations is the sole shareholding joint-stock and limited liability company. Pursuant to the Article 504 of the abrogated Turkish Commercial Code No. 6762 ("Former TCC") a limited liability company cannot be formed by less than two, and more than fifty shareholders. The minimum limit of the number of the shareholders has been abandoned and incorporation of a sole shareholder limited liability company has become possible.

Expulsion from Limited Liability Companies Incorporated by Two Shareholders According to Former TCC

The limit of the number of shareholders in the Former TCC caused problems. For example, in limited liability companies incorporated by two shareholders, in case of a discrepancy, as the Former TCC didn't allow for a single-shareholder limited liability company the only remedy applicable was the dissolution of the company for just cause by the court. Thus, because of these conflicts among the shareholders, companies that had good dynamics and efficient commercial potential were faced with dissolution and were eliminated from business life. As sole-shareholding limited liability companies were not permitted, the Court of Cassation didn't allow the expulsion of a shareholder with just cause. The established opinion of the Court of Cassation was based on the ground that the withdrawal or expulsion of a shareholder from a limited liability company incorporated by two shareholders was not possible, even in the presence of a just cause, since the company can't

* ***Article of July 2014***

proceed with a sole shareholder after withdrawal or expulsion. Therefore the only remedy was to request dissolution of the company. Further to the Court of Cassation, as there is no article about the maintenance of sole shareholding limited companies in the Former TCC, Article 504/II indicates: *"If the number of shareholders is down to one or one of the compulsory organs of the company can't be formed, unless these deficiencies can't be removed within an appropriate time, upon the request of an associate or a creditor of the company, the Court decides the dissolution of the company. Upon the request of a party, the Court takes necessary cautionary judgments."* This Article was only applicable when the number of shareholders was down to one because of an obligatory reason such as the death of a shareholder within the regular term of the company or transfer of all shares to one shareholder. The Court of Cassation adopted the view that according to the Former TCC Article 551/II, the right of expulsion of a shareholder exists only for limited liability companies with more than two shareholders.

Within the frame of the established opinion of the Court of Cassation, which was based on the According to the Former TCC, courts used to decide for the dissolution of companies by just cause instead of the expulsion of a shareholder in case of discrepancies between the shareholders; this caused the interruption of commercial life and prevented the development of the companies.

Expulsion from Limited Liability Companies incorporated by Two Shareholders According to the TCC

Pursuant to TCC No. 6102 the number of shareholders of limited liability companies is regulated as one to fifty; thus, in case of a conflict between the shareholders, instead of the dissolution of the company by just cause, the opportunity of expulsion was enabled. Therefore, it is now lawful to maintain a limited liability companies incorporated by two shareholders in the event of expulsion of one of said shareholders. Through this system, the Court of Cassation changed its view of dissolution by just cause, to expulsion of the opponent shareholder.

Law of Enforcement Article 3

Pursuant to Article 3 of the Law on Enforcement and Application of the Turkish Commercial Code ("Law of Enforcement"), concerning the legal transactions regulated by law irrespective of the parties' consent that occurred before the entry into force of the TCC, the provisions of the TCC will be applicable. As per Article 3 *"The provisions of the TCC shall apply to legal relationships regulated by law irrespective of the parties' consent, even if they were established before the entry into force of the TCC."* In connection with the limited liability companies, sole shareholding limited liability companies (TCC Articles 573-574), audit and special audit (TCC Article 635), grounds for and consequences of dissolution (TCC Article 636), participation in the withdrawal (TCC Article 639) and cash payment for withdrawal (TCC Article 641-642) are examples of these legal transactions. As per this provision, the decision of the 11th Civil Chamber of the Court of Cassation, dated 13.06.2013 and numbered 2011/14131 and 2013/12400, created case law by stating the following: *"as Article 3 of the Law on Enforcement and Application of the Turkish Commercial Code which is established after this case has initiated, provides an opportunity to apply the provisions of the TCC No. 6102, which allows the single-member LLC, it is needed to be decided according to the petition of claim which requests the dismissal of the shareholder"*. This decision opened the gate for the application of such new provisions.

Application of the TCC to the Limited Liability Companies incorporated in accordance with Former TCC

Pursuant the provisions of the TCC, there are two options concerning the expulsion of a shareholder. The first option is the existence of a provision in the articles of association that stipulates the reasons for the expulsion of a shareholder from the company (contractual right of dismissal). In this case, the shareholders may decide for the expulsion of a shareholder when the circumstances provided in the articles of association occur. Pursuant to Article 640 TCC, the shareholder may initiate an annulation case against this decision within 3 months after the notification by the notary to him/her. The reasons for expulsion provided in the articles of association should not necessarily be one of the just causes indicated in Article 640/3 TCC. Reasons for contractu-

al right of dismissal are determined by the shareholders, in accordance with the freedom of contract principle.

The second option is that the right to request from the court the expulsion of a shareholder in case a just cause exists. Requests for expulsion of a shareholder from a company is one of the non-delegable authorities of the general assembly pursuant to Article 616/1/c TCC. In this case, if the company believes that there is a just cause that prevents a shareholder from remaining as such, the company shall apply to the Court and the judge will decide whether the cause is just or not. The judge will decide for expulsion if he agrees with the just cause.

Even if, pursuant to Article 3 of the Law on Application, the provisions of the TCC shall apply to the limited liability companies incorporated by two shareholders that were established during the Former TCC, the application of the first option is not directly possible. If the contractual right of expulsion was not recognized by the articles of association of a limited liability company established during the Former TCC, this right of contractual dismissal can only be used after the revision of the articles of association of the company providing such right. However, the application of the second option is possible. If the company proves the just cause, it may request the expulsion of the shareholder from the company. Even if the company was incorporated during the Former TCC, instead of the dissolution of the company in accordance with the previous decision of the Court of Cassation, due to Law of Enforcement and provisions of the TCC, the court might decide for the expulsion of the shareholder or for the application of other circumstances convenient to the case.

Withdrawal

In case the relationship among the shareholders becomes unbearable, the right of contractual withdrawal provided by the articles of association (TCC Article 638/1) and the permission of withdrawal for just cause by the Court (TCC Article 638/2) are other solutions, besides the dismissal or liquidation of the company. In accordance with the above mentioned explanations, even if the articles of association of a company incorporated according to the Former TCC does not provide for the right of contractual withdrawal, such right could be pro-

vided by amending the articles of association. The quorum set forth in the TCC shall be respected when the amendment is made, a right of withdrawal can be provided and instead of seeking just cause and applying to the court, when a stipulated reason for withdrawal occurs, the shareholder may use his/her right of withdrawal, and the company could continue with a single shareholder. If this remedy is not preferred, the shareholder who alleges the presence of a just cause may apply to the court and request his/her withdrawal. In this case the court shall examine whether there is a just cause and especially whether the claimant is at fault or not. According to the established view of the Court of Cassation, the party at fault cannot claim withdrawal for just cause.

Dissolution

Every shareholder may request dissolution of the company in case a just cause exists pursuant to Article 636 TCC, which regulates grounds of dissolution of limited liability companies. Nevertheless, the dissolution is the last remedy. Instead of dissolution, the court may decide, at its sole discretion, on the dismissal of the shareholder claiming the dissolution upon the payment of real value of the shares or on other solutions that are acceptable and convenient to the situation. The distribution of dividends, division of the company and providing shares of a newly established company and attribution of the opponent shareholder as director can be shown as alternative, acceptable solutions.

Just cause

Just causes that are the conditions to apply to the court are not restrictively cited in the TCC. Abuse of majority power, non-functioning organs, breach of trust among shareholders, providing unfair advantages to the shareholders, breach of financial rights, breach of the right to information and to inspect, important conflict between the shareholders, misdirection of the company and causing a loss to the shareholders may be accepted as the reasons that render the shareholders relationship unbearable. As a matter of fact, the Court of Cassation indicates that the just causes stated in the TCC that trigger dissolution of the companies are not restrictive.

The parties of the dissolution request

In case of a court application for just cause, another problem appears; against whom the lawsuit will be initiated? The Court of Cassation's decisions on this matter are contradictious. In some of its decisions, it seeks that all the shareholders are respondent, and in recent decisions it accepts only the company as respondent, since otherwise when the dissolution of the company is decided, the decision would effect a third party who is not involved in the case. The Court of Cassation has conflicting decisions concerning the other party when companies incorporated by two shareholders are involved; is some decisions it is the shareholders and in other it is the company.

Conclusion

TCC allows for the expulsion of a shareholder or to implement other solutions that are convenient to the situation instead of the dissolution of a limited liability company with two shareholders. According to Article 3 of the Law of Enforcement, these provisions are also applicable to limited liability companies that have been incorporated and to the lawsuits that were initiated during the Former TCC. The continuity of companies is important not only for the self-dynamism of the company, but also for the commercial life. During the Former TCC, the dissolution of a company was the only remedy offered to limited liability companies where there existed discrepancies among its shareholders. This remedy was deficient and did not serve the purpose. The TCC changed this system and filled the gaps. The Court of Cassation followed this approach in its new decisions and contributes to the establishment of new regulations brought by the TCC.

Termination of a Limited Liability Company by Just Cause*

Prof. Dr. H. Ercument Erdem

Introduction

The Turkish Commercial Code No. 6102[1] ("TCC") bears many novelties regarding limited liability companies. In addition to new mechanisms regulated therein, the TCC introduces material revisions to concepts that have already been foreseen under the former abrogated Turkish Commercial Code No. 6762[2] ("fTCC"). One of these revisions concerns the termination of a limited liability company by just cause.

The provisions governing termination of a joint stock company by just cause[3], which has been regulated for the first time under the TCC, and the termination of a limited liability company by just cause are materially similar. Notwithstanding, while the right to file a lawsuit for termination by just cause is granted only to the minority shareholders in a joint stock company, any shareholder of a limited liability company may exercise this right. Termination for just cause, which was already regulated under the fTCC, is supplemented and should be evaluated together with the exit rights of a shareholder in a limited liability company. Therefore, the termination of a limited liability company by just cause necessitates specific review and attention.

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* ***Article of September 2014***

1 Entered into force through publication in the Official Gazette dated 14 February 2011 and no. 27846 on 1 July 2012.

2 The fTCC was abrogated by the TCC on 1 July 2012.

3 The termination of joint stock companies by just cause is assessed in a Newsletter article of February 2014. Please see **Ercument Erdem**, Termination of a Joint Stock Company by Just Cause http://www.erdem-erdem.av.tr/en/articles/termination-of-a-joint-stock-company-by-just-cause/ (accessed on 8 October 2014).

This Newsletter article will evaluate the termination of a limited liability company by just cause, bearing in mind both the termination by just cause under the fTCC and the novelties introduced by the TCC.

Termination by Just Cause under the fTCC and the TCC

fTCC Provisions

Art. 549 fTCC foresaw causes for termination of limited liability companies. One of the causes for termination is a court order for termination upon request of one of its shareholders in the presence of just causes.

Bearing in mind the exit rights regulated under Art. 551 fTCC, if there is just cause, a shareholder of a limited liability company had the right to request either the exercise of their right to exit the company[4], or the termination of the company by just cause.

Material Novelty Introduced under the TCC

The TCC regulates termination of a limited liability company by just cause in Art. 636. Similar to the provisions of Art. 549 fTCC, the TCC grants every shareholder in a limited liability company the right to file a lawsuit for the termination of that company in the presence of just causes.

Notwithstanding, Art. 636/3 introduces a material novelty: the judge of the court, before which the termination lawsuit is filed, may rule for the squeeze out of the claimant shareholder or for another solution which is acceptable and suitable for the specificities of the present case.

Had the fTCC included such a provision, it could have prevented the prevailing practice of ordering the termination of the company, which was mandatory for limited liability companies with two share-

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[4] Please see **Ercument Erdem**, Withdrawal and Expulsion from Limited Liability Companies ("LLC") Incorporated by Two Shareholders (Newsletter Article of July 2014) http://www.erdem-erdem.av.tr/en/articles/withdrawal-and-expulsion-from-limited-liability-companies-llc-incorporated-by-two-shareholders/ (accessed on 8 October 2014) for squeeze out (expulsion) and exit in limited liability companies with two shareholders under the fTCC and the TCC.

holders, where exit and squeeze-out was not possible. The judge could have been empowered to rule for a solution other than termination.

For these reasons, Art. 636/3 TCC introduces a constructive provision that serves to promote the continuity of a company.

Specificities of the Lawsuit for Termination by Just Cause

Parties to the Lawsuit, Competent Jurisdiction

Any shareholder of a limited liability company may file a lawsuit for its termination by just cause.

While this right is granted as a minority right in joint stock companies, it is remarkable that any limited liability shareholder may file this termination lawsuit. Nevertheless, bearing in mind the exit and squeeze out rights granted under the fTCC and preserved under the TCC, the right to file a lawsuit for termination by just cause must be assessed together with the exit rights of the shareholder. Therefore, it is appropriate for this right to be granted to any limited liability company shareholder.

The lawsuit is filed against the company.

As is the case for the lawsuit for termination of a joint stock company by just cause, the competent jurisdiction in a lawsuit of this type is the commercial court of first instance where the headquarters of the limited liability company is located.

Just Cause

Neither the fTCC nor the TCC clarifies the scope and content of a just cause while regulating the termination of a company by just cause.

The legislative justification of Art. 636 TCC makes reference to Art. 531 governing the termination of a joint stock company by just cause. The legislative justification reaffirms that the code does not define what a just cause is, that jurisprudence and academic opinions shall define its scope. The justification provides for certain examples accepted by Swiss scholars. These include the repeated illegal convocation of the general assembly, constant violation of minority and individual rights, especially that of the right to information and inspection,

continuous loss of the company and a regular decrease of distributed dividends.

The just causes accepted among scholars and jurisprudence during the period when the fTCC was in force may be used as a reference for defining just cause under the TCC. As emphasized by scholars, Art. 161 and Art. 187 fTCC regarding just causes in collective companies may shed light on the interpretation of just cause during the fTCC period. For instance, Art. 187 fTCC states that betrayal by a shareholder of the company in the management of the company and its accounts, non-fulfillment of his/her primary duties, misuse of the company name and property for his/her personal benefits, or his/her loss of ability or capacity to realize company actions due to illness or another cause, are just causes.

Numerous Court of Appeals rulings under the fTCC and TCC also shed light on various reasons which cause the continuity of the partnership or shareholding relationship to become unbearable. The misuse of the majority right, the non-operability of company bodies, material conflicts or hostilities among shareholders and the filing of lawsuits, criminal accusations and even physical confrontations, disruption of trust, unjustified benefits obtained for or by certain shareholders, violation of economic rights, such as the decrease or lack of dividend distribution, constant loss declared by the company and the impossibility for the company to realize its objective, the violation of a shareholders' right to information and inspection and mismanagement of the company are certain examples seen in jurisprudence.

Based on the above examples, just cause may be defined as a legal event which renders the continuity of partnership relations based on the good faith impossible.

In order for the ruling for the termination of a limited liability company, the elements that ensure continuity of the company should no longer be present. Termination should be the case only if the causes which the claimant shareholder alleges prevail over the benefits of other persons in the continuity of the company; unless the just cause is considered material to this extent, the court should not rule for termination of a company.

The requirement for a just cause to be material to the extent explained above becomes even more important bearing in mind the possibility Art. 636 TCC grants the court to rule for the squeeze out of the claimant shareholder or for another suitable solution instead of ruling for the termination of the company.

Court Rulings for Other Suitable Solutions

Pursuant to Art. 636 TCC, if a termination lawsuit is filed, the court may rule for the squeeze out of the claimant shareholder or for another suitable solution. This discretion granted to the judge is very important bearing in mind the main principle of ensuring a company's continuity and resorting to termination only when there is no other viable solution.

This provision is similar to Art. 531 TCC which, for the first time, regulates the termination of joint stock companies by just cause. The TCC accepts, by regulating alternative solutions to termination by just cause, that termination of a company is a very heavy consequence both for joint stock companies and limited liability companies. The termination of a company should only be a last resort.

Given the novelty introduced under Art. 636 TCC, the court does not have to rule for the termination of a limited liability company, even if it finds the reasons brought forward by the claimant shareholder justified. If the continuity of a company is more convenient from an economic and rational perspective, the court may squeeze out the claimant shareholder instead of terminating the company. This provision therefore accepts that the shareholder will incur no harm in being squeezed out of the company whose termination it is requesting. In both cases, the shareholder will exercise their shareholding rights and their shareholding shall cease.

In the event a lawsuit for termination by just cause is filed, the court is not limited with the option to squeeze out the claimant shareholder, and may rule for other suitable solutions. Notwithstanding, the TCC does not state what those solutions may comprise. Art. 636 TCC grants the judge broad discretion and the judge shall evaluate the conflict presented before the court.

It is disputed among scholars whether the judge should obtain the consent of the claimant shareholder and other shareholders when ruling for other convenient and acceptable solutions, while assessing the acceptability of this solution. The solutions which the judge shall apply may affect all shareholders. On the other hand, the judge's duty is to protect the company's interests, ensure its continuity and arrive at a solution rather than obtain a consensus.

Scholars state that possible solutions which a court may order may include distribution of dividends, spin-off of a company and granting shares to the claimant shareholder in the company to be newly formed as a result of the spin-off and appointment of the claimant shareholder(s) as manager at the company.

Conclusion

The TCC preserves the lawsuit for the termination of a limited liability company by just cause regulated under the fTCC. However, by regulating the possibility for the court to rule for the squeeze out of the claimant shareholder or for another solution which is acceptable and suitable for the specificities of the present case is a material innovation.

Provisions governing the termination of a limited liability company and that of a joint stock company are similar to one another. Notwithstanding, unlike in a joint stock company, any shareholder may file this lawsuit in a limited liability company, regardless of whether the shareholder constitutes a minority or not.

The code does not specify what the just causes for the termination of either a joint stock company or a limited liability company are. This will be clarified through jurisprudence and scholars' opinions. The fTCC provisions, scholars' opinions and previous Court of Appeals rulings may be consulted to shed light when defining the scope of just cause.

Filing a Claim for Compensation for Shareholders' Damages or the Purchase of Their Shares pursuant to Art. 202/2 of the Turkish Commercial Code[*]

Att. Selen Ozturk

Introduction

The Turkish Commercial Code No. 6102 ("TCC") Art. 202/2 sets forth certain solutions for shareholders where the dominant company unlawfully exercises control over the dependent companies. The exercise of control, as per this article, may occur through merger, division, conversion, termination decisions taken by the dependent company through the exercise of control or important decisions such as issuing securities. In accordance with said article, the shareholders who dissent from certain transactions in the dependent company through the exercise of control may request from the court that damages arising from the dissented transaction be compensated, or that their shares be purchased. This regulation is a significant regulation and requires further examination since it is intrinsic to the TCC and entitles the shareholders to exit the company. This article will examine the contravention of the law regulated under Art. 202/2 TCC, the causes of action, parties, claims and the required security to be deposited related to this action.

The Contravention of Law as Regulated under Art. 202/2 TCC

The contravention of law regulated under TCC Art. 202/2 is based on the rendering of decisions in the absence of explicit just cause with respect to the dependent company. However, these decisions are not just any kind of decisions taken by the dependent company, but only important decisions stipulated in said paragraph. In accordance with Art. 202/2 TCC "transactions such as merger, division, conversion, ter-

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[*] *Article of April 2014*

mination, issuing securities and important amendments to articles of association, which are initiated through the exercise of control and without any clear just cause" are included in the scope of the article. Even though these transactions are transactions exclusively within the authority of the general assembly, the law maker, in order to prevent the circumvention of the law, specifies that this article shall also be applied where these decisions are taken by the board of directors. These transactions are not *numerus clausus*. Nevertheless, transactions that change the shareholding structure, terminate the company, change the financial structure or that bring important amendments to the articles of association (for instance amendments which may be concluded through qualified majority) form the limits of the article's scope.

The contravention of the law will arise where these decisions taken by the general assembly or the board of directors of the dependent company do not have clear just cause. Accordingly, if the decisions contribute to the development or progress of the dependent company, or if they are considered necessary for the interest of the company, it may be asserted that there is just cause. Moreover, while assessing the just cause, the examination of the merger or conversion reports will be important since these reports set forth the purpose and the benefits of said transaction. Within this scope, a judgment regarding the presence of just cause may be reached through the examination of these reports. It is observed that said article, even though it entitles the shareholder to file a lawsuit, reviews just cause with respect to the dependent company. However, scholars hold that shareholders' interest is important and must be considered since the damage to shareholders must be compensated.

As stipulated in the first sentence of Art. 202/2 TCC, in order for these decisions to be found in violation of the law and for the shareholders to make their claims, they must occur through the exercise of control. Within this context, the fact that whether the general assembly or the board of directors decisions have been taken through the dominant company's exercise of its direct or indirect voting power should be analyzed.

Conditions for Claiming Compensation or the Purchasing of Shares

In accordance with TCC Art. 202/2, shareholders who have cast negative votes against the general assembly resolution and recorded such votes in the minutes of this resolution in connection with transactions such as merger, division, conversion, termination, issuing securities and important amendments to articles of association which are initiated through application of control and without any clear reasonable grounds concerning the dependent company, or who have objected in writing to the board resolution on the same and similar subjects, may request from the court that their damages be compensated by the dominant enterprise, or at least that their shares be purchased at stock exchange value, if possible. If there is no such value or if the stock exchange value is not just, then at actual values or at a value to be determined in accordance with a method that is generally accepted.

At this point, the first dispute concerns whether the request for compensation and the purchasing of shares constitute independent lawsuits. Tekinalp states that the action on compensation and the action on the purchase of the shares are separate cases, and that the plaintiff may not file the two lawsuits together; they may only be alternatives to one other[1]. However, there are those who contend that such a lawsuit may be filed as a single lawsuit, claiming compensation for damages or that the shareholders' shares be purchased.

As seen in said provision, certain conditions must be fulfilled in order to file this action. The conditions are that (i) the existence of a general assembly or board of directors' resolution, as set forth under Art. 202/2 TCC, (ii) the resolution must lack clear reasonable grounds with regards to the dependent company, (iii) the resolution is taken as an act of control by the dominant company, (iv) the shareholder(s) casts a negative vote in the general assembly resolution and records this in the minutes or objects in writing to the board resolution and (v) the resolution is damaging to the shareholder.

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[1] **Ünal TEKİNALP**, Sermaye Ortaklıklarının Yeni Hukuku, İstanbul 2013, p. 589.

Plaintiff

The plaintiff in this lawsuit is the shareholder of the dependent company. The shareholder must hold the title of shareholder on the date when the relevant general assembly resolution is taken in order to file the lawsuit. A shareholder who does not satisfy the conditions set forth under Art. 202/2 TCC may not file suit. In compliance with this, the shareholder, during a general assembly resolution must cast a negative vote and record this in the minutes; regarding a board resolution, he must object in writing as soon as he becomes aware of the relevant resolution. Pursuant to said provision, the shareholders who have abstained from voting or whom did not attend the meeting do not have a right to file a lawsuit. However, with regards to the shareholders whose attendance in the general assembly has been prevented, they may be granted a right to file an action in order to protect their interests. In addition, the shareholder filing an action against the dominant company must be damaged or will be damaged upon the materialization of the transaction.

Defendant

The defendant is the dominant enterprise that enacts the resolutions due to the voting power it has in the general assembly, or in case of a board resolution, the dominant enterprise represented by the board of directors, or which elected the board of directors.

Deposit

When the action set forth in Art. 202/2 TCC is taken, the amount of money covering the possible losses by plaintiffs or the purchase value of the shares shall be deposited in the name of the court as security in a bank to be determined by the court. Until the security has been deposited, no proceeding may be conducted in relation to the general assembly or board of directors' resolution. As understood from the article, the money deposited by the defendant is not subject to any demand and the execution of the resolution is prevented if the security is not deposited. This deposit secures the compensation, which will be paid at the end of the action.

Claims

Compensation for Shareholder's Damages

The shareholders in the action filed pursuant to Art. 202/2 TCC, may request compensation for the damages resulting from the unlawful exercise of control. The aim of this provision is to compensate the damages incurred by shareholders, thus compensation of the dependent company's damages does not constitute the subject of this action. The judge shall rule for the compensation of the shareholder's damages where he/she is convinced that the conditions set forth in the provision are satisfied. The damages to be compensated shall be damages which have actually occurred.

Share Purchase

Another claim which may be asserted by shareholders, pursuant to Art. 202/2 TCC, is the request for the purchase of their shares. The shareholder possesses the right to exit the company through this mechanism, as set forth in Art. 202/2 TCC. In order to file this action, it is required that the shareholder's interests are damaged without just cause and the partnership relation has become unbearable. In order for the judge to rule for the purchasing of the shares of the shareholder, the shareholder fulfilling the conditions stipulate in this article must file an action with this request. Accordingly, all of the shares of the shareholder shall be purchased if the claim is settled in their favor. The shares shall be purchased at stock exchange value if possible, or if there is no such value or if the stock exchange value is not just, at actual values, or at a value to be determined in accordance with a method that is generally accepted. When calculating the value of the shares, restrictions such as pledges and attachments over the shares must be taken into account.

Jurisdiction and Statute of Limitations

A claim requesting compensation or the purchase of shares must be filed within two years commencing from the date of the general assembly resolution or the publication date of the board of directors' resolution. The competent court is the court of the place of domicile of the defendant.

Conclusion

This regulation, which is a new regulation in Turkish law, enables the recovery of the damages to shareholders or purchasing of their shares in the event of unlawful use of control, pursuant to Art. 202/2 TCC.

Share Deal or Asset Deal?*

Att. Berna Asik Zibel

In General

We may, in general, talk about a "share deal versus asset deal" situation when a transaction that involves the transfer of a business or provides freedom of contract for the parties. In practice, these transactions are mainly comprised of (i) the signing of sale and purchase agreements on the acquisition of all of the shares or the entire business of a target company that contains extensive and detailed provisions, (ii) fulfillment of conditions precedent and pre-completion covenants, and (iii) subsequently, the completion of the transfer transaction. Therefore, our subject herein is to make a comparison between the transfer of the shares of a target company, and the transfer of an entire business of such target company, without the legal entity. The legal provisions hereby discussed are Art. 489 et seq. of Turkish Commercial Code No. 6102[1] ("TCC") applicable to share transfers and Art. 11/3 TCC, and Art. 202 of Turkish Code of Obligations No. 6098[2] ("TCO"), applicable to the transfer of business. Transactions involving the transfer of business with a certain type of contract, due to special provisions of applicable laws or transactions dealing with the transfer of only significant assets, or a certain part of business are not taken into account herein.

Pursuant to Art. 489 TCC, the transfer of bearer share certificates requires the transfer of possession of the share. As to registered share certificates, pursuant to Art. 490/2 TCC, the transfer concerning legal

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* ***Article of October 2014***

1 Official Gazette, 14.02.2011, P. 27846.

2 Official Gazette, 04.02.2011, P. 27836.

transactions is realized by the transfer of possession of the registered share certificate that has been validly endorsed.

On the other hand, Art. 11/3 TCC regulates that a *commercial enterprise* can be transferred as a whole that will not necessitate conducting the legally required transactions for the transfer of each asset, separately. According to this provision, the transfer agreement shall be in written form, and registered, and announced with the trade registry, and unless otherwise specifically indicated, is considered as covering the fixed assets, enterprise value, tenancy rights, trade name, and other intellectual property rights, and other assets that are permanently attached to the business.

Transfer Procedures

In a share deal, the entire business of the target company, including, but not limited to the assets, agreements, permits and licenses, the employees and liabilities are subject to transfer, while the buyer acquires the shares of the target company. In other words, if there are assets or other elements of the target company that are not intended to be covered by the transfer, then these should be carved out from the company through separate legal transactions prior to the share transfer transaction, and to procure this result, such an undertaking should be regulated as a condition precedent or a pre-completion covenant under the sale and purchase agreement.

On the other hand, in an asset deal where there is a transfer of business, as indicated in Art. 11/3 TCC, unless otherwise specifically set forth under the written contract, the elements of business (i.e. *the fixed assets and other assets that are permanently attached to the business, enterprise value, tenancy rights, trade name and other intellectual property rights*) are deemed to be included in the transaction. In other words, the parties of the transaction have a certain degree of freedom of contract as to which assets and other elements are to be included in, or carved out from, the sale and purchase transaction, provided that the entirety of the business is preserved within the transfer transaction. The Trade Registry Regulation[3] ("TRR") sets forth that the integrity of the

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[3] Official Gazette, 27.01.2013, P. 28541.

commercial enterprise shall not be affected, and the continuity of the commercial enterprise shall not be damaged as a result of carving out any asset or element of the business from the transaction[4].

As per this provision, upon the registry and announcement of the transfer agreement with the trade registry, the business can be transferred as a whole without requiring separate transactions for the transfer of each asset. Before the TCC entered into force on 1 July 2012, each asset constituting the acquired business must have been transferred through a different procedure (e.g. in the event of a conveyance of an immovable, such conveyance must be conducted before the land registry office, or in the case of a transfer of vehicles, such transfers must be made with traffic registry branches or offices of police departments). To that end, the TCC reflects a very important and positive step for the entirety of a business transfer. The entirety of the transaction is achieved through written form, registration and announcement with the trade registry and notification to other registries by the trade registry. According to Art. 133/3 TRR, all transfer agreements must be registered. The registration is institutive, whereby publication has an explanatory effect that will prevent the *bona fide* acquisition by third parties. The most important rule for the completion of a transaction is the notification of other registries by the Trade Registry. As to Art. 135/5 TRR, simultaneously with the registration of the transfer of business, the directorate shall notify all of the related registries in order to register the assets and rights, such as immovables, ships and intellectual property rights.

As is clear from the above-mentioned provisions, legislators have preferred to simplify the business transfer transaction by regulating one-step registration before the public registries. In addition, the ability to carve out certain assets, as well as the risks within a business during such transfer, can be accepted as an advantage of having an asset deal.

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[4] **ERDEM, Ercüment**; The Transfer of Commercial Enterprises pursuant to the Turkish Commercial Code, Newsletter, July, 2013, http://www.erdem-erdem.com/fr/articles/the-transfer-of-commercial-enterprises-pursuant-to-the-turkish-commercial-code-2/.

Agreements

Before the TCC entered into force in July, 2012, within the context of an asset deal, all agreements of a target company must have been assigned to the buyer with the consent of the other party of such agreements, since there was no special provision regarding the transfer of business through one single transaction. Upon TCC coming into force, the transfer of agreements within an asset deal became controversial for Turkish scholars. Although TCC Art. 11/3 sets forth that a *commercial enterprise* can be transferred as a whole without requiring separate transactions for the transfer of each asset, as a basic argument, some scholars accept agreements as being assets of such business, since they create obligations and receivables; whereas some scholars argue that due to the change of party provisions under the TCO, the agreements of a business shall still be assigned separately. With respect to the transfer of the lease agreement of a business place, Art. 323 TCO regulates that the lessor cannot refrain from providing the approval without just cause[5]. In practice, in order to be on the safe side, it is recommended to draft special provisions under the sale and purchase agreement for receipt of the approvals by the relevant counter parties.

Within the context of a share deal, agreements of a target company will continue to be valid and enforceable with the same terms, without the need for a separate assignment. In this respect, some of the agreements may contain change of control clauses that may entitle the counter-parties of such agreements to terminate the relevant agreement in the event of a share transfer in the target company. Therefore, similar to the suggestion with respect to an asset deal, it is essential to draft a condition precedent in the sale and purchase agreement of a share deal to obtain the necessary approvals from the counter-parties of those relevant agreements.

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5 According to Temporary Art. 2 of the Law No.6217 dated 31 March 2011 amended with the Law No. 6353 dated 4 July 2012; should the lessee be a merchant according to TCC, a public law or private law legal entity, Art. 323, 325, 331, 340, 342, 343, 344, 346 and 354 shall not be applied for a period of 8 years as of 1 July 2012. In such a case, the relevant articles of the agreement or the provisions of the abrogated Turkish Code of Obligations.

Employees

As a general rule under Turkish labor law, the employees of a business place are automatically transferred when such business place is transferred to a new owner who keeps the business operational. In this regard, no special assignment contract or transaction must be entered into. However, it must be taken into consideration that for an automatic transfer to be effective and binding for the employees, the working conditions of the employees must remain as they were prior to the transfer. Otherwise, the employees may object to an automatic transfer and terminate their employment contracts. On a final note, an automatic transfer of the employees brings with it a transfer of rights of the employees with retrospective effect; *i.e.* for calculation of severance payments and annual leave payments, the date when the relevant employee commenced working for the target company will be taken into account, and not the date of the business transfer, whereby the employees are transferred.

As to a share deal, there will be no difference as compared to an asset deal, unless otherwise agreed to with the transferring party of the deal, and the employees of such target company are automatically transferred.

Exposure for Past Practices

Although it is much less likely for a buyer to inherit tax liabilities and penalties in the event of an asset deal when compared to a share deal, one cannot fully assert that in an asset deal, the buyer will not in any way be affected by the above-mentioned liabilities, which the target company may be exposed to due to their past practices, especially from a theoretical point of view.

Albeit a lack of reference with respect to the liabilities of the business under Art. 11/3 TCC, unless otherwise specifically provided for under the contract, the transfer of a business shall also be considered to cover the liabilities of such business as well, since Art. 202 TCO regulates that a transfer shall cover both the assets and the liabilities of a business.

According to Art. 202 TCO, if a business is transferred in its entirety, with all of its assets and liabilities, the transferee automatical-

ly becomes liable for the debts of the said enterprise, starting from date of announcement to that effect. In addition, Art. 280 of the Execution and Bankruptcy Code No. 2004[6] states that the transfer of a business in under certain conditions may expose the buyer to certain liabilities.

Although there is debate between scholars as to whether the provisions under Art. 202 TCO are mandatory, Art. 11/3 TCC indicates that "unless otherwise agreed" strengthens the opinion that the parties may freely determine the components of a transaction[7].

Governmental and Environmental Permits and Licenses

Since the licenses and permits required for the activities of a business are issued under the title of the company that owns such business, within the context of a share deal, there is no requirement of renewal or change of such licenses and permits, unless there is a special provision under the applicable laws. There are special provisions applied to some sectors, such as the energy sector or insurance sector that require notification to, or approval from a relevant public authority prior to a share transfer; however, such requirements are relevant to the completion of the share transfer transaction, but not to the continuance of the activities after such transaction.

On the other hand, in the event of an asset deal in the form of a business transfer, in order for a business to continue its activities, in general, the buyer will mostly be required to apply to relevant governmental authorities for the renewal or change to permits and licenses, including general ones, such as workplace opening and operation permits. In order to be on the safe side, a draft detailed provision should be made under the relevant agreement regarding the renewal of the permits and licenses of the business in accordance with the mutual understanding of the parties.

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6 Official Gazette, 19.06.1932, P. 2128.

7 **AŞIK ZİBEL, Berna**: Transfer of Assets along with Liabilities as in Transfers of Business, Newsletter, February, 2012, http://www.erdem-erdem.com/en/articles/transfer-of-assets-along-with-liabilities-as-in-transfer-of-enterprisebusiness/.

Notification to the Competition Authority

Having a share deal or an asset deal will not make any difference with respect to the requirement to notify the Turkish Competition Authority of the transaction. Art. 7/2 of Law No. 4054 on the Protection of Competition shall be applicable.

Tax Expenses

Both in an asset deal and a share deal, tax expenses should be taken into account. In general, share deals are likely to be preferable since there are exceptional provisions.

Conclusion

The parties of a transaction should take into account all aspects of their specific intentions, and also their mutual understanding when they decide whether to conduct a share deal or an asset deal. In other words, every decision to that effect should be transaction specific. Moreover, necessary provisions, such as conditions, covenants and representations and warranties shall be specifically regulated in the relevant sale and purchase agreement based on the mutual understanding of the parties.

Non-Compete Obligation of the Commercial Agent*

Att. Naciye Yilmaz

Introduction

Non-compete obligation of the commercial agent is assessed under two headings under Turkish Law. Firstly, we address the non-compete obligation of the agent during the term of the agency agreement. Pursuant to Article 104 of Turkish Commercial Code numbered 6102 ("TCC"), entitled "*Exclusivity*", an agent should not act on behalf of different principals who work within the same geographical area or territory, and who are in competition with each other. This obligation results from the agent's duty of loyalty. Secondly, there are non-competition agreements which cover the period subsequent to the termination of the agency agreement. Non-competition agreements are regulated under Article 123 of the TCC. According to the legislative justification of the TCC, the *ratio legis* of the relevant disposition is protection of agents against non-competition agreements that are usually concluded upon the request and under pressure of the principal, by introducing the time and subject limitation, the written form requirement and compensation requirement for the prohibition of competition.

Non-Compete Obligation during the Term of the Agency Agreement

The right to exclusivity regulated under Article 104 of the TCC is qualified as either "*monopoly right" or "exclusivity*" by doctrine, and in practice. The TCC adopts the "one agent - one principle" rule[1], even though the parties are free to agree otherwise. The non-compete oblig-

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* ***Article of December 2014***

1 **Kaya, Arslan**; Türk Ticaret Kanunu Şerhi, Birinci Kitap Yedinci Kısım: Acentelik, Beta Yayınları, 2013, p. 42.

ation of the agent during the term of the agency agreement is known as the monopoly right of the principal. This monopoly right of the principal means that unless otherwise agreed in writing, as per the duty of loyalty of the agent, the agent shall not act on behalf of several competing commercial enterprises that are located in the same geographical area or territory. Within this framework, we see that the non-compete obligation of the agent is limited with time, scope and area.

With respect to the wording of Article 104 of the TCC, various scholars defend that "*competitors*" should be interpreted in the strictest sense, and be understood as "*competitors active in the same commercial fields of activity*[2]." In other words, an agent can act on behalf of several commercial enterprises active in different commercial fields of activity. The fact that agents are independent commercial auxiliaries is one of the reasons why an agent can act on behalf of several commercial enterprises. Geographical limitation is determined in accordance with agreement between the parties. In addition, exclusivity can be provided for a specific product or group of customer so long as it is determined for a certain geographical area or territory.

The agent may act on behalf of competing commercial enterprises provided that the principal gives its consent, accordingly. Written form is a validity condition for this agreement. However, within the scope of the agent's obligation to protect its principal's interests, which is one of the of the agent's duties of loyalty, even though the agent is allowed to compete through an agreement, the agent should not harm the principal's interests[3]. In such a case, an abuse of the right to compete shall be in question[4]. In other words, the fact that the agent is released from a non-compete obligation by an agreement does not mean that the agent is also released from its other legal obligations against the principal. In any event, the agent is obliged to protect its principal's interests.

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2 **Kaya, Arslan**; p. 42.

3 **Poroy/Yasaman**, Ticari İşletme Hukuku, Vedat Yayıncılık, 2012, p. 251.

4 **Kayıhan, Şaban**; Türk Hukukunda Acentelik Sözleşmesi, Seçkin Yayınları, 2011, p. 108.

Breach of Non-Compete Obligation

A non-compete obligation is a liability for an agent since he/she cannot establish an agency relation with the competitors of the principal. Any non-compliance with this liability either may result in compensating the principal, or may cause in the principal to terminate the agency agreement[5].

Non-Competition Agreements

Article 123 of the TCC regulates the contractual non-compete obligation for the period subsequent to the termination of the agency agreement. In principle, parties are free to continue working together after the termination of the agency agreement. However, non-competition agreements are used to be executed for the purposes of the protection of trade secrets shared during the term of work between the parties, the loyalty obligation of the agent, and the avoidance of any conflict of interest. Under Turkish legislation, the provision regulating the latest agreement for the first time in the TCC originates from the German Commercial Code. Before the adoption of the TCC, the provisions pertaining to the service contract under the abolished Code of Obligations numbered 818 were applied when necessary to the agency agreements, and the non-competition agreements were also treated accordingly[6].

Pursuant to Article 123 of the TCC, the agreement by which the agent's conduct of business is restricted after the termination of the contractual relationship between the parties shall be made in writing. In addition, the principal must deliver a signed document comprising of the terms and conditions of the non-competition agreement to the agent. Written form is required for the validity of this agreement[7].

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5 **Kaya, Arslan**; p. 45.

6 **Göksoy, Yaşar Can**, 6102 Sayılı Yeni Türk Ticaret Kanunu'na Göre Acentenin Sözleşme Sonrası Rekabet Yasağı Anlaşması, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi Cilt:12, 2010, p. 896.

7 **Poroy/Yasaman**, p. 262.

Scope of Application

Subject of the non-competition agreement is the limitation of the agent's activities with a non-compete obligation for the agent. The wording of the relevant article refers to "*restricting the activities of the agent after the termination of agency agreement.*" Therefore, scope of the non-compete obligation is determined in accordance with the agent's activities conducted for the principal[8]. Thus, the scope of the non-compete obligation shall be determined primarily according to the provisions of the agency agreement. However, the expression, "*activities of the agent*" shall be strictly interpreted, and the agent shall be allowed to continue its activities in other fields. There is a tendency to broadly interpret this expression, in practice. Therefore, it is defended that the scope of the below-mentioned compensation should also be broader[9].

The time limitation for the agreement is set forth by law. Pursuant to Article 123 of the TCC, non-competition agreements should be concluded for a maximum of two years, starting from the termination of the agency agreement. This two-year period is definite and shall neither be extended, nor shall it be suspended or interrupted. The agreements stipulating a non-compete obligation for a period longer than two years shall be deemed partially null and void, and the restriction shall ipso jure not procure any effect after the termination of this two-year period[10].

Timing of the Non-Competition Agreements

As stated in Article 123 of the TCC, the timing of non-competition agreements is essential. As a result of the purpose regarding the protection of the agent, non-competition agreements shall only be concluded along with the agency agreement, or during the term of the agency agreement. However, it is unclear whether the non-competition agreements concluded after the termination of the agency agreement fall within the scope of Article 123 of the TCC. However, principals

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8 **Kaya, Arslan**; p. 292.

9 **Kaya, Arslan**; p. 292.

10 **Kaya, Arslan**; p. 293.

may require the agents, during the term of the agency agreement, to conclude future-dated non-competition agreements, and eliminate the protection laid down in Article 123 of the TCC. In order to eliminate this outcome, some scholars argue that Article 123 of the TCC should also be applied to the non-competition agreements concluded after the termination of the agency agreements[11]. Moreover, pursuant to Article 14 of Law numbered 6103 on the Entry into Force and Application of the Turkish Commercial Code, non-competition agreements concluded before the entry into force of the TCC, and still in force on 01.07.2012 (which is the date of entry into force of the TCC) are within the scope of Article 123 of the TCC.

Compensation for Non-Compete Obligation

Pursuant to Article 123/1 of the TCC, the principal shall compensate the agent for valid non-competition agreements. The lawmaker does not provide a specific amount here, but refers to an "*adequate compensation*." The obligation of compensation payment arises directly out of the law, and does not need to be stated specifically in a non-competition agreement.

The amount of the compensation shall be determined, considering the objective conditions. However, it must be mentioned that in any case the compensation shall not exceed the value of the contract[12]. Various of the scholars state that the compensation as related to a non-competition agreement should be determined considering the calculated goodwill compensation, and according to the average commission/remuneration of the agent for the last five years corresponding to the period of non-competition, since the agent is prevented from acting on behalf of other competing enterprises in the same territory[13].

Pursuant to Article 123/2, the principal may renounce the non-competition agreement until the termination of the agency agreement. In that case, the principal is released from its obligation to compensation payment for non-competition after six months as of the date of the declaration related to the renouncement of the latest.

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[11] **Göksoy, Yaşar Can**, p. 900.

[12] **Kaya, Arslan**; p. 296.

[13] **Poroy/Yasaman**, Ticari İşletme Hukuku, Vedat Yayıncılık, 2012, p. 262.

Invalidity

Article 123 of the TCC regulating the non-compete obligation is mandatory; therefore, any disposition to the detriment of the agent is null and void. The right for an adequate compensation is also deemed mandatory, that is why any disposition providing non-adequate and low compensation is deemed null and void, as well.

Conclusion

In conclusion, the non-compete obligation of the agent may be determined for the period of agency agreement, or after termination of the agency agreement. The non-compete obligation of the agent provided in Article 104 of the TCC is set forth in order to protect the agent considering the subject, time and geographical limitations. However, under Turkish Law, an agent's non-competition with its principal is the rule; otherwise, shall be only agreed upon in writing. The non-compete obligation for the period after the termination of the agency agreement is provided by non-competition agreements. Such agreements are also concluded in writing, and a signed copy that included the terms of the related agreement by the principal should be delivered to the agent. Non-competition agreements shall be concluded for a maximum of two years, and considering the purpose of the provision, it is more appropriate to state that such agreements shall be concluded along with the agency agreement or during the period of agency agreement. As mentioned in detail, above, since non-competition agreements are synallagmatic, the principal shall adequately compensate the agent in exchange for its non-compete obligation, if any.

CAPITAL MARKETS LAW

Prominence of Sukuk in Turkey as an Islamic Finance Instrument*

Prof. Dr. H. Ercument Erdem

Turkey's first regulation for Islamic Finance was realized during the 1980s, during a period of liberalization as part of a plan to attract foreign direct investments. Interest free banking was introduced with the legalization of "special finance houses" which did not possess bank status and therefore did not benefit from banks' privileges.

The Islamic Finance sector kept evolving steadily in the 1980s and 1990s with Arab Gulf investors setting up finance houses and commencing lending activities, accommodating mainly specific religious clientele.

The leap for interest free banking came after the 2001 economic crisis. Banking finance legislation went through a major overhaul after the crisis. A union was formed to provide a certain level of state control and support for special finance houses. 2006 saw the introduction of Banking Law No. 5411, which legitimized participation banking and provided insurance through the Savings Deposit Insurance Fund for participation deposits. Along with these changes, the special finance houses union became the Participation Banks Association of Turkey ("TKBB"), which sets forth the ethical, professional principles for participation banks. All participation banks had to be a member of TKBB. The following years saw a rapid increase in participation banking and the 2008 global crisis highlighted the need for more stable financing. In line with the government's support of Islamic Finance and interest free finance instruments, the World Bank Global Islamic Finance Development Center was launched on the premises of the Istanbul Stock Exchange in late 2013.

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* ***Article of June 2014***

Sukuk Financing

Turkey had various previous experiences with interest free financing in the form of profit-loss sharing certificates and real estate certificates mainly used for the financing of large infrastructure and construction projects. The issuance of sukuk was initially regulated with the Capital Markets' Board ("CMB") Communiqué Series III, No. 43 on Lease Certificates and Asset Lease Companies ("Communiqué Series III, No. 43") in 2010. Communiqué Series III, No. 43 regulated lease certificate (*sukuk*) issuance in a broad manner without specifics and several issuances were realized under it. In 2013, it was abolished by the Communiqué Series III, No. 61 on Lease Certificates ("Communiqué"). In 2012, Law No. 6327 was introduced allowing for the Undersecretary of Treasury to issue sovereign lease certificates. Statistics of the Organization of Islamic Cooperation indicate that Islamic banking in Turkey has not received the same level of interest as compared to other Muslim countries and is far from saturation. As such, the sukuk market is yet to develop. In fact, the first sovereign sukuk issuance was realized in August 2013 with significant over-subscription closing at USD 8 billion which shows huge demand for sukuk.

Legal Framework

As is known, sukuk holders obtain a partial ownership over a specific asset enjoying the profit that such asset generates and the proceeds from the sale, if sold.

The Communiqué introduced five types of lease certificates consisting of certificates based on ownership (*ijara sukuk*), management (*musharakah sukuk*), trading (*murabaha sukuk*), partnership (*mudarabah sukuk*) and engineering, procurement and construction (EPC) contracts (*istisna sukuk*) or through the combined use of these different types. Yet lease certificates that may be issued are not limited to these, as the CMB is receptive to novel instruments.

The legislation also regulates the establishment and management of asset leasing corporations ("ALC") and their capacities. ALCs may issue more than one lease certificate at a time and may issue for companies that are not the originating company.

ALCs may be established by banks, intermediary institutions, listed real estate investment trusts, public corporations with an average market value above TRY 1 billion and average market capitalization over TRY 250 million, partnerships where the Treasury holds 51% and more shareholding.

The board of directors of the ALC is liable for failure to collect the proceeds obtained from the rights and assets as well as to make payment to lease certificate holders pro rata their share as per their lease certificate.

The Communiqué regulates the issuance of lease certificates in a broad manner, leaving space for interpretation and practice. As per the Communiqué, real persons or legal entities execute a written agreement, indicating their intention to pool their properties to establish the originating institution. The originating institution transfers assets and rights to the ALC for the issuance of ownership-based lease certificates, or to the companies incorporating the ALC that manage the assets or rights on behalf of the ALC in the issuance of management agreement-based lease certificates. The ALC serves as the special purpose vehicle to which the assets or rights are transferred or leased.

The characteristics of each type of lease certificate are as follows:

- Ownership based lease certificates are issued to provide financing for the acquisition of the rights and assets by the ALC from the originating institution for the purposes of leasing to the originator or third parties or management on behalf of the ALC.
- Lease certificates backed by management contracts are issued so as to transfer the proceeds generated by managing the assets or rights owned by the originating institution to the ALC.
- Lease certificates backed by trading are issued for proceeds generated from the sale of assets and rights on deferred basis in order to finance the acquisition of such asset or right by the ALC.
- Lease certificates backed by a partnership are issued for providing financing to enable the ALC to be a shareholder of the joint-venture.

- EPC based lease certificates are issued to finance the realization of the relevant work for which the ALC shall be party to the EPC contract as well.

Assets and rights included in the portfolio of an ALC cannot be disposed of until the redemption of lease certificates, for any purpose other than collateralization to the benefit of lease certificate owners, even in the case of transfer of management or supervision of the ALC to public authorities. Accordingly, its assets cannot be pledged or attached, or be subject to interim injunction in favor of third parties or attached even for the collection of public receivables, or included as part of an estate in the case of bankruptcy. The ALC cannot conduct any activities other than those related to the issuance of lease certificates.

Risk Management

Apart from financial risks, a lease certificate issuance may bear operational risks in respect of the management of the rights and assets that are subject to the lease certificate and regulatory risks depending on the location of the issuance.

The Communiqué explicitly prohibits the attachment, pledge or otherwise collateralization of the assets subject to sukuk in favor of third parties in a manner that may be detrimental to the rights of the certificate holders. Although this provision does mitigate a major legal risk that may occur on the part of the investors, it is not clear which party will bear the consequences. Operational risks are covered in terms of collection and distribution of proceeds.

Another issue that bears importance is compliance with *Sharia* rules. *Sharia* rules are not applicable in Turkey and the Communiqué naturally does not impose any obligations in this respect. However, compliance with *Sharia* rules may be important especially for foreign investors. As known, there is no uniformity or written set of rules regarding the interpretation of Sharia rules. Different issuers may adhere to different interpretations, some of them get consulting from experts in the area, whereas others follow the interpretations of the Islamic Financial Services Board and Accounting and Auditing Organizations for Islamic Financial Institutions. These issues may be

significant in the issuance of lease certificates based on businesses which include elements both compliant and non-compliant with Sharia rules. There are currently four participation banks in Turkey all of which are member of TKBB, the association for participation banking which acts as a superior authority setting out guidelines. According to the website of the TKBB, goods and services that are allowed according to *Sharia* may be subject to Islamic Financing even if the provider also engages in prohibited activities. However, there is no clarity as to how this rule may be applied in case of lease certificate issuances.

Depreciation of the assets may also pose a risk. The Communiqué sets forth that the value of the issued lease certificates shall not exceed 90% of the total value of the relevant asset or rights for ownership based lease certificates.

Tax Incentives

ALCs and investors in sukuk market enjoy numerous tax exemptions.

Proceeds from transfer of assets and rights to ALCs and the holders of the lease certificates are tax-exempt. The same rule applies to VAT as Value Added Tax Law No. 3065 exempts the delivery of lease certificates issued by ALCs, the transfer of assets to the ALC and their subsequent lease and transfer back to the originating entity. Documents and certificates executed for the purposes of lease, transfer and pledge transactions regarding relevant assets or rights for the purposes of lease certificates also enjoy stamp tax-exemption. The transfer, lease and pledge transactions are exempt from duties. Withholding tax percentages vary from 10% of the lease proceeds obtained from lease certificates with a term of up to 3 years, to 3% for those with a term of 3 to 5 years. Government issued lease certificates (*sovereign sukuk*) as well as privately issued lease certificates with a term of over 5 years are not subject to withholding tax. For proceeds obtained from lease certificate trading and coupon payments; non-resident and resident stock corporations' are free of withholding tax whereas non-stock corporations, other institutional investors and real persons are subject to a withholding of 10% on income. The income obtained from lease certificates issued abroad is also exempt from tax.

On the other hand, earnings from the acquisition and disposition of lease certificates issued domestically in Turkish Lira through promise to sell or buy back and earnings from the sale before term of lease certificates are subject to banking and insurance transaction tax in the amount of 1% for issuers.

Conclusion

Islamic Finance and interest free finance instruments are increasing their popularity globally as part of an effort to attract Gulf investors. And Turkey's legislation and practice on the matter is rapidly evolving with its foreign investor friendly and Islam espousing political and economic environment. Thus, the favorable tax regime for issuers, investors and the finance institutions offers broad opportunities in *Sukuk* market of Turkey.

Communique Regarding Common Terms on Material Transactions and Shareholder's Right to Dissociate (II-23.1)*

Att. Nilay Celebi

"Material transactions" have become an important issue for companies subject to Capital Markets Law No: 6362 ("Law"). The Capital Markets Board has issued the Communiqué On Common Terms in Material Transactions and a Shareholder's Right to Dissociate, II-23.1 ("Communiqué") in order to clarify the scope of "material transactions" and the Communiqué was published in the Official Gazette dated 24 December 2013, No. 28861.

Material Transactions

Material transactions are defined in Article 5 of the Communiqué as follows:

a) Merger, spin-off, change of type, cessation of the business,

b) Transfer or lease or creation of a right in rem over all or a substantial part of the assets,

c) Change of the scope of business (in whole or in part considered as substantial),

d) Creation of privileges or change of the scope or extension of the privileges,

e) Delisting,

f) Purchase or lease of a substantial part of the assets from the related parties,

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* ***Article of January 2014***

g) In case of a capital increase, fulfillment of the responsibility of subscribing in cash by setting off the debts arising from the asset transfer, and

h) In case of a capital increase, if the funds exceed the existing capital of the company and if such funds will be used for the payment of debts, in whole or in part, owed to the related parties, defined in the relevant regulations of the Capital Markets Board, and which arise from non-cash asset transfers to the company.

The Capital Markets Board may consider representations and warranties given before becoming public, or transactions that may have a material effect on the business or commercial life of the company (even though no representations and warranties given before), as material transactions.

The board of directors' resolutions regarding material transactions shall be announced to the public together with the value of the shares subject to the right to dissociate, and by stating the votes of independent directors.

For companies not traded on the stock exchange, it is not mandatory to announce the value of the shares subject to the right to dissociate.

Materiality

A. Regarding paragraph (b) above "b) Transfer or lease or creation of a right in rem over all or a substantial part of the assets", transactions are considered material when:

a) the ratio between the value of the assets in question in the financial statements announced to the public to the total of the assets in the financial statements announced to the public shall be more than 50%, or

b) the ratio between the amount of the transaction to the value of the company based on the mathematical weighted average on a daily basis, 6 months prior to the date of the board of directors' resolution shall be more than 50%, or

c) the ratio between the financial value of the asset contribution to be transferred (or leased or created a right *in rem*) to the income stated in the last financial statements and the income stated in the last financial statements shall be more than 50%.

B. Regarding paragraph (f) above "f) Purchase or lease of a substantial part of the assets from the related parties", transactions are considered material when:

a) the ratio between the amount of the transaction and the value of the company based on the mathematical weighted average on a daily basis, 6 months prior to the date of the board of directors' resolution shall be more than 50%,

C. The board of directors shall always determine the materiality for each transaction, even though the above-stated thresholds in paragraphs A and B are not reached.

D. Regarding paragraph (c) above "c) Change of the scope of business (in whole or in part considered as substantial)", transactions are considered material when:

a) Amendment of the articles of association resulting in the main business being shifted to a side business of the company,

b) Decisions or transactions that may change the production procedures for the goods and services that constitute the main business of the company.

E. Public announcement of material transactions must include the board resolution on the decisions and the negotiations for the materiality and relevant criteria, as well as the calculation of the ratios.

General Assemblies Concerning the Material Transactions

Material transactions shall be submitted to the approval of the general assembly.

In the general assembly, unless an explicit higher quorum is stated in the articles of association, decisions relating to material transactions

can be adopted by the positive votes of two-thirds of the shareholders present in the general assembly, which have voting rights. However, unless a higher quorum is stated in the articles of association, if at least half of the shareholders having voting rights are present in the meeting, the decisions can be adopted by the majority of the shareholders having voting rights present in the meeting. Provisions in the articles of association lowering such quorums shall be deemed invalid.

Shareholder's Right to Dissociate

The shareholders or their representatives who attend the general assembly meeting on material transactions and record their dissenting votes to the minutes shall have the right to dissociate by selling their shares to the company.

A person who holds usufruct rights and exercises voting rights shall not have the right to dissociate. In such a case, the shareholders or their representatives shall attend the general assembly meeting regarding material transactions and record their dissenting vote to the minutes in order to exercise their right to dissociate.

The following shall be stated in the agenda of the general assembly meeting for material transactions: (i) shareholder's right to dissociate who attend the general assembly meeting and record their dissenting vote to the minutes, (ii) the value of the shares subject to the right to dissociate, and (iii) the procedure of the exercise of such right.

The exercise of a shareholder's right to dissociate shall commence within 6 business days (at most) starting from the date of the general assembly meeting. The period for the exercise of such right cannot be less than 10 business days and no more than 20 business days.

The shareholder's right to dissociate can be exercised through an intermediary institution. The Capital Markets Board may grant an exemption to such rule for companies not traded on the stock exchange.

Shareholders who intend to exercise their right to dissociate shall deliver the shares to the intermediary institution, within the framework of the public disclosure regarding the procedure and in line with the general provisions, and thus the sale shall be completed. The share

prices shall be paid to the shareholders who applied to the intermediary institution to exercise their right to dissociate on the business day following the sale, at the latest.

The shareholders, or their representatives, who attend the general assembly meeting regarding material transactions and record their dissenting vote to the minutes, shall maintain their voting rights on other issues stated in the agenda of the general assembly.

The shareholder's right to dissociate can be exercised for the entirety of the shares, notwithstanding the group/class of such shares.

Value of the Shares Subject to the Right to Dissociate

For companies whose shares are traded on the stock exchange, the value of the shares subject to the right to dissociate shall be the average of the corrected weighted average prices within thirty days before the date of public disclosure of the transaction (excluding the date of disclosure).

For companies whose shares are not traded on the stock exchange, the value of the shares subject to the right to dissociate and the evaluation report which shall be prepared pursuant to the relevant regulations of the Capital Markets Board to determine whether such value is fair and reasonable, shall be disclosed to the public together with the agenda of the general assembly meeting in which the material transactions will be discussed.

If there is more than one announcement with regard to the material transactions, the date on which the plan/intent of the relevant proposed transaction is announced shall be taken into consideration.

Each material transaction shall be stated separately in the agenda and discussed separately in the general assembly. The value of the shares subject to the right to dissociate for each transaction shall be calculated and stated in the agenda. However, the higher value shall be taken into account for the shareholders who record their dissenting vote to the minute for more than one material transaction.

The value of the shares subject to the right to dissociate shall be paid in cash and at once.

Mandatory Call

Regarding the transactions described in paragraphs d), e) and g) above: "*d) Creation of privileges or change of the scope or extension of the privileges*", "*e) Delisting*", and "*g) In the case of capital increase, fulfillment of the responsibility of subscribing in cash by setting off the debts arising from the asset transfer*", the real or legal persons who will benefit from such transactions shall call for the shares of the other shareholders. The calculation method for the value of the shares subject to the right to dissociate can be used herein.

The share purchase price shall be paid in cash and at once.

Transactions on Which No Right to Dissociate Arises

No right to dissociate shall arise for the material transactions described below:

a) Transactions mandatory under the applicable law,

b) Transactions by companies whose control belongs to a governmental authority,

c) Removal of all of the privileges of the shareholders free of charge, or limitation on privileges in terms and scope,

d) Amendment of the status of the investment funds, cessation of the status of such funds and change in privileges in this regard,

e) Transactions mandatory for takeover bids as a result of a material transaction, or transactions approved by the Board for volunteer takeover bids,

f) Spin-off transactions that establish a new partnership in which the shareholding structure of the demerged company is kept; merger and spin off transactions in simplified form,

g) The fact that the transaction is made by judicial authorities in accordance with a judgment decided under the Enforcement and Bankruptcy Code or for the purposes of collection of a public claim, the immediate buy back of the assets subject to transaction through financial leasing; and asset transfer to issue a lease certificate, security based assets or a mortgage or warranted security.

h) Lease of assets in the portfolio of real estate investments trusts,

i) Forming rights in rem over the assets in the portfolio of real estate investment trusts in accordance with the Communique III-48.1 concerning real estate investment trusts,

j) Forming rights *in rem* over the assets of the companies consolidated in the financial statements in favor of such companies,

k) Subject to the approval by the Capital Markets Board, the transfer of assets having no economic value, which are evaluated so as to offset the capital loss in the independent audit report of companies who have lost at least half of their capital, pursuant to the financial statements prepared in accordance with the regulations of the Board.

l) Merger and liquidation transaction for a company which is established for that reason (merger and liquidation).

In the cases where no right to dissociate shall arise; except for the situations where a general assembly meeting is required, a board of directors' resolution shall suffice. Where a general assembly meeting is required pursuant to the relevant regulations, a statement from the board of directors confirming that no right to dissociate shall arise for the relevant transaction shall be added to the agenda of the meeting.

In each case, the board of directors' resolution adopted for the transactions stated herein shall be announced to the public together with the relevant information and documentation.

Conclusion

The Communiqué defines material transactions, and the rights and the principles of shareholders who recorded their dissenting vote on these transactions, and recorded their opposition to the minute, are defined and determined therein. The board of directors of listed companies must evaluate the materiality and necessity of the relevant transaction carefully, since the consequences of the execution of such transaction for the company are very important.

Share Purchase Offer*

Att. Leyla Orak Celikboya

Introduction

Shareholders in public companies may voluntarily offer to purchase the shares of other shareholders. Nevertheless, under certain circumstances, the controlling shareholder, or the shareholder who acquires control of a public company, is obliged to make mandatory offers to purchase the shares of other shareholders.

Voluntary and mandatory offers are regulated under Capital Markets Law No. 6362[1] ("CML") and Communiqué No. II-26.1 governing Share Purchase Offers[2] published pursuant to the CML ("Communiqué"). This newsletter article analyzes the share purchase offer within the scope of the CML and the Communiqué.

CML Provisions Governing Share Purchase Offers

In General

Art. 25 CML authorizes the Capital Markets Board ("Board") to determine the principles and procedures of voluntary offers and mandatory offers triggered by material transactions. Additionally, unlike the former and abrogated Capital Markets Law No. 2499, Art. 26 CML introduces a general provision governing triggering events for mandatory offers. Shareholders obtaining shares or voting rights granting them control over the management are obliged to offer to purchase

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* ***Article of February 2014***

[1] Entered into force through publication in the Official Gazette dated December 30, 2012 and no. 28513.

[2] Published in the Official Gazette dated January 23, 2014 and no.28891, to be effective and enforceable to mandatory offers triggered and voluntary offers made after its entry into force.

the shares of other shareholders. Thus, in principle, acquiring management control of a public company shall trigger the mandatory offer.

Management Control

Art. 26 CML specifies the events which confer management control. Accordingly, shareholders (acting individually or in concert with third persons, directly or indirectly) holding more than fifty percent of the voting rights or the right to choose or nominate the majority of the members of the board of directors are deemed to hold management control. Despite the absence of a share transfer, the CML treats obtaining management control through agreements executed between shareholders equally as a trigger event for mandatory offers. Obtaining a majority of the voting rights in the presence of privileged shares granting their holders the privileged right to elect or nominate board members may not however suffice to gain management control. In this case, such share purchases shall not be considered within the scope of Art. 26 CML.

Other Events Triggering a Mandatory Offer

The Board may oblige the controlling shareholders who cause the company to be deprived of a concession related to its scope of activities, or whose license to operate under the Banking Law No. 5411 is revoked, or whose shareholding rights, management and audit is conferred to the Savings Deposit Insurance Fund (Art. 25/4 CML). Similarly, the Board is authorized to request mandatory offers in the event investment companies transform into a different company type (Art. 25/5 CML). Art. 33/4 CML further authorizes the Board to oblige controlling shareholders of public companies who will be delisted to make a mandatory offer.

Sanctions

CML provides for two sanctions in the event the mandatory offer obligation is not respected. Pursuant to Art. 103/3 CML, in the event the Board grants an additional time period, if the shareholder fails to make a mandatory offer when that period lapses, the Board may sanction the shareholder with an administrative monetary fine up to the

total price of the shares subject to the mandatory offer. However, the administrative monetary fine, which was also applicable under the former Law No. 2499, was far from being persuasive for companies. Thus, the CML introduced an additional sanction. Accordingly, shareholding rights of shareholders who refuse to make mandatory offers within the time periods determined by the Board shall automatically be suspended and such shares shall be disregarded in calculation of the meeting quorum. This sanction is one of the most important novelties introduced by the CML regarding share purchase offers.

Communiqué Provisions Governing Share Purchase Offers

Scope

The Board, as authorized under Art. 25 CML, regulated the principles of voluntary and mandatory offers with the Communiqué. The Communiqué governs share purchase offers generally triggered by obtaining management control. The Communiqué shall not apply to mandatory offers triggered pursuant to Art. 25/1 CML governing material transactions, Art. 26/5 CML on transformation of investment companies or Art. 33/4 CML regarding delisting of public companies (Art. 2 of the Communiqué).

General Principles

In line with the provisions of the CML, the Communiqué obliges shareholders who assume management control through purchase of part or all of the shares of a public company to make a mandatory offer.

All payments to be made as a result of the share purchase offer must be made in cash and in Turkish Liras. Nevertheless, if the shareholder consents in writing, the payment may also be made through capital market instruments provided that they are traded on a stock exchange. The offering shareholders shall adapt measures to ensure the payment of the entire purchase price of the relevant shares. The Board may require the shareholder to obtain a bank or corporate guarantee for the payment of this price.

The offering shareholder shall, regardless of whether the offer is voluntary or mandatory, apply to the Board with an information form, a sample of which is attached to the Communiqué. This information

form shall include various information; including information on the company, the offering shareholder, events triggering the mandatory offer or the underlying causes of the voluntary offer and the conditions of the offer. In the event the information presented in the form are consistent, comprehensible and complete, the Board shall approve the information memorandum. The form shall be disclosed to the public within three business days following the approval by the Board. However, if it is understood that the information presented on the form are incorrect, misleading or incomplete, the Board is authorized to pause or prohibit the share purchase offer.

The offering shareholder shall sign an undertaking agreement with an investment company. The undertaking agreement shall provide the information specified in the Communiqué, including information on the shares subject to the offer and the price to be paid for such shares.

During the share purchase offer procedure, all material steps, such as the share purchase offer decision, any event triggering mandatory offer, offer price, valuation reports, the results at the end of each offer day and the shareholding and management structure of the company following completion of the offer should be disclosed to the public.

Mandatory Purchase Offer

- *Events Triggering Mandatory Offer and Exemption*

The Communiqué regulates that, those who obtain management control of a public company, either through share purchases or agreements concluded between shareholders, are obliged to make mandatory offers to other shareholders. The mandatory offers must be unconditional.

The Communiqué repeats Art. 26 CML, which explains the cases where a shareholder is deemed to have obtained management control, and provides for additional explanation. In determining which actions amount to “acting in concert”, real person shareholders are deemed to act in concert with companies under his/her control, and legal entity shareholders are deemed to act in concert with persons controlling themselves and other companies under the same control. The Communiqué also regulates the events where a mandatory offer shall

not be triggered. The acquirer of controlling interest shall be exempt from making a mandatory offer if:

- Management control is obtained as a result of a voluntary offer;
- Management control is obtained through agreements between shareholders, approved by the general assembly of the public company, and provided that shareholders who vote against such approval are granted exit rights;
- The shareholder holding controlling interest transfers shares such that his/her shareholding decreases below 50%, and without losing management control, regains a shareholding above 50% through share transfers; or
- Shares are transferred between members of the same group holding controlling interest in the public company.

Furthermore, the Board may, at its discretion, declare that certain cases, such as mandatory changes in and the restructuring of the shareholding structure, or acquiring control of a holding company without the purpose to acquire the control of its subsidiary public company, shall be exempt and shall not trigger the mandatory offer procedure.

- *Time Periods and Sanctions*

The acquirer of controlling interest shall apply to the Board within six business days following their share acquisition, together with the information form and the documents specified in the annexes of the Communiqué, to make a mandatory offer. The offer should commence within two months following the realization of a triggering event and within six business days following the approval of the information form by the Board, and remain open for at least ten and at most twenty business days.

The shareholder must apply for exemption, if applicable, within this six-day period following the mandatory offer triggering event. If an application for exemption is filed, in the event the Board rejects such application, the offer should commence within one month following the decision of the Board.

Non-compliance with these time periods shall result the suspension of shareholding rights and the shares being disregarded in the cal-

culation of meeting quorums. Furthermore, in the event the Board provides an extension to this period and the shareholder fails to make the offer at the end of this extension, the Board may sanction the shareholder with a monetary administrative fine up to the total purchase amount of the shares in accordance with Art. 103/3 CML. Interest shall also accrue under Art. 17 of the Communiqué.

- *Offer Price*

The offer price for mandatory offers of listed companies may not be less than the arithmetic average of the daily weighted average price for a period of six months preceding the public announcement of the event triggering the mandatory offer, or less than the purchase price paid for the purchase of company shares within the six months preceding the mandatory offer. In the event of indirect acquisition of management control, the offer price should also not be less than the price specified in the valuation report to be prepared in accordance with the rules established by the Board. Privileges will be taken into account in determining the price of different share groups. In the event company shares are sold with a price exceeding the offer price during the period between the announcement of the share transfer triggering the mandatory offer and the completion of the offer, the price of the offered shares shall be adjusted and be at least equal to the higher sale price.

Voluntary Offer

- *Offer Procedure*

Shareholders of public companies may voluntarily make an offer to other shareholders to purchase part or all of their shares. The offering shareholder may withdraw its offer until the commencement of the actual purchase. A shareholder wishing to make a voluntary offer shall apply to the Board together with the information form and other documents specified in the annexes of the Communiqué.

The target company’s board of directors shall prepare a report specifying its opinions and its justifications regarding the voluntary offer, and publicly announce this report at least one business day prior to the commencement of the offer.

The time periods governing the voluntary offer are in general similar to that of mandatory offers. The offer should commence within six business days following the Board's approval of the information form and remain open for at least ten and at most twenty business days. In the event shareholders apply for the purchase of their shares in an amount exceeding the total number of shares the offering shareholder is offering to purchase, the shares shall be purchased proportionally from the shareholders.

- *Offer Price*

The Communiqué does not stipulate a rule for determining the offer price for voluntary offers. Nevertheless, it provides for provisions governing the increase of the price under certain circumstances.

The shareholder making the voluntary offer is free to increase the offer price until one business day prior to the completion of the offer. In such an event, shareholders who have sold their shares and paid the offer price shall pay the increase within two business days after the completion of the offer. If the price is readjusted, the offer period shall be extended by two weeks.

In the event the offering shareholders or persons acting in concert purchase company shares for a higher price within the period from the announcement of the voluntary offer to the public until the lapse of three months after the completion of the offer, the offer price shall be readjusted and increased up to an amount at least equal to the higher price.

A third party may make a competitive offer. In this case, the offer period of the initial voluntary offer may be extended until the completion of the competitive offer. Shareholders who have accepted the initial voluntary offer may revoke their acceptance prior to the payment of the purchase price, if a competitive offer is made after they accepted the initial offer.

Conclusion

The CML provides for general provisions governing voluntary and mandatory offers. It defines events where management control is deemed to be acquired and stipulates trigger events for mandatory

offers. Moreover, the CML introduces a new sanction in case of non-compliance with the capital markets legislation governing mandatory offers. Accordingly, in the event of failure to make a mandatory offer in due time, the relevant shareholding rights shall be suspended.

The Communiqué was issued in accordance with and based on these provisions and the authorization granted to the Board. The Communiqué regulates the general principles, the trigger events and specifics of mandatory offers, as well as the principles of voluntary offers. These provisions aim to protect the small investors in public companies and ensure that they are paid at least the price that would be paid for their shares on the market.

Communiqué on Corporate Governance I*

Att. Revan Sunol

Introduction

Corporate governance refers to the system by which the distribution of rights and responsibilities among different participants in a corporation, and the rules and procedures for making decisions in corporate affairs is specified. As is known, the Turkish Commercial Code No. 6102 ("TCC") has adopted corporate governance rules in the regulation of corporate law. In line with the regulation in the TCC, Art. 17 of the Capital Markets Code No. 6362, which entered into force with its publication in the Official Gazette, dated 30.12.2012 and numbered 28513, sets forth that corporate governance shall be regulated by the Capital Markets Board ("Board").

In accordance with the above mentioned regulations, the Board has issued the Communiqué on Corporate Governance Rules to be Complied with by Companies and Related Party Transactions (Series II, No. 17.1), thereby abolishing the Communiqué on the Determination and Implementation of Corporate Governance Rules (Series IV, No. 56) and the Communiqué on Principles to be Complied with by Joint Stock Companies subject to the Capital Markets Code. Please note that this article is concerned with the regulations of the communiqué rather than the corporate governance rules. The corporate governance principles, which are set forth in detail with the Communiqué, shall be taken into consideration in the following months.

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* *Article of February 2014*

The Scope of the Communiqué

The scope of the Communiqué includes publicly held corporations that are publicly traded and corporations traded on the National Market (companies that fulfill the stock market's listing criteria are traded on the National Market), Second National Market (small and medium sized companies, companies temporarily or permanently de-listed from the National Market, and companies that fail the National Market's listing criteria are traded on the Second National Market) and Collective Products Market (certificates of investment trusts, real estate investment trusts, venture capital trusts and exchange traded funds, warrants, and certificates are traded on the Collective Products Market). It must be noted that the Communiqué provides for certain exceptions in the application of the corporate governance principles.

Important Regulations and Enforcement

The Communiqué provides for certain new regulations as well as revising certain issues that were already subject to regulation. In this context, the unit previously named "Shareholder Relations" has been renamed as "Investor Relations Department". Pursuant to the Communiqué the mentioned unit shall be under the management of a manager with administrative duties and shall report to the board of directors with respect to its activities at least once a year.

Related party transactions are regulated so as to comprise not only the relevant corporations but also their affiliated companies. Also, the issues of securities, surety, mortgage and liens, which were formerly regulated with a Board decision, are taken into consideration with detail.

Related Party Transactions

Before proceeding with an asset, service purchase, sale or obligation transfer transaction with their related parties, corporations and their affiliated corporations must adopt a board of directors resolution setting forth the terms of the transaction if such transaction is predicted to have a value equal to more than five percent of the value of the total assets of the corporation, or the proceeds or the value of the company. Also, a valuation must be conducted by an institution, deter-

mined by the Board, before the transaction. Where the predicted ratio is more than ten percent, the approval of the majority of independent directors shall also be required. Where the majority of independent directors do not approve the transaction, this must be announced in the Public Disclosure Platform ("PDP") and submitted for the approval of the general assembly. If it is decided to proceed with the transaction, the nature of the concerned parties' relation and information regarding the transaction must be disclosed in the PDP. If the transaction is not realized in accordance with the valuation, the grounds for such non-compliance must also be included within the disclosure.

It must be noted that corporations that are subject to trade in markets and platforms other than the National Market, the Second National Market and the Collective Products Market are also subject to the regulations regarding related party transactions.

Securities, Surety, Mortgage and Liens

Except for the benefit of their own legal entities, other corporations included in the consolidated financial statements and third parties with whom ordinary commercial activities are conducted, corporations and their affiliated corporations cannot provide securities, surety, mortgage and liens for the benefit of third parties. The approval of the majority of independent directors is required for such securities to be granted for the benefit of third parties with whom ordinary commercial activities are conducted. Where the majority of independent directors do not approve, this must be disclosed in the PDP and the opposing opinion must also be included within the disclosure.

Corporations may provide securities, surety, mortgage and liens to corporations and business partnerships, in which they are directly participating in the capital, in proportion to their participation in the capital.

It shall be noted that as a principle in the Communiqué, it is accepted that members of the board of directors shall not be allowed to vote in matters which may present a conflict of interest.

Corporate Governance Principles

Within the scope of the Communiqué, corporate governance principles are provided under the titles shareholders, public disclosure,

transparency, stakeholders and board of directors. With these principles, the goal is:

- to protect the rights of shareholders as well as to ensure that corporations do not forget their legal, contractual, market protecting and social obligations to stakeholders such as employees, investors, clients and creditors who are not actually shareholders;
- to disclose to the public the responsibilities and duties of the board of directors and the administration (managers) and to render this disclosure regularly in order to establish a certain level of accountability in favor of any stakeholder;
- to adopt rules which would support ethical decision making mechanisms of corporations; and
- to assure that the board of directors has sufficient skills and understanding to monitor the administration of the company and also that it has a balanced commitment and independence vis-a-vis the company.

The corporate governance principles will be taken into consideration in a more detailed manner in the coming months.

Enforcement

Some of the corporate governance principles are provided as compulsory rules to be followed, while some of them as only guidelines. In the Communiqué, it is determined explicitly which principles constitute the obligatory principles that shall be followed. The Board has ex-officio authority to enforce the execution of such obligations and to take the necessary actions for such execution.

In line with this, the Board has the authority to file a declaratory action against transactions which are not in compliance with obligatory principles, to request preliminary injunctions without granting any securities for the rescissions of these transactions, to bring actions and to request to the relevant court that the decision be adopted in a manner that will result in compliance with the relevant obligation. The Board shall make its requests to the court so as to include a suggestion as to the how compliance may be attained.

Conclusion

The Communiqué provides for the adoption of transparent stakeholder protection mechanisms for corporations and includes enforcement procedures to ensure that obligatory rules are followed.

Communiqué on Corporate Governance II*

Att. Revan Sunol

In accordance with the provisions of the Turkish Commercial Code No. 6102 (“TCC”) and the Capital Markets Law No. 6362, the Communiqué on Corporate Governance II No:17.1 (“Communiqué”) which abolished the Communiqué on the Determination and Implementation of Corporate Governance Rules (Series IV, No. 56) and the Communiqué on Principles to be Complied with by Joint Stock Companies subject to the Capital Markets Code (Series IV, No. 41), was published in the Official Gazette dated 03.01.2014 and numbered 28871. Other provisions of the Communiqué have been examined in our Newsletter article entitled “Communiqué on Corporate Governance I” and therefore, the subject of this Newsletter article is exclusively the examination of the principles prescribed in the Communiqué.

Introduction

The Communiqué provides the corporate governance principles within its Annex-1 following the regulations of security issues by companies and transactions of related parties. It shall not be considered obligatory to follow all the principles as some of them are merely meant for guidance. The compulsory principles are enumerated in the Communiqué and these are mostly related to the protection of shareholders rights and the functioning of company decision maker mechanisms, especially the Board of Directors, in a transparent, independent and accountable manner. Where there is a violation of the compulsory principles, the Capital Markets Board (“the Board”) has the authority to take measures to enforce compliance with the principles and to seek cancellation of the relevant transaction.

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* ***Article of May 2014***

Protection of Shareholder Rights

The protection of shareholders rights shall be realized mainly through providing clear and efficient information, and the encouragement of participation in general assembly meetings.

The organs of the company and the investor relations department shall act effectively in order to insure the protection of shareholders rights and the facilitation of their usage. The corporate website of a company shall contain updated information on facts that would potentially affect the shareholders' rights.

The procedures relevant to General Assembly ("GA") meetings and resolutions, which are important for the usage of shareholders rights, are provided in Art. 1.3 in the Communiqué Annex. Some provisions of the GA meetings must be compulsorily followed. Pursuant to Art. 7 of the Communiqué, regarding enforcement, the Board may seek cancellation of the transaction, which is in violation of the obligation of compliance. To sum up the principles relevant to the GA, the convocation announcement must be detailed and comprehensible, and issues which may affect the usage of rights or create changes in the administration or activities must be highlighted. The Communiqué places focus on the pertinent issues in this respect. The meeting shall be conducted in an independent manner in order to transmit the items of the agenda to the shareholders and shall effectively encourage their participation. Further, pursuant to Art. 1.3.9, transactions that would affect the company's financial situation, due to their volume, necessarily require the majority of votes of non-executive members in order to be executed. In case said resolution is not adopted unanimously by members of the Board of Directors ("BoD"), it shall be approved by the GA and disclosed via the Public Disclosure Platform ("KAP").

Public Disclosure and Transparency

In addition to the information that shall mandatorily be disclosed pursuant to the legislation, a company's corporate website shall contain information important to stakeholders; such as information on privileged shares, current shareholding and management structure, the latest version of the articles of association, policy of profit distribution and financial statements.

Preferably the corporate activity report should contain information on subjects relevant for the independent decision making mechanisms of the company, such as reciprocal shareholdings, important lawsuits brought against the company and the activities of BoD members outside the scope of the company.

Protection of Stakeholders

In the Communiqué, the stakeholders are defined as institutions and special interest groups having a relationship with the company, such as employees, creditors, clients, suppliers, unions and several non-governmental organizations.

In case of violation of rights of the stakeholders, the principle of efficient and rapid compensation and the principle of taking measures in order to facilitate notification of the violating transactions to the BoD committees shall be followed.

Furthermore, models shall be developed in order to encourage the participation of stakeholders in the company's administration without prejudice to the company's activities and conduct.

Board of Directors

The activities of the BoD shall be conducted in a transparent, accountable, fair and responsible manner. The Board of Directors shall consist of at least five members. The majority shall be non-executive members. At least one-third, and in any case two members, of the Board of Directors shall be non-executive members.

The criteria for non-executive members are provided in detail in Art. 4.3.7, and require that the relevant person shall not have any material or personal connections to the company, and shall have the necessary professional abilities to perform said duty.

In the articles of association, the authorities of the president of the BoD and chief executive officer/general director shall be distinguished and be specified in the articles of association. Where it is decided that the same person shall perform these duties, it shall be disclosed in the KAP with relevant justifications.

Issues such as appointment of non-executive members and for the loss of status of independent members have been regulated with compulsory procedures to followed. It is also compulsory that companies aim to achieve 25 % female membership within their BoDs and actively develop a policy to this end.

Board of Directors Committees to be Established

The "Audit Committee", "Early Detection of Risk Committee", "Corporate Governance Committee", "Nomination Committee" and the "Compensation Committee" must be established for the effective functioning of the BoD. The working principles and members of the committees shall be declared in the KAP. Each committee shall have at least two members. The majority of the committee members must be non-executive directors, and if a committee has only two members then they must both be non-executive directors.

The compensation of members of the BoD and managers must be in writing and approved by the General Assembly. The corporate compensation policy must be included on the company website. The independent BoD members shall not be compensated with profit share, share options or performance based compensation plans; their compensation must be realized in a manner that will maintain their independence.

Conclusion

The Communiqué consists of guidance principles rather than obligatory rules. Nevertheless, issues that bear importance for the maintenance of transparency and accountability are regulated with obligatory provisions, and transactions that may be risky are subject to public disclosure rather than prohibition.

However, companies must pay attention to these rules, as non-compliance may result in the cancellation of the relevant transaction, and therefore the nullification of the resolutions of decision making bodies for procedural non-compliance; for example, regarding the assembly of the relevant body.

Renewed Communiqué and Guide for Disclosure of Material Events*

Att. Ali Sami Er

For those investing in capital markets, immediate access to developments about issuers, the so-called *material events*, is very crucial. Alteration of this system to meet transparency demands of investors is inevitable. In parallel to reformation of the entire capital markets regime in Turkey, after the promulgation of the new Capital Markets Law, the Communiqué on Material Events ("Communiqué") was also renewed on January 23, 2014. However, the Guide that will shed light on the interpretation of the provisions laid down by the Communiqué was announced on June 27, 2014.

This article, reflecting the explanations in the Guide and the new rules set forth in the Communiqué, aims to be a guide for the investor relations departments. The article will elaborate on disclosure of inside and ongoing information, the obligations of the executives who have access to the inside information, the scope of insiders list, forward looking statements, the form, time and language of the disclosures, disclosure updates and the possible sanctions for not fulfilling the disclosure requirements.

Inside Information

The purpose of the obligation to disclose inside information is to ensure simultaneous and equal distribution of information for all market participants and thereby to prevent incorrect pricing that might have occurred in result of incomplete and inaccurate information in the market. No amendment in respect of the general characteristics of the inside information is made in the Communiqué. Just like the former

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* *Article of August 2014*

guide, the new Guide also includes important examples to determine whether information should be considered as inside information.

Disclosure of the Inside Information

A clarification is made to address the ambiguous criteria for "significant shareholder" in the former communiqué. When the inside information is learned by shareholders other than issuer, such shareholders holding at least 10% of the voting rights or share-capital, or privileged shares which give the right to determine or to nominate board members will be deemed to have significant shareholding and thus be required to disclose inside information. However, if these shareholders have a confidentiality obligation not to disclose such information, there will be no need for disclosure. In this regard, it is noteworthy to consider making amendments in issuer's articles of association to include confidentiality obligation.

Those significant changes related to issuer's parent and affiliate companies' operations, financial structure and management/capital relations that were advised to be disclosed in the old guide are also incorporated in the Communiqué as material events to be disclosed.

Delaying Disclosure of Inside Information

In comparison to the former communiqué that only allowed the issuer to delay disclosing inside information, the Communiqué grants this right to the significant shareholders.

List of Persons with Access to Inside Information ("Insiders List")

Just like the former communiqué, the persons whose names are written on Insiders List are supposed to be warned about the obligation to keep insider information secret and a written notification as to the sanctions if the obligation is violated must be communicated.

The Guide regulates the new content of the Insiders List. The list shall contain information about each person if there are special reasons as to why should be reported in the list, the start and end dates of the employment, the last date such information was updated. In the event of a public offering, the information contained in the Insiders List has

to be entered in the Central Registry Agency ("CRA") system before the capital markets instruments are traded on the exchange. Some examples of grounds for inclusion of a person on the list are: the registration and the announcement of the representative of a legal person in the Board of Directors member, appointment, change of position, promotion, consultancy/audits, work in the parent company, etc.

Different from the former communiqué, if there is an amendment to the Insiders List, the necessary updates have to be made within two days thereafter.

According to the former communiqué, the Insiders List had to be filed by the issuer for a period of eight years; whereas, the new Communiqué employs the CRA for record-keeping and in the event of a request, it shall be sent to the Capital Markets Board and the relevant stock exchange.

Confirmation of News or Rumors

Issuers are obliged to disclose regarding the accuracy of the news or rumors in the media should they relate to inside information. However, the popularity and circulation rate of the media, as well as the evaluation of the Board of Directors as to whether or not this information is inside information, are essential to decide whether a disclosure is needed.

Disclosure of Forward Looking Statements

Essential changes are made in the Communiqué to which the investor relations departments should pay close attention.

If the issuer wants to disclose forward looking statements, a resolution of the Board of Directors or a written approval of the competent persons to whom the Board of Directors has granted authority shall be obtained.

These disclosures can be made maximum four times a year. The disclosure can be announced separately in public disclosure platform ("PDP") or, it can be incorporated in the annual reports. Nevertheless, if any changes occur in respect of such disclosures, a new disclosure shall be made immediately.

Finally, the Communiqué also regulates that the disclosure policy of the issuer has to include the disclosure principles for forward looking statements.

Disclosure of Executives and Their Operations

According to the Guide, the executives encompass all the people who are on the Insider List. Furthermore, the authorized persons present in the signature circular, the legal persons that are controlled directly or indirectly by the executives, the Board of Directors members and the senior managers of the parent company are counted as examples for executives in the Guide.

The Communiqué also includes some new persons in addition to the persons considered as closely associated with executives. In this scope, the directors entitled to make executive decisions or the members of the Board of Directors of affiliate companies that contribute to 10% or more of the total assets in the last year's financial statement, are considered as the persons closely associated with executives.

The Communiqué regulates a new disclosure obligation in the event the transaction volume including purchase-sale of (i) shares or capital market instruments pertaining thereto exceed TRY 50,000 or (ii) capital market instruments other than those shares traded on the stock-exchange exceed TRY 100,000. As the latter disclosure obligation was not regulated in the former communiqué, special attention must be paid for compliance.

Pursuant to the Communiqué, a disclosure in respect of transactions in the stock exchange has to be made (i) at latest one work-day prior thereto without indicating the sale price, and (ii) also after the sale with the pertinent information. The Guide further indicates that if the sale does not occur, reasons for the cancellation shall be disclosed.

Ongoing Information

With the new Communiqué, the scope of the ongoing information is revised and the upper threshold regarding the disclosure obligation for shareholding changes is increased from 75% to 95%. For non-public companies, the disclosure thresholds are limited to 25%, 50% and 67% of shareholding. Furthermore, the scope of disclosure is also revised.

Pursuant to the Guide, those who have issued capital market instruments based on shares are not under the obligation of disclosure regarding the underlying assets if such underlying asset belongs to another issuer.

Another novelty is the immediate update ex-officio by the CRA of the shareholding chart in the issuer's form indicating those with 5% or more shareholding or voting rights should there be a change therein. However, CRA's update does not release the issuer from making such changes in its public disclosure form.

Notification Form for Inside and Ongoing Information

The disclosures concerning inside information shall be made by using the forms provided in the PDP. Pursuant to the Communiqué, uncertain facts may also be subject to disclosure. For such facts, the Guide provides that the form has to be filled in by writing "Uncertain" and when such facts become certain, the same form has to be filled in and disclosed.

Inside information shall be disclosed immediately whereas ongoing information disclosures regarding the shareholding and control structure shall be made at the latest by 08:00 AM on the third working day after the transaction causing such change by using the form attached to the Communiqué.

Furthermore, if any changes occur in the general issuer information form published in the PDP, the issuer has to update said information within two working days.

Inside information disclosures have to be published on the website of the issuer at latest the next working day thereafter and have to remain published on the website for a period of 5 years.

In the disclosure, a sentence summarizing the content of the disclosure and a title has to be included; if there are several issues to be disclosed, the disclosure must include different titles reflecting such issues.

Language Used in Material Event Disclosures

Pursuant to the Guide, the issuers in the first group determined by the corporate governance principles of Capital Markets Board have to

disclose in English as well simultaneous with the Turkish disclosures, effective from January 1, 2015. With the English disclosure, a disclaimer can be attached stating that the Turkish disclosure shall prevail.

Update of Disclosure

With the new Communiqué, a very crucial provision is introduced which was not present in the former Communiqué. If there is no progress regarding certain disclosed event, the reasons as to why there has not been any development must be disclosed every 60 days from the last disclosure.

By all means, this provision will cause many problems for the issuers. For example, in an acquisition, no development may occur within 60 days. Even though we awaited a flexible approach in the Guide regarding this obligation, the explanation in the Guide is straightly in line with the Communiqué's wording.

In a situation where the conditions for delaying disclosure arise, it may be argued that the update disclosure may not be repeated every 60 days.

Other Amendments

With the Communiqué, the minimum content of the issuer's disclosure policy is identified. Especially, the investor relations departments have to pay attention to comply with such content.

Further, the disclosure obligation has been introduced with the Communiqué for those capital market instruments offered to public other than the shares, and new disclosure principles are enacted for those issuers that offer non-listed shares to the qualified investors only.

Possible Sanctions

The Capital Markets Law provides that those who violate the regulations, standards and forms will be subject to an administrative fine from TRY 20,000 to TRY 250,000. If a benefit is derived from this abuse, the amount of the administrative fine cannot be less than twice the amount of such benefit.

Conclusion

The disclosure obligation renewed with the Communiqué shall be performed to ensure rapid access to information and not to cause discrimination among the investors breaching the principle of equal treatment. The novelties introduced with the Communiqué and the Guide's explanations currently reshape the disclosure practice and especially during this period, the investor relations departments shall carefully work with these new standards to assure compliance.

Regulation Regarding the Formation, Operation and Control Principles of the Central Registry Agency*

Att. Naciye Yilmaz

Article 81 of the Capital Markets Law No. 6362 ("Capital Markets Law") indicates that the foundation, operation, membership and audit principals of the Central Registry Agency ("CRA" or "Agency") shall be determined by a Regulation of the Capital Markets Board ("CMB" or "Board"). The Regulation Regarding the Formation, Operation and Audit Principles of the Central Registry ("Regulation") was prepared within this scope and became effective with publication in the Official Gazette dated 07.08.2014 and numbered 29081.

Duty and Powers of CRA

As per Article 5 of the Regulation, the CRA is a joint stock company endowed with legal entity status and established to execute the registry of capital market instruments, pursue electronically these instruments and the rights thereof, execute the global custody of these instruments and fulfill other duties determined by the Board.

As per Article 9, the essential duties of the CRA are: registration of capital market instruments, providing services on the usage of the rights arising thereof, conserving the privacy of the registry and fulfilling the operation of the system safely. Hence, the CRA pursues the consistency of the registration of its members; in the event of incoherency or contradiction related to the system, the Agency provides the required corrections and notifies the case to the CMB immediately. Data collection and data use in a safe way are under the CRA's responsibility. Therefore, the Agency houses an electronic data bank and provides the communication of investors safely. It lends assistance to

* *Article of August 2014*

members about the system of arbitration in case disputes arise related to the operation of system.

Operating Principles and Conditions

As per Article 10, for the fulfillment of aforesaid duties, the CRA must have the sufficient organization and technical equipment in conformity with the Regulation. Moreover, the Agency must take precautions related to the protection of its substantial assets. After establishing the necessary information systems and technological infrastructure, the CRA shall make regulations related to the reliability, integrity and consistency of these systems. If necessary, the CMB is also competent to make arrangements and applications.

The CRA executes these transactions in accordance with certain principles. According to the indicated principles, as per Article 11, the CRA shall establish the necessary infrastructure and equipment area and shall take precautions pertaining to the compliance of its members to the regulations. It supports the movements of the stock exchange to avoid market abuse and treat the implementation of the activities fairly. The Agency provides information flow among members, market participants and the CMB. It must have adequate resources to conduct this electronic data system in a permanent way. The CRA must treat members fairly when it comes to non-judicial punishments and charging. Moreover, for transparency, it shall regularly declare its' financial statements, fees and organizational structure via its website.

Organization of the CRA

CRA's competent bodies are general assembly and board of directors. As per Article 6 of the Regulation, Borsa Istanbul A.Ş., as well as other stock markets, the Istanbul Settlement and Custody Bank and the Turkish Capital Markets Association shall be founding partners.

As per Article 12, CRA's general assembly consists of shareholders. General assembly may be convened as ordinary or extraordinary. Board representative may attend the general assembly but does not have right to vote.

As per Article 13, board of directors of the Agency may consist of at least 7 members and at most 11 members. The general manager is a

permanent member of the board of directors. One of the members of board of directors shall be appointed by the Capital Markets Board as a board representative, and in order to assure the Agency's activity of electronic registration institution, one of the board of directors members shall be appointed by the Ministry of Customs and Trade among the General Directorate of Domestic Trade employees. The chairman of the board of directors represents the Capital Markets Board.

Membership

As per Article 20, exporters, investment foundations, central custody foundations and other foundations recommended by the CRA and accepted by the Board shall be CRA members. The CRA may impose conditions, such as membership of a stock exchange or any other organized markets. The Central Bank of the Republic of Turkey may be the privileged member upon request. Therefore, membership obligations, non-judicial punishments, cancellation or temporary suspension of membership and other provisions related to supervision are inapplicable for the Central Bank of the Republic of Turkey.

Article 21 stipulates the requirements to be granted membership. Technical equipment and security systems that meet the requirements as determined by the CRA, liability insurance in case the CRA board of directors finds it necessary, a sufficient number of qualified employees and payment of a membership fee are required for the application. Apart from these, investment foundations must be competent to provide custody service pursuant to investment transactions and exporters must export capital market instruments or make an application to the Board for the purpose of exporting. The CRA accepts the membership of these foundations when the required provisions are met. As per Article 23, a foundation must inform the CRA by written notification to renounce its membership. Membership expires by way of board of directors' resolution. Data and information kept by the related members shall be transferred to the other members, according to the methods determined by CRA board of directors. As per Article 24, in the event of contradiction with the Regulation provisions, suspension or cancellation of membership is possible.

Members' Liability and Measures to Be Taken

The Regulation determines liabilities and measures for the CRA's members. Pursuant to Article 25, members shall be liable for all transactions at the CRA. Members' liability cannot be abrogated or restricted through agreement provisions concluded between Members and clients. All members shall act in accordance with the rules of good faith and correctness. In order to guarantee the pecuniary and legal liability, they shall take out the general and special insurances set forth by the CRA and take other measures. Furthermore, they must notify the CRA immediately on the day of realization as to any changes concerning partnership, management structure, and financial state. As per Article 29 of the Regulation, in case there are erroneous entries, the CRA and its members shall also be liable. In this case, the CRA and its members shall be liable for the damages of rights holders, in proportion to their faults. Liability cannot be mitigated or abrogated with the agreements concluded between CRA and its members. The board of directors may also decide that members shall take out liability insurance for the indemnification of damages as stated in Article 29.

Conclusion

The Regulation sets forth the foundation, operation, membership and audit principals, incomes and dividend distribution principles of the Agency. The CRA's current activities and requirements related to its duties and authorizations, which are determined by the Capital Markets Law, are considered within the related Regulation.

Related Party Transactions under Capital Markets Legislation*

Att. Nilay Celebi

Capital Markets Law No. 6362, the Communiqué on Corporate Governance Principles II-17.1 ("Communiqué") and the relevant regulations issued by the Capital Markets Board ("CMB"), regulate related party transactions of public companies. There are certain principles set forth in the capital markets legislation that establish how to conduct a related party transaction. Disclosures to the public should be made via the Public Disclosure Platform ("KAP") for entering into such a transaction.

Related party transactions are defined under the Turkish Accounting Standards and spouses, company controlled directly or indirectly, parent / holding company, subsidiary, associates of the holding company, key directors are considered as related parties.

Capital Markets Law No. 6362

A general rule for executing a related party transaction is determined under Art. 17/3 of the Capital Markets Law No. 6362. As per said provision, prior to the related party transaction, the principles of which shall be determined by the CMB (see below explanations under the Communiqué), public companies should adopt a board of directors' decision, which determines the principles of the transaction to be conducted. The approval of the majority of independent members is required for the implementation of the relevant board of directors' decisions. If a majority of the independent members disapprove the transaction in question, it must be disclosed to the public on the Public

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* *Article of September 2014*

Disclosure Platform ("KAP") and the transaction must be submitted to the general assembly for approval. In such a case, no meeting quorum is required and the parties of the transaction and related parties cannot vote in the general assembly. The resolutions are taken by a simple majority vote. The resolutions of the board of directors and general assembly not adopted in accordance with the aforesaid principles shall be deemed void.

Communiqué on Corporate Governance Principles, II-17.1

Transactions to be Conducted with Related Parties

As per Art. 9 of the Communiqué, companies and their subsidiaries shall adopt a board of directors' resolution determining the principles of the transactions before conducting transactions as set forth below in Part 1 and Part 2 with the related parties:

Part 1:

In case;

a) the proportion of the transaction cost to total assets calculated pursuant to the last financial statements disclosed to the public or the revenue sum constituted pursuant to the last annual financial statements disclosed to the public or the company value calculated by using the arithmetic ratio of the weighted average prices adjusted daily for six months before the date of the board of directors' resolution, as a base, in transactions similar to asset and service procurements and transactions of responsibility transfer between companies, their subsidiaries and the related parties; or

b) the proportion of the transaction cost (the net book value if it is higher) to the total assets calculated pursuant to the last financial statements disclosed to the public or revenue sum constituted pursuant to the last annual financial statements disclosed to the public or company value calculated by using the arithmetic ratio of the weighted average prices adjusted daily for six months before the date of the board of directors' resolution, as a base, in transactions similar to asset and service sales between companies, their subsidiaries and the related parties;

will be more than 5%; a valuation for the transaction must be made before the transaction by an institution authorized by the CMB. No extra valuation report is required when the subject of the transaction is shares and the transfer of such shares is conducted at a stock exchange. In lease transactions and/or other transactions where cash flows are definitely separated, the present net value of the lease revenues/expenditures and/or other revenues/expenditures which are calculated with the discounted cash flow method shall be considered as the transaction cost. In the event that ratios calculated pursuant to the aforesaid principals are negative or found unreasonable and accordingly inapplicable, such ratios shall not be taken into consideration and this matter shall be disclosed to the public on the Public Disclosure Platform ("KAP").

Part 2:

a) If it is foreseen that the ratios stated in Part 1 will be more than 10%, in addition to the obligation of conducting a valuation, it is required that a majority of the independent members' in the board of directors' vote for such a transaction. The members of the board, qualified as the representative of the related party shall not vote in such board meetings. If a majority of the independent members disapprove the transaction in question, it must be disclosed to the public on the Public Disclosure Platform ("KAP") and the transaction shall be submitted to the general assembly's approval. In such a case; no meeting quorum is required and the parties of the transaction and related parties cannot vote in said general assembly. The resolutions are taken by a simple majority of the votes. The resolutions of the board of directors and general assembly not adopted in accordance with the aforesaid principles shall be deemed void.

b) Real estate and its component parts and the real estate projects and rights thereof related to the transaction are subject to a valuation pursuant to the regulations of the CMB's real estate valuation.

c) If a related party transaction is approved; the direct and indirect relationship between the related parties, the nature of transactions, assumptions used in the valuation and the summary of

the valuation report, including the valuation results, whether or not the transactions were conducted in conformity with the results of the valuation report, and the justification of this matter shall be disclosed to public on the Public Disclosure Platform ("KAP").

The provisions of Art. 9 of the Communiqué shall not apply for the portfolio management, investment and intermediary services received from the related parties of the investment trusts. Additionally, said article shall not apply to the related party transactions arising from the ordinary activities of banks and financial institutions.

The CMB may require, at its discretion, (i) the valuation of the transactions (related party or not) notwithstanding the ratios stated in the Communiqué, and (ii) the disclosure of the valuation results to the public according to principles stated in the same Communiqué.

Common and Long-Term Transactions

As per Article 10 of the Communiqué, the board of directors shall approve the scope and terms of the common and long-term transactions. Where a substantial change occurs in the scope and conditions of common and long-term transactions, a new resolution shall be adopted.

a) If the ratio between the cost of the common and long-term transactions between companies, their subsidiaries and related parties in an accounting period to the sale costs calculated pursuant to the last annual financial statements disclosed to public for purchase transactions is more than 10%;

b) or if the ratio between the cost of the common and long-term transactions between companies, their subsidiaries and related parties in an accounting period to the revenue cost calculated pursuant to the last annual financial statements disclosed to the public for sales transactions is more than 10%;

a report shall be prepared by the board of directors on the transaction conditions and a comparison of such transactions with market conditions, in addition to the board of director's resolution, and a complete form of the report, or its result, shall be disclosed to public on the Public Disclosure Platform ("KAP"). If the majority of independent

members disapprove said transactions, the dissenting counter statement shall be disclosed to public on the Public Disclosure Platform ("KAP").

In order to prepare the aforementioned report, it is compulsory to include the following matters:

a) Information on the parties to the transaction, i.e. trade name, activities, whether they are a public company or not, and a summary of their financial data, including the total assets on an annual basis, the business profits, net sales, etc;

b) General information on the relationship between the companies who are party to the transaction and the impact of said relationship on company activities;

c) The date and subject of the agreement which forms the basis of the transaction, the substantive content of the agreement provided that there is no trade secret and in case such information has been disclosed in a document (i.e. prospectus) in the past, information regarding such matter;

d) The evaluation criteria as to whether or not the transaction is in conformity with the market conditions; and

e) An evaluation as to whether or not the transaction is in conformity with market conditions.

Art. 10 of the Communique shall not apply for the distribution of profits, the exercise of pre-emptive rights and payments related to the financial rights of the directors, the portfolio management, investment and intermediary services received by the related parties of brokerage companies, real estate investment trusts and venture capital investment trusts. Additionally, said article shall not apply to the transactions of banks and financial institutions with their related parties arising from their ordinary activities.

Conclusion

In general, public companies should fulfill some obligations under the capital markets legislation before executing a related party transaction, i.e. adopting a board of directors' resolution, preparing a report etc.. Additionally, it is important that a public company fulfill its obligation of public disclosure before a related party transaction.

Squeeze-out and Sell-out Rights in Public Companies*

Att. Leyla Orak Celikboya

Introduction

Capital Markets Law No. 6362[1] ("CML") regulates the squeeze-out, sell-out and exit rights in public companies for the first time[2]. While the shareholding status may cease upon the voluntary transfer of shares to a third person, under certain cases, other methods may be needed to terminate the shareholding. Especially with respect to events where shareholders hold a material majority of shares, the termination of the shareholding of other shareholders may be necessary even in the absence of a third party transferee, as the controlling shareholder may request to squeeze-out the minority, and the minority who has no control over, or is not in a position where it may affect the decisions in a company, may choose not to be bound by the consequences of such decisions. Therefore, these rights that have been granted under the CML are of material importance.

Art. 27 CML regulates the squeeze-out and sell-out rights in publicly offered companies or companies deemed to be public. Notwithstanding, the CML does not regulate when these rights are born, nor the principles and procedures governing their exercise, which

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* ***Article of October 2014***

1 Entered into force through publication in the Official Gazette dated December 30, 2012 and no. 28513.

2 For further information on squeeze-out, sell-out and exit rights under the TCC and CML see **Leyla Orak Celikboya**, Squeeze-Out, Sell-Out and Exit Rights in Joint Stock Companies, http://www.erdem-erdem.av.tr/en/articles/squeeze-out-sell-out-and-exit-rights-in-joint-stock-companies/ (accessed on 15.10.2014); and further information on exit rights under the CML see **Nilay Celebi**, Communique Regarding Common Terms on Material Transactıons and Shareholder's Rıght To Dissociate (II-23.1), http://www.erdem-erdem.av.tr/en/articles/communique-regarding-common-terms-on-material-transactions-and-shareholders-right-to-dissociate-ii-23-1/ (accessed on 15.10.2014).

are left to the regulations of the Capital Markets Board ("CMB"). The Communiqué No. II-27.1 governing the Squeeze-out and Sell-out Rights in Companies[3] ("Former Communiqué") that has been issued in this regard entered into force on 1 July 2014. Notwithstanding, this communiqué was replaced with the Communiqué No. II-27.2 governing the Squeeze-out and Sell-out Rights in Companies that entered into force through publication in the Official Gazette dated November 12, 2014 and no. 29173 ("Communiqué"). This Newsletter article shall assess the squeeze-out and sell-out rights through comparing the provisions of the Former Communiqué and the Communiqué.

CML Provisions

Pursuant to Art. 27 CML, in the event a shareholder owns shares exceeding a threshold to be determined by the CMB, it will have the right to squeeze-out other minority shareholders. The wording of this provision reveals that the minority referred to thereunder is not the minority as defined under the Turkish Commercial Code No. 6102[4] ("TCC"), but rather the shareholders who constitute a minority with reference to controlling shareholders that hold shares in the percentage determined by the CMB.

Shareholders who have a right to squeeze-out the minority may request from the public company, within a time period to be determined by the CMB, the cancellation of the shares of minority shareholders, and issue new shares representing such shares to be granted to themselves[5].

Art. 27 CMB refers to Art. 24 in relation to the share price. This provision governing the price shall be assessed, together with the provisions of the Communiqué, below.

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[3] Published in the Official Gazette dated January 2, 2014 and no. 28870. The Former Communiqué was abrogated and replaced on 12 October 2014 by the Communiqué.

[4] Published in the Official Gazette dated February 14, 2011 and no. 27846, and entered into force on July 1, 2012.

[5] This provision differs from Art. 208 TCC. Art. 208 TCC regulates the right of the controlling shareholder to purchase minority shares and regulates share transfers. Whereas, pursuant to Art. 27 CML, the shares of the minority are cancelled, and new shares to replace the cancelled ones shall be issued and delivered to the controlling shareholder.

Art. 27 CMB further states that when the right to squeeze-out is born, the minority shareholder shall also have the right to exit the company. Accordingly, minority shareholders may, within a time period to be determined by the CMB, request that the majority shareholders, who have the right to squeeze-out, to purchase their shares at a fair value.

Thus, the squeeze-out right of a majority, and the sell-out right of a minority, is regulated under the same provision.

The said article expressly states that Art. 208 TCC, which is among the provisions governing group companies, and regulates the squeeze-out right of the controlling shareholders, shall not apply to public companies. This provision governs the right of a mother company to squeeze-out the minority in a subsidiary company causing disturbance and trouble. The legislative justification of the CML states that both provisions have a similar nature, and that the CML introduces a specific provision for specific cases that necessitate this exception to the TCC.

Art. 27 CML has left the application of this provision to the CMB regulations. Below, the provisions of the Communiqué are analyzed.

The Provisions of the Communiqué

The Communiqué regulates when the squeeze-out and sell-out rights arise, how these rights shall be exercised, the price for exercising these rights, and other miscellaneous matters.

Birth of the Squeeze-out and Sell-out Rights

In the event that a shareholder holds at least 98% of the voting rights of a company through a share purchase offer or otherwise, or if the controlling shareholder already satisfying this threshold makes an additional share purchase, it shall have the right to squeeze-out other shareholders. Once the squeeze-out right is born, the remaining minority shareholders shall have the right to sell-out their shares. The percentage of votes was regulated as 95% under the Former Communiqué. Evidently Art. 4 of the Communiqué sets a higher threshold. Notwithstanding, pursuant to the provisional Art. 3, the threshold necessary for the exercise of the squeeze-out and sell-out rights shall be

95% for rights that have arisen or will arise until 31 December 2014, and 97% for rights that will arise thereafter until 31 December 2017.

The shares indirectly or directly owned by the controlling shall be taken into consideration for the calculation of voting rights. Voting privileges or the voting rights of usufruct and purchase right holders shall not be taken into consideration. In this respect, the Communiqué differs from the Former Communiqué, pursuant to which voting privileges which are applicable to all votes of the general assembly would also be taken into account for calculating voting right percentages.

Exercise of the Squeeze-out and Sell-out Rights

Contrary to the Former Communiqué, the Communiqué regulates the squeeze-out and the sell-out right under the same provision.

The controlling shareholder holding at least 98% of the votes or making additional share purchases while already having reached this threshold is obliged to make a public declaration. The remaining minority shareholders may exercise their sell-out rights within a three month period starting as of the relevant public declaration. This right shall lapse and may not be exercised once the three month period has expired. Even if the controlling shareholder does not continue to hold its controlling position (based on the threshold determined by the CMB) for the duration of the three month period, the sell-out right may be exercised until the lapse of this period. The controlling shareholder must refrain from additional share purchases during this three month period, other than purchases as a result of the exercise of a sell-out right.

The sell-out right may be exercised for all, and not less than all, shares (whether privileged or not) of the relevant shareholder. The shareholder shall notify the company in writing of its request to exercise its sell-out right. The board of directors of the company shall confirm the shareholding status of the applicant, and procure the preparation of a valuation report revealing the purchase price for the minority shares within one month following the sell-out application. The company must, within this one month period and in any event within three business days following the public declaration of the valuation report, notify the controlling shareholder that a sell-out right is exercised.

Contrary to the Former Communiqué, traded and non-traded companies are not subject to different time limits.

The controlling shareholder shall deposit the share purchase amount to the company account, at the latest within three business days following the notification of the sell-out right by the company to itself, and the company shall transfer this amount the second succeeding business day to conclude the share transfer.

The Former Communiqué regulated that the controlling shareholder could also use its squeeze-out right within the same three-month period, the lapse of which would result in the lapse of this right. Nevertheless, the Communiqué abandoned this approach. Accordingly, the controlling shareholder who wishes to exercise its squeeze-out right must do so within three business days following the lapse of the three-month period during which sell-out rights may be exercised.

The shareholder who wishes to exercise its squeeze-out right shall apply to the company, provide information on itself, and on the share price, submit a bank letter of guarantee, or block an amount in a private account to be used for the exercise of this right. The determination of the price to be paid is assessed in detail below.

The board of directors of the company shall adopt a resolution to cancel the shares of the squeezed-out minority, and issue new shares to replace the cancelled ones, and apply to the CMB for approval of the issuance certificate. The company must also apply for delisting from the exchange market. Following the completion of the procedures before the Central Registration Agency ("CRA") that are explained below, the company shall be delisted from the exchange market and excluded from the scope of the CML. This transaction shall not give rise to an exit right.

Within three business days as of the CMB's approval, the controlling shareholder must deposit the squeeze-out price in the company's account. The private capital increase of the company shall be made through deduction from the reserves blocked by the controlling shareholder. Within one business day following the deposit of the squeeze-out price by the controlling shareholder, the company shall apply to the CRA for the transfer of this amount to the accounts of the squeezed-out shareholders, the cancellation of their shares and the transfer of

newly issued shares into the company's account. The CRA shall transfer the relevant amounts to the accounts of the investment companies of the squeezed-out shareholders. As of this date, the remainder amount for shares monitored by the company, or those that are not registered, shall be kept and blocked for a period of three years in an account to be established within İstanbul Takas ve Saklama Bankası A.Ş. (Istanbul Settlement and Custody Bank Inc).

The exercise by the controlling shareholder of its squeeze-out right, the cancellation of the relevant shares, and the invitation of minority shareholders to apply to the company for disposal of their shares in exchange for the share price, shall be publicly announced by companies whose shares are not traded on the exchange market.

Share Price for the Exercise of the Squeeze-out and Sell-out Rights

Art. 27 CML makes reference to Art. 24 in relation to the share price. Art. 24 CML regulating the exit right as a consequence of a material transaction in a company states that, the share price for public companies shall be the average of the weighted average prices in the exchange market within thirty days before the date of the public disclosure of the transaction. The CMB shall determine the procedures and principles of price calculation for companies whose shares are not traded.

The Communiqué regulates the determination of the squeeze-out and sell-out price in detail under Art. 6. The provision under Art. 7 of the Former Communiqué which stated that the fair value is equivalent to the purchase price regulated under Art. 24 CML is no longer preserved under the Communiqué. Different purchase prices are determined for the exercise of the squeeze-out and sell-out rights.

The purchase price for the squeeze-out rights for traded shares, and, if there is only one group of non-traded shares, for such shares of a company whose shares are traded on an exchange market, shall be equivalent to the average of the weighted average prices in the exchange market within thirty days before the date of public disclosure of becoming a controlling shareholder, or realizing additional share purchases. For multiple groups of non-traded shares, this price shall be the arithmetic average of the value to be calculated for each group.

The value of each share group for companies whose shares are not traded on an exchange market shall be determined through a valuation report.

The Communiqué refers to a "fair price" for the exercise of the sell-out right. Accordingly, for traded companies, the price determined for the squeeze-out right, the price determined per each share group through a valuation report, the price of a mandatory share purchase offer made pursuant to Art. 26 CML within the year preceding the public disclosure of control, if any, and the average of the weighted average prices in the exchange market for the last six months, last year and last five years shall be compared. The highest value shall be the purchase price when the sell-out right is exercised. For companies whose shares are not traded on an exchange market, the price determined through a valuation report and the price of the mandatory purchase offer shall be compared. The time periods that have lapsed for the actions the CML took in relation to information trading and manipulation under the CML shall not be taken into consideration for this calculation.

As can be seen, the purchase price differs for the exercise of the squeeze-out and sell-out rights. The shareholder exercising its sell-out right is granted an opportunity to be paid a higher price than what would have been paid through being squeezed-out.

Public Disclosure

The controlling shareholder shall publicly announce that is in a controlling position, that it realized additional share acquisitions while in this position, or that it lost its controlling position, that it has decided to exercise its squeeze-out right and the relevant purchase price.

The company shall publicly disclose any squeeze-out right request, the procedure of squeeze-out and the results of the squeeze-out, that sell-out rights may be exercised, the total number of shareholders making an application for exercising their sell-out rights and the percentages of their voting rights, the total price to be paid for the exercised sell-out rights, the results of valuation reports for determining the share price, and if the valuation report results are not ready, the price calculated under other methods referred to above.

Conclusion

The Communiqué provides for the principles and procedures of exercise of the squeeze-out and sell-out rights in public companies that is regulated for the first time under the CML. This right grants controlling shareholders, who hold at least 98% of the voting rights in a public company, to request the cancellation of the minority shares, and the issuance of new shares to be delivered to the controlling shareholder. On the other hand, the minority shareholders shall also have the right to request the controlling shareholder to purchase their minority shares of the controlling shareholder.

Contrary to the Former Communiqué, the fact that a shareholder obtains control through reaching the threshold set under the Communiqué or makes additional share purchases while already exercising this control shall primarily give rise to the sell-out rights of the minority shareholders. Only after the three month period when the sell-out right may be exercised lapses will the controlling shareholder be entitled to exercise its squeeze-out right These rights grant the minority the right to no longer be bound by the decisions adopted in the relevant company, and the controlling shareholder the right to full control over the company.

The price to be paid when the squeeze-out or sell-out rights are exercised are regulated separately and in detail under the Communiqué. The price to be paid for the exercise of the sell-out right, differing from the price to be paid for exercising the squeeze-out right, shall be through comparing values calculated under numerous methods, and applying the highest value.

Asset-Backed and Mortgage-Backed Securities*

Att. Nilay Celebi

General

In accordance with Turkish Civil Code ("Civil Code") art. 970-972, financial institutions that grant loans in exchange for mortgages may issue bonds in exchange for their secured loan receivables in order to finance the projects by collecting small amounts from investments[1]. Thus, loan creditor financial institutions may issue bonds in exchange for loan receivables that are secured by mortgages. Financial institutions sell these secured bonds, and provide the receivables secured by mortgages as security for the investors.

According to Civil Code art. 970, institutions that are authorized by the relevant authority to grant loans in exchange for mortgages may issue secured bonds in exchange for their receivables secured by mortgages, or their receivables arising from current business, even though no agreement is concluded, and no liability concerning delivery is foreseen.

With respect to Civil Code art. 971, creditors shall not request the payment of such secured bonds prior to the redemption plan being put into place. As the loan granted by the financial institution has a determined payment plan, such bond shall adhere to the same redemption plan.

Bonds shall be issued as registered, or to the bearer, and have registered coupons.

In accordance with Civil Code art. 972, issuers, conditions regarding issuance, and the institutions authorized to grant permission for

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* ***Article of November 2014***

1 **OGUZMAN, Kemal**; **SELICI, Ozer; OKTAY OZDEMIR, Saibe**, Esya Hukuku, Istanbul 2013, p. 1039.

issuance, shall be determined by a special law. The Capital Markets Board adopted important communiqués within this scope.

In accordance with the Capital Markets Law ("CML"), the Capital Markets Board adopted the Communiqué on Asset Backed Securities and Mortgage Backed Securities (III-58.1) ("Communiqué") and regulated principles and procedures of asset-backed and mortgage-backed securities.

With respect to the Communiqué, asset-backed securities and mortgage-backed securities shall be briefly assessed, below.

Asset-Backed and Mortgage-Backed Securities ("AMBS")

The Communiqué defines mortgage-backed securities as the securities that are secured by mortgages, issued in exchange for the assets to be acquired by the housing finance fund or mortgage finance fund.

Asset-backed securities are the securities issued in exchange for the assets to be acquired by the housing finance fund or mortgage finance fund.

If the fund is the issuer, an asset finance fund for the issuance of the asset-backed securities and a housing finance fund for the mortgage-backed securities shall be established. The funds established by the financial leasing companies and financing companies shall only issue AMBS through the acquisition of the assets owned by the founders. The funds established by the banks, mortgage financing, and broadly authorized intermediary institutions are allowed to issue AMBS through the acquisition of assets that are owned not only by the founders, but also by other institutions.

In Turkey, these fund may be established for a limited or unlimited period of time. However, the funds shall neither be established, nor operated, for purposes other than AMBS issuance.

The assets of the fund shall not be disposed of for other purposes until the issued AMBS are redeemed. The aforementioned rule shall also be valid in case that a public institution acquires the control or the management of the founder. The assets of the fund shall not be subject to attachment, precautionary measures, or the bankruptcy process, including the collection of the public receivables.

The assets of the fund shall not be pledged or collateralized, with the exception of loans, derivatives, or other similar transactions concluded on behalf of the fund, providing that such provisions are made in the name of the fund, and a specific provision is included in the internal regulations.

Asset finance fund's portfolio may include;

- Receivables of the banks and finance companies arising from consumer loans and commercial mortgage loans,
- Receivables arising from financial lease agreements in accordance with Law no. 6361,
- Receivables arising from the sale of real estate owned by the Housing Development Administration of Turkey,
- Documented or secured commercial receivables arising from invoiced sales to their customers by joint stock companies that provide service and produce goods (with the exception of financial institutions),
- Deposit for a term shorter than three months, participation account, reverse repossession, money market funds, short-term borrowing instrument funds, and Takasbank money market transactions with the intention to invest the monies realized from the assets of the fund's portfolio,
- Assets that exceed the total amount of obligations of the fund may be transferred to the reserve accounts created in accordance with the ratio, or amount specified in the service contract. Such assets are transferred to the reserve accounts,
- Other assets approved by the Capital Markets Board, with the exception of capital markets instruments.

Housing finance fund's portfolio may include;

- Receivables of the banks and finance companies secured by a mortgage registered to the relevant registry arising from the housing finance set forth in paragraph 1 of art. 57 of the CML,
- Receivables arising from the housing finance agreements within the scope of Law no. 6361, provided that they are concluded for housing finance purposes set forth in art. 57 of the CML,

- Receivables and commercial loans of the banks, financial leasing companies and finance companies secured by a mortgage registered to the relevant registry,
- Receivables arising from the sale of real estate owned by the Housing Development Administration of Turkey,
- Assets belonging to the asset finance fund as stated in items (5), (6) and (7), above,
- Rights and obligations arising from derivatives.

Application of approval for the establishment of the fund and prospectus, or the certificate for the issuance of AMBS shall be evaluated, together. However, if requested by the founders, such applications may be evaluated, separately. Other documents determined by the Capital Markets Board shall be attached to the application.

Following the issuance of AMBS, the fund's portfolio shall be established by the cash collected from the investors.

Conclusion

Art. 970-972 of the Civil Code provides an opportunity to certain financial institutions to issue secured bonds. Accordingly, the principles and procedures regarding the issuance of AMBS has been regulated by the Communiqué and, in this respect, an important source of finance has been provided.

New Regulation in Turkish Capital Markets: Real Estate Investment Funds*

Att. Ozgur Kocabasoglu

With the entry into force of Capital Markets Law[1] ("CML") numbered 6362, real estate investment funds have attained a legal background for the first time in our country. The Communiqué on Real Estate Investment Funds III-52.3 ("Communiqué"), published in Official Gazette numbered 28871, dated 03.02.2014, and entered into force in 01.07.2014, has been prepared within the framework of the provisions regarding the investment funds of the CML.

In General

In accordance with Article 52 of the CML, the asset that is established by portfolio management companies within the fund rules in conformity with the fiduciary ownership principles on account of the savers, with money or other assets collected from the savers in return for fund units, in order to operate the portfolio or portfolios, and which is not a legal entity, is called an investment fund. In relation to the real estate investment funds, these investment funds are considered as legal entities, within the limits of the registration and the amendments to the registration, cancellation and revision operations. The immovable properties that are in the real estate portfolio fund, and the rights and instruments that are based upon the immovable property, shall be registered in the name of the fund. In order for the investment funds to obtain authorization, their fund rules shall be submitted for the Capital Market Board's (the "Board") approval. The investment funds are established through fund rules, either temporarily or permanently. The

* ***Article of November 2014***

[1] Entered into force by publication in the Official Gazette dated 30.12.2012 and numbered 28513.

purpose of the new regulation of the CML is to procure the management of the investment funds by professional institutions within a competitive market structure, in accordance with the UCITS provisions found in the European Union ("EU") Directive[2] numbered 2014/91/EU[3].

In accordance with Article 54 of the CML, in addition to its authorities found in the abrogated Capital Markets Law numbered 2499, the Board has been authorized to determine the procedures and principles of conversion of funds, issuance of fund units, fund management and deposition fees, prospectus, and other public disclosure obligations.

Regulations Introduced by the Communiqué

Art. 4 of the Communiqué defines real estate investment funds as "*an asset that is not a legal entity and permanently or temporarily established within the fund rules by portfolio management companies and real estate portfolio management companies, which holds an operating license duly given by the Board in order to manage the portfolio that is comprised of assets and transactions, as specified in the third paragraph, with the money collected from qualified investors in return for fund units, in accordance with fiduciary ownership principles, and pursuant to the provisions of the Law.*" In other words, real estate investment funds are structures through which the savers are provided with the opportunity to receive real estate returns, such as rental income and value increment, by purchasing the "fund units" of the portfolios, constituted by purchasing real estate[4]. The real estate investment funds contribute to the development of capital markets by means of deepening competition in the real estate market, and developing capital markets through the sale of fund units in secondary markets. Another important issue specified in the definition is that real estate investment funds can solely be established by portfolio management companies and real estate portfolio management companies.

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2 **Akbulak, Yavuz**. Türk Hukukundaki İlk Düzenleme: Gayrimenkul Yatırım Fonları, Banka ve Finans Hukuku Dergisi, Cilt:3 Sayı:11 Yıl:2014, p.173.

3 This Directive amended Directive no. 2009/65/EC, which was the previous Directive containing UCITS regulations.

4 CMB Investor Information Brochures – 3, Investment Funds.

Real estate investment funds can be established to invest in specific real estate, or without any such restriction, provided that it is specified in fund notification documents. As stated in the definition, the transactions and assets to be found in a real estate investment fund's portfolio are listed in the Communiqué as follows:

- Real estates and property rights;
- Private and public debt instruments, and shares of joint-stock companies established in Turkey, including those covered by the privatization process;
- Foreign private and public sectors' debt instruments and joint stock company shares tradable within the framework of Governmental Decree no. 32, Protection of the Value of Turkish Currency put into force by Decree of the Council of Ministers no. 89/14391 dated 07.08.1989;
- Time deposits and participation accounts;
- Investment fund units;
- Repurchase (repo) and reverse repurchase transactions;
- Lease certificates and real estate certificates;
- Warrants and certificates;
- Settlement and Custody Bank money market transactions;
- Cash collaterals and premiums of derivative instruments;
- Specifically designed foreign investment instruments and loan participation notes deemed appropriate by the Board;
- Other investment instruments deemed appropriate by the Board.

In accordance with Art. 53 of the CML, Art. 5 of the Communiqué stipulates that the fund assets are segregated from the assets of its founder, portfolio depository and portfolio manager. Thus, this rule, adopted for the investment funds, in general, is accepted with respect to the real estate investment funds, as well. The fund assets shall not be designated as collateral or pledged for purposes other than borrowing loans and conducting hedge-fund activities with the purpose of derivative instrument transactions, provided that such transactions are con-

ducted on account of the fund, and the fund rules and the issue document shall also include provisions to this effect. In addition, the fund assets shall not be disposed of for any other purpose whatsoever, even if the management or the supervision of the founder, or the portfolio depository, is transferred to the public authorities. Moreover, the fund asset may not be attached, made subject to interim injunction, or included in a bankrupt's estate even for the purposes of collecting public receivables. The debts and obligations of the founder and/or the portfolio manager to third persons and the receivables and claims of the fund from these same third persons may not be set off against each other.

Fund notification documents consist of fund rules, issue document and if any, investor information form. The fund rules is an agreement that is entered into by the unit holders on one side, and the portfolio depository and the portfolio manager on the other, which is concerned with the management of the fund portfolio and functioning of the fund in accordance with the fiduciary ownership principles, the depositing of the portfolio, including standardized terms of contract concerning the management of the fund in accordance with the provisions of proxy agreements. A fund-issued document is a document containing information about the nature and the sale conditions of the fund. An investor information form is a brief form showing the structure, investment strategy and the risks of the fund. The founder is responsible for the consistency of this form with the fund rules and issue document, for the accuracy of its contents, keeping them up-to-date and for the losses arising from inaccurate, misleading, or incomplete information included in this form. Standards of each of the fund notification documents are decided and determined by the Board[5].

Various limitations in relation to fund size have also been envisaged in the Communiqué. Accordingly, real estate investments shall account for at least 80% of the fund net asset value. In calculation of this ratio, the capital market instruments issued by real estate investments continuously comprised of at least 75% of their total assets based on the financial statements prepared under the provisions of the

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5 **Akbulak, Yavuz**, p. 175.

legislation they are subject to, real estate certificates and fund units of other real estate investment funds shall also be taken into consideration. Despite the fact that there is a limitation regarding the fund size, a limitation with respect to the diversity of the investment funds has not been stipulated. In accordance with Article 18/1 of the Communiqué, lands, registered lands, houses, offices, shopping centers, hotels, logistic centers, warehouses, parking lots, hospitals and all other kinds of similar real estates can be considered as real estate investments. With respect to all kinds of buildings and similar other structures to be included in the fund portfolio, the occupancy permit shall have been received, and condominiums shall have been established. Buildings, lands, registered lands and similar other real estates and property rights that are pledged, or have restrictive provisions affecting the value of the real estate, may also be included in the fund portfolio, providing that it is specified in the mentioned fund information documents[6].

On the other hand, the minimum fund size is another matter regulated within the Communiqué. According to Article 17/1 of the Communiqué, within one year as of the starting date of the sales of fund units to qualified investors, a fund portfolio value shall be a minimum of 10,000,000 TRY, and the cash collected from fund holders shall be invested within the portfolio restrictions set forth in the Communiqué. If the fund portfolio value does not reach the minimum amount by the end of the mentioned period, the fund's investment activities shall be terminated, and the fund rules shall be removed by the founder from the trade registry within no later than six months.

Additionally, in accordance with the provisions found in the Fifth Part of the Communiqué titled "Principles on Appraisal of Real Properties," the appraisal of the real estate investments at the end of every calendar year made by real estate appraisal companies, as deemed appropriate by the Board, have been made mandatory.

Conclusion

The principles of establishment, activities, and issuance of sales to qualified investors of the fund units concerning the real estate invest-

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[6] **Akbulak, Yavuz**, p. 181.

ment funds that are a legal entity with the entry into force of CML published in the Official Gazette dated 30.12.2012 and numbered 38513, are regulated in detail with the publication of the Communiqué. Even though real estate investment funds are yet to be established, various entrepreneurs are intending to establish the first real estate investment fund of Turkey. Real estate investment funds are commonly established abroad; they make the securitization of real estate possible, and liquidate them by connecting investors with real estate owners[7].

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[7] **Akbulak, Yavuz,** p. 188.

The New Era for Mutual Funds - I*

Att. Ali Sami Er

Structural changes will be observed this year in the mutual funds market that has risen to 34 billion TL, excluding pension funds[1], in line with the new regulations of the Capital Markets Board ("CMB"). Communiqué regarding the Principles of Mutual Funds ("Communiqué") numbered II-52.1 entered into force on 01.07.2014; however, a mutual fund with the founder being a portfolio management company ("PMC") has not yet been established, and most of the funds have to be restructured. This article sheds light on the new settlement and adaptation applications according to the Communiqué and the CMB's resolutions.

The Adaptation Applications of Current Funds

The system of mutual funds has been completely changed by the Communiqué. Under the new terms, the founders are restricted to the PMC's. The management service shall be provided only by the PCM's, as well. As portfolio custodian, aside from Takasbank, the investment companies who have portfolio custody competence, and whose paid-in capital is 20 million TL, shall be determined.

Different from the old terms, by transitioning to the open-end fund structure, they are now established in the form of umbrella funds through the scope of the funds' by-laws[2], offering circular[3] for each issue according to need, and key investor information document[4]. Thus, parallel to the European Union regulations, highest level of dis-

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* ***Article of November 2014***

1 Turkish Capital Markets November Review 2014.

2 Its minimum qualifications are noted in Communiqué Annex-1.

3 Its minimum qualifications are noted in Communiqué Annex-2.

4 Its minimum qualifications are noted in Communiqué Art. 12.

closure requirements will be met and all assets and liabilities of these funds will be operated separately from each other.

Prior to the CMB's application regarding the adaptation of the current funds to the Communiqué, the PMC's board of directors shall draft amendments as to the funds' rules or the offering circulars, and the reasons for these amendments. Within this draft, an application to the CMB shall be submitted and, afterwards, the process below-mentioned shall be applied. Following the permission of the CMB, the amendment shall be registered with the commercial registry and announced in the commercial gazette.

It is also obligatory upon the founder to prepare a regular disclosure form to be published in the KAP, as well as in the fund's by-laws, offering circular, and key investor information document.

We would like to emphasize that with respect to the adaptation to the regulations; firstly, the founding PMC shall form the necessary infrastructure and organization pursuant to the Communiqué on Portfolio Management Companies and Activities of Such Companies ("PMC" ve "Communiqué"). Hence, the application concerning the adaptation of the current funds, the conditions of the Communiqué and the PMC Communiqué shall be provided.

The fund founder may transfer its funds to other PMCs. If the founder transfers its funds to different PMCs, the CMB application may be made, separately. If the founder transfers all of the funds to the same PMC, the application shall be made at the same time. In this case, the transferee PMC shall apply, simultaneously, with the transferor founder.

Application Process for the New Establishments

The umbrella fund is established through registration of the fund's by-law, following the approval of the CMB, as a result of the examination of the application that was made by submitting the fund's by-laws and application form to the CMB. The examination shall be concluded within 2 months by the CMB.

After the registration, within 3 months, the founder shall present the offering circular that shall be prepared according to the below-mentioned fund types and key investor information document for the approval of the CMB. The CMB may extend this 3 month period once, for 3 months, in the event of reasonable exceptions. In addition, with-

in this period, the necessary place, equipment, accounting system and technical personnel required for the fund shall be provided. The CMB concludes the examination within 20 work days. Following the approval, within 10 work days, the offering circular and key investor information document shall be disclosed in the KAP and on the formal website of the founder, and shall follow the timeframe set forth in the said document. The monies and other assets collected at the end of the issuance shall be assigned to the assets according to the fund type, the following work day after the issuance is completed.

Briefly, the establishment and issuance of a fund may continue for 3 or 6 months. Please note that the duration starts from the date of notification to the founder, and the duration of the CMB's examination might vary.

Fund Types

The Communiqué notes the fund types in detail, but, with the permission of the CMB, new types of funds may be established. For example, pursuant to the Guide of the Communiqué published by the CMB, it gives permission to establish a "Mixed Umbrella Fund," which includes at least two types of funds among partners' interests, debt instruments, gold and other precious metals, as well as the capital markets instruments backed by such metals, and whose values are not less than 20% of the total fund value.

Another innovation brought by the Communiqué is the umbrella participation fund, established through the principles of profit sharing:

a) Funds that invest at least 80% of the portfolio on a continuous basis in,

    i. Local and / or foreigner public and/or private debt instruments shall be called "DEBT INSTRUMENTS UMBRELLA FUND"

    ii. Stocks of local and/or foreign issuers shall be called "STOCK UMBRELLA FUND"

    iii. Publicly traded gold and other precious metals, as well as capital markets instruments backed by such metals shall be called "PRECIOUS METALS UMBRELLA FUND"

    iv. Units of other mutual funds and participation shares of

exchange traded funds shall be called "FUNDS OF UMBRELLA FUNDS"

b) Funds that invest entire portfolios on a continuous basis in capital markets instruments with high liquidity that have a maximum of 184 days' maturity, and the majority average maturity of the portfolio, with a maximum of 45 days shall be called: "MONEY MARKETS UMBRELLA FUND"

c) Funds that invest entire portfolios on a continuous basis in lease certificates, participation accounts, partners' interests, gold and other precious metals, and umbrella funds formed by other money and capital market instruments that are accepted by the CMB, and which are not subject to interest, shall be called a "PARTICIPATION UMBRELLA FUND"

d) Funds that cannot be classified as any one of the types, above, with regard to portfolio restrictions shall be called "VARIABLE UMBRELLA FUNDS"

e) The funds whose participation shares are intended to be distributed only to qualified investors shall be called "HEDGE UMBRELLA FUNDS"

f) Funds where a part, or all, or the initial amount of the investment, plus a certain return is undertaken to be paid to the investor on the basis of an appropriate investment strategy and the guarantee provided by the guarantor as per the principles specified in the information documents within a specific term, shall be called "GUARANTEED UMBRELLA FUNDS"

g) Funds, where a part, or all, or the initial amount of the investment, plus a certain return is targeted to be paid to the investor on the basis of an appropriate investment strategy, and best efforts strategy as per the principles specified in the information documents, within a specific term, shall be called "PROTECTIVE UMBRELLA FUNDS"

In addition, it is obligatory to use the title "Foreign" for the mutual funds that are invested in foreign exchange and capital market instruments with a proportion of at least 80% of its total value. It is also obligatory to use the title "Undertaking" for the mutual funds of the undertakings that are included within the scope of the regulations of the CMB concerning the financial report standards, which are formed by money and capital markets instruments.

Asset Limits Subsumable under the Assets of the Fund

Pursuant to the Communiqué, we would like to emphasize the below-noted limits regarding the assets that are subsumable under the assets of the funds.

ASSET TYPES	AT LEAST HOW MUCH % OF THE TOTAL FUND VALUE MUST IT FORM?
Stock Certificates and related derivatives (same issuer)	10
Stock Certificates (invested in more than 5% by different issuers)	Total 40
Money and Capital Market Instruments (belong to the same union association)	20
Money and Capital Market Instruments	5, Total 25
Mortgage and Asset Guaranteed Securities	25
Debt Instruments (same issuer)	10
Public Debt Instruments	100
Public Debt Instruments (unique asset)	35
Capital Market Instruments of Asset Leasing Companies (same issuer)	25
Capital Market Instruments of Asset Leasing Companies established by the Law regarding Public Finance and Debt Management Regulations	100
Brokerage Company, Partners' Warrants and Certificates	10, same issuer 5
Short-Term Deposit less than 12 months, Participation Accounts, Certificate of Deposit	10, same bank 3
Partners' interests that the founder intermediates in the group associations included within the scope of the financial reporting standards of the CMB for the public offering, on condition to be traded at the exchange	maximum 10% of the issue, and maximum 5% of the total fund value
Money and Capital Markets Instruments of the issuers a) who are directly and indirectly the controlling manager b) who are a controlling shareholder of the manager or controlling shareholder of the directors of the manager	20
Fund and participation shares of exchange traded funds and shares of securities investment associations	20
Repo transactions	10
Reverse Repo transactions	10 (over the counter 10)
Takasbank Money Market Transactions	20

In addition, the funds may obtain assets over the counter. In this case, the said asset shall have a valuation grade equivalent to the investment level, and shall be transacted at a fair value, and shall be converted to cash at a fair market price.

The open position amount caused by derivatives cannot exceed the total fund value. In the calculation of the fund's open position, the reverse positions taken in the transactions of the warrants, certificates and derivatives that are relevant to the same asset shall be clarified.

Funds shall not be involved in short sales or credit security transactions.

Conclusion

With the new law of mutual funds, the operation and adaptation units need to work on funds' by-laws and structural amendments closely and comprehensively. It is crucial to apply the amendments set forth in this article as soon as possible by the founders, for the development and settlement of the system brought by the Communiqué. Currently, as only 18 PMC has submitted their adaptation applications[5], beyond a shadow of a doubt, to restructure the mutual funds, a busy agenda awaits the CMB Institutional Investors Chamber, till the last day of the adaptation period that is 01.07.2015. With our following article, to present the new system of the Communiqué, we will touch on the operational proceedings that are to be adhered to by the mutual funds during their daily proceedings.

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5 Turkish Institutional Investment Managers' Association Review October-December 2014.

ARBITRATION LAW

Consolidation of Arbitrations in ICC Arbitration*

Prof. Dr. H. Ercument Erdem

With respect to International Chamber of Commerce ("ICC") arbitration, consolidation is a procedural mechanism used when two or more pending arbitrations are merged into a single arbitration. Due to the current practice in international commercial transactions that require technical, commercial and financial specialization, the number of multi-party disputes has a tendency to increase. Consolidation may have advantages with regard to procedural efficacy, and may provide procedural economy and cost efficiency. It also lowers the risk of inconsistent decisions. Additionally, the fact-finding phase is facilitated and may be finalized more efficiently, with a more comprehensive presentation of legal and factual positions.

In General

The consolidation of arbitrations is set forth under Art. 10 of the ICC Arbitration Rules ("the Rules"). Pursuant to the relevant article, the International Court of Arbitration ("the Court") may, at the request of one of the parties, consolidate two or more arbitrations that are pending under the Rules into a single arbitration. The Court may decide on the consolidation under the following scenarios, which shall be further examined in this article:

- Where the parties have agreed to consolidation, or
- Where all of the claims in the arbitrations are made under the same arbitration agreement, or
- Where the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same

* ***Article of October 2014***

parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.

Conditions for Consolidation

The first scenario in which different arbitrations may be consolidated is the parties' agreement. If there is an explicit agreement of the parties in all of the arbitrations to be consolidated, the Court may order consolidation.

The second scenario is the case in which all of the claims are made under the same arbitration agreement. In this instance, the arbitrations may be consolidated even if the parties are not the same[1]. This broader scope adopted by the 2012 Rules is considered as a more useful and appropriate preference, since there is usually no reason to exclude consolidation from the beginning where all of the parties are bound by the same agreement to arbitrate, even though they may not be parties to both pending arbitrations[2]. On the other hand, it can be the case that the claims made in these arbitrations are totally unrelated to each other. In such cases, the Court shall consider on a case-by-case basis whether to consolidate the cases that have been brought under the same arbitration agreement. In the event that there is no link between the claims, then the Court may refuse to consolidate the arbitrations[3].

The third and the last scenario is that the claims are made under more than one arbitration agreement, under the condition that the arbitrations are between the same parties, the disputes in the arbitrations have arisen in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible. The arbitration agreements may be considered incompatible in cases where factors such as the place of arbitration, the language of arbitration, the mechanism for selecting arbitrators, or the number of arbitrators are different.

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[1] Please note that this is an amendment to the 1998 Rules that required the parties to be the same. This issue will be further examined under the title, "Modifications Made by the 2012 Rules" of this article.

[2] **Jason Fry, Simon Greenberg, Francesca Mazza**, The Secretariat's Guide to ICC Arbitration, ICC Publication 729 (Paris 2012), p. 113 ("Secretariat's Guide").

[3] Secretariat's Guide, p. 113.

The Court's Discretion on Consolidation

Taking into consideration the wording of Art. 10, which includes the term "may," it should be stated that the Court has discretion to grant the consolidation. The Court may consolidate, or may deny the request, even though the requirements under Art. 10 are met, considering the case at hand.

Pursuant to Art. 10(2) of the Rules, in exercising this discretion, the Court may take into account any circumstances it considers to be relevant, and consider factors such as whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations, and if so, whether the same or different arbitrators have been confirmed or appointed. If the arbitrators have been confirmed in more than one of the arbitrations, and if they are different individuals, the Court will not be able to constitute a single arbitral tribunal. As the arbitrations would become one single arbitration once consolidated, to be decided by a single arbitral tribunal, the constitution of a single arbitral tribunal would be necessary. Therefore, it would be impossible to constitute a single arbitral tribunal unless the different arbitrator, or arbitrators, resigns or is removed by the Court at the parties' request[4].

It should be emphasized that the Court is not limited to the examples stated in the relevant article, and may consider any other circumstance it considers relevant, such as the procedural stage of the proceedings, and whether the terms of reference have been established[5].

The party requesting consolidation shall submit a written request to the ICC Secretariat. It is preferable that the party provides the necessary information and explanations to the Court in order for it to decide on consolidation, such as the link between the disputes, and the grounds for granting consolidation under the Rules.

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4 Secretariat's Guide, p. 113.

5 **Marily Paralika, Alexander G. Fessas**, Joinder, Multiple Parties, Multiple Contracts and Consolidation under the ICC Rules, Presentation made on the ICC Conference "New Trends in ICC Arbitration and Mediation" held in Nicosia, Cyprus on April 29th, 2014. Source: http://www.ccci.org.cy/wp-content/uploads/2014/05/Multi-Joinder-Consolidation.pdf ("Paralika-Fessas").

Modifications Made by the 2012 Rules

Under the 1998 Rules, consolidation was regulated under Art. 4(6). The relevant article permitted consolidation only in cases in which the parties were the same, unless the parties had agreed to consolidate. The 2012 Rules adopt a more liberal approach than that of the 1998 Rules concerning consolidation. Art. 10, subparagraph (b) permits consolidation when the claims in the arbitrations are made under the same arbitration agreement, including the cases in which the parties are not the same.

On the other hand, the 1998 Rules were silent on the conditions to be considered for consolidation under multiple agreements, which are expressly regulated under the 2012 Rules. It should be emphasized that although it was not regulated under the 1998 Rules, the practice developed by the Court was in line with the new provision of the Rules[6].

Procedural Issues on Consolidation

Pursuant to Art. 10(3) of the Rules, when arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties. Consequently, the consolidated case will bear the case number of the arbitration that commenced first, while mentioning the numbers of the case that were consolidated[7].

Following consolidation, the Secretariat informs the parties of the new case caption, and sets a short time limit for the parties to submit their objections, if any.

Potential Problems of Enforcement

It should be emphasized that enforcement issues may arise in the presence of consolidation of arbitrations. Under the New York

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6 **Simon Greenberg**, A Closer Look at *Consent*: Consolidation, Multi-Contract, Joinder, Cross-Claim, and Applicable Rules Versions, ICC Dispute Resolution Services. Source: https://www.international-arbitration-attorney.com/wp-content/uploads/1icc-dispute-resolution-servicesa-closer-look-at-consentconsolidation-multi-contract-joinde.pdf.

7 Secretariat's Guide, p. 113. The example given in the Secretariat's Guide is as follows: If cases 12345/XY and 12356/XY were to be consolidated, the consolidated case would be referenced as 12345/XY(c 12356/XY).

Convention, the fundamentals of enforcement may be stated as the agreement of the parties to submit their differences to arbitration, the scope of the authority of the arbitrators, and the fairness of the conduct of the arbitration. In the doctrine, it is stated that if another dispute is consolidated to the first arbitration, this may violate the fundamental agreement between the two parties to submit their disputes to arbitration[8]. Consequently, the probable basis for refusal to enforce an award under the New York Convention may be the absence of an arbitration agreement between the parties.

To overcome this problem, tribunals and institutions may encourage the parties to record their agreement to consolidation, either in the terms of reference or in some other document, such as the procedural orders, or other early procedural decisions[9].

Conclusion

Consolidation of ICC arbitrations is of great importance, considering the fact that multiparty arbitrations represent 30% of the total caseload of the ICC[10]. Beyond any doubt, the complex nature of international transactions is the major factor in this significant number of cases. The Rules set firm grounds for the consolidation practice of the Court, in line with the previous Court practice, and the needs of arbitration practitioners. We hope that the consolidation of arbitrations will not endanger the enforcement proceedings, and that the precedents of national courts will develop in an arbitration-friendly direction.

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8 **Julian D M Lew**, **Loukas A Mistelis, Stefan M Kröll,** Comparative International Commercial Arbitration, Kluwer Law International, 2003, p. 408 ("Lew-Mistelis-Kröll").

9 **Lew-Mistelis-Kröll**, p. 409.

10 **Paralika-Fessas.**

Current Practices on Determination of Seat of Arbitration in ICC Arbitration*

Att. Ezgi Babur

The determination of the seat of arbitration is of great importance, due to its consequences on the arbitration procedure. In the International Chamber of Commerce ("ICC") practice, cities as Paris, London, Geneva and Zurich are among the most popular arbitration seats. It is preferable that the seat is in a jurisdiction with a well-developed arbitration legislation. Courts experienced in arbitration issues and a tradition of supporting and respecting arbitration agreements and arbitral awards are also among the factors considered in the determination of the seat of arbitration. The location of the seat of arbitration and ease of access and convenience are also considered by the parties and practitioners in the choice of the seat of arbitration.

In General

The place of arbitration is set forth under Article 18 of the ICC Rules. Pursuant to the first paragraph of this article, the place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.

In practice, it is seen that the parties agree on the place of arbitration and do not leave this to the discretion of the ICC[1] Court. As per the statistics of the ICC , the place of arbitration was specified in arbitration clauses in more than 76% of the cases. In 12% of the cases, the parties subsequently agreed on a place of arbitration and the Court fixed the place of arbitration in the remaining 12% of the cases.

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* ***Article of September 2014***

1 **Jason Fry, Simon Greenberg, Francesca Mazza,** The Secretariat's Guide to ICC Arbitration, ICC Publication 729 (Paris 2012), p. 201 ("Secretariat's Guide").

The place of arbitration has important consequences on the arbitration procedure. Considering this importance, it would be on the safe side to decide on the place of arbitration in light of the expert legal advice. To begin with, it determines the law governing the arbitration proceedings, in other words *lex arbitri*. Within this context; issues such as the arbitrability, the enforcement of arbitration agreements, and the involvement of courts in arbitration proceedings are the affected by *lex arbitri*. Furthermore, the place of the arbitration defines the "nationality" of an arbitral award[2]. The nationality of the award may be significant for the enforcement of the award, since New York Convention enables the signatories to make a reciprocity reservation[3].

Preference of Arbitration Seat in ICC Arbitration

Concerning the data of the years 2007-2011[4], ICC arbitrations mostly took place in North and West Europe, with 67% of the cases. Particularly, the most popular arbitration seat is France, with 546 cases. France is followed by Switzerland with 482 cases and United Kingdom with 324 cases.

One of the reasons of popularity of France is based on the fact that ICC's headquarters are based in Paris. Additionally, the positive attitude of the courts towards arbitration and the fact that there is a court specialized for arbitration contributes to the preference of practitioners on this issue[5].

Concerning United Kingdom, it should be stated that London is commonly used as arbitration seat, especially in maritime arbitrations. In practice, it is seen that London is determined traditionally as seat of arbitration on most of the bills of lading.

Another quite popular seat of arbitration is Switzerland, especially the cities Geneva and Zurich. The reasons behind this preference are

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2 Secretariat's Guide, p. 199.

3 It should be noted that Turkey ratified the New York Convention with two reservations. Firstly, the Convention shall be applied to commercial disputes; secondly, it should only be applied to arbitral awards which are given in another state that has also ratified the Convention.

4 Secretariat's Guide, p. 199.

5 **Ziya Akıncı**, Why Center for Arbitration in İstanbul?, Journal of Yaşar University, p. 80. Source: http://journal.yasar.edu.tr/wp-content/uploads/2014/01/3-Ziya-AKINCI.pdf ("**Akıncı**").

the recognition of Switzerland as a neutral state in many aspects, the multilingual aspect and the positive attitude of Swiss courts towards arbitration. Specifically, concerning Turkish parties, the fact that the Swiss and Turkish Code of Obligations are significantly similar is also a very important factor[6].

Apart from the arbitration seats located in Europe, seats such as Singapore, New York and Sao Paulo are among cities most frequently selected as places of arbitration.

In addition to the data above concerning the most popular seats of arbitration, it should be stated that there is a large variety of different cities and countries selected as places of arbitration. Pursuant to the ICC statistics of the cases that were initiated between the years 2007-2011, the number of different cities selected as places of arbitration ranges from 86 to 113. As per the number of different countries in which those cities are situated, this is between 42 and 63.

In Turkey, activities pertaining to the establishment of an institutional arbitration center in Istanbul are on-going[7]. The Draft Law on the Istanbul Arbitration Center is on the agenda of Turkish Grand National Assembly. Considering the geopolitical advantages of Istanbul, the establishment of such arbitration center would contribute to enhance the popularity of Istanbul as an internationally recognized arbitration center.

Location of Hearings and Meetings

The location of hearings is laid down in the second paragraph of Article 18 of the Rules. Accordingly, the arbitral tribunal may, after consultation with the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties. As stated in the relevant article, the parties may specify the use of a particular hearing location, although it is not common in practice. In this case, pursuant to Article 18(2), the arbitral tribunal will be bound by this specification.

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6 **Akıncı**, p. 81.

7 For detailed information about İstanbul Arbitration Center, please see: **Leyla Orak Celikboya**, İstanbul Arbitration Center, Erdem&Erdem Law Office Newsletter, July 2014. Source: http://www.erdem-erdem.av.tr/en/articles/istanbul-arbitration-center/.

It should be emphasized that the hearings may be held in a location other than the place of arbitration. The arbitral tribunal may consider another location more convenient for meetings and hearings, taking into account the location of the parties' counsel, the arbitrators, the parties and the witnesses[8]. For instance, in case all the counsels of the parties are located in the same city, it may be preferable to hold the hearings in the said city. On the other hand, if there would be a witness hearing and the witnesses are all located in the same city, then the witness hearing may be held in this city.

Conclusion

A variety of factors are considered by the parties and counsels in the choice of arbitration seat. Considering the importance and the effects of this choice, it should be emphasized that this choice should be made diligently. Concerning ICC arbitration, there are a number of cities frequently selected as arbitration seat by the parties of an arbitration agreement. With the opening of the Istanbul Arbitration Center, we hope that Istanbul will be an internationally recognized arbitration seat, and take part among the popular arbitration seats in the international arbitration arena.

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[8] Secretariat's Guide, p. 206.

Advance on Costs in ICC Arbitration*

Att. Ezgi Babur

Advance payments play an important role in International Chamber of Commerce ("ICC") arbitrations. Advance payment is intended to ensure that the ICC holds sufficient funds to cover all ensuing steps in the arbitration until the next payment is due[1]. With the advance payments, the ICC administrative expenses, arbitrator's fees and expenses are ensured, and delays or interruptions of the arbitration proceedings for financial reasons are prevented.

In General

The provisions on advance payment are set forth under Article 36 of the ICC Arbitration Rules ("the Rules"), and also under Article 1 of Appendix III to the Rules.

The advance on costs is fixed pursuant to cost scales which are used in determining ICC administrative expenses and arbitrators' fees[2]. The scales are based on the amount in dispute; however, the percentage of the costs decreases as the amount in dispute rises. Therefore, for amounts that are quite high, the parties do not have to bear unreasonable costs.

Allocation of the Advance on Costs between the Parties

Article 36(2) of the Rules provides that a single advance on costs would be fixed based on the sum of the parties' claims. The same arti-

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* ***Article of June 2014***

1 **Jason Fry, Simon Greenberg, Francesca Mazza**, *The Secretariat's Guide to ICC Arbitration*, ICC Publication 729 (Paris, 2012), p. 362 ("Secretariat's Guide").

2 These scales can be found in Article 4 of the Appendix III of the Rules.

cle sets forth that the advance on costs shall be paid in equal shares by the claimant and the respondent.

On the other hand, there are two exceptions laid down under Article 36(2). In case there are claims made pursuant to Article 7 or Article 8 of the Rules, which regulate the joinder of additional parties and claims between multiple parties, the costs would be allocated in accordance with Article 36(4) of the Rules.

Article 36(4) aims at the fair distribution of advance payments between the parties in a multiparty arbitration. It should be noted that this provision is a new provision adopted with the 2012 modifications to the Rules. This provision will be applied to cases with more than two parties, either with the rejoinder of the party in line with Article 7, or when more than two parties are named in the Request for Arbitration, as claimants or respondents[3].

Separate Advances on Costs pursuant to Article 36(3) of the Rules

Pursuant to Article 36(3) of the Rules, in case there are counterclaims submitted by the respondent, the Court may fix separate advances on costs for the claims and the counterclaims. In this case, each of the parties shall pay the advance on costs corresponding to its claims, instead of paying its share based upon the global advance on costs.

This provision may be advantageous when one of the parties refuses to take part in the payment of the advance on costs that has been calculated including the other side's claims. Particularly, when the respondent has counterclaims, the amount in the dispute consists of not only the amount of the claim, but also the amount of the counterclaim.

As is known, where the advance on costs is not paid by one of the parties, the Secretariat invites the other party to substitute for the non-paying party. This may have disadvantages where global advances on costs have been determined, since the respondent who has counterclaims may abstain from paying the advances.

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[3] Secretariat's Guide, p. 377.

Sanction for the Non-Payment of Advances on Costs

At this point, we should briefly explain the sanction for non-payment of advances. Pursuant to Article 36(6) of the Rules, when a request for an advance on costs has not been complied with, after consultation with the arbitral tribunal, the Secretary General may direct the arbitral tribunal to suspend its work and set a time limit of not less than 15 days, upon the expiry of which the relevant claims shall be considered as withdrawn. Therefore, in case separate advances on costs have been determined, the arbitration will proceed with the claims of the party who paid the advances on costs.

However, in case there is a global advance on costs, the claimant who is faced with the possibility of withdrawal of the claims pursuant to Article 36(6) is forced to pay the whole amount of the advance on costs.

Where separate advances on costs are determined, the parties have to pay the amount of the advance, calculated based on the amount of their claims or counterclaims. In case one of the parties fails to pay the advance on costs concerning their own claims, then the claims or counterclaims of the relevant party is subject to the sanction set forth under Article 36(6) of the Rules.

This incentivizes the parties to make the advance payments.

The Court's Discretion on Fixing Separate Advances on Costs

It should be emphasized that the fixing of separate advances on costs is at the Court's discretion. It is also stated that the Court does not fix separate advances on costs, unless a party makes a request[4].

The reluctance of the Court on this issue is two-fold: First, the Court aims to avoid additional financial burden on the parties. When the claims of the parties are considered separately, they are subject to higher margins pursuant to the scales under Article 4 of Appendix III of the Rules[5]. Secondly, the Court may avoid fixing

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[4] Secretariat's Guide, p. 376.

[5] As the scales provide lower margins for higher amounts, the claims and counterclaims would be subject to lower margins, in case they are added to each other.

separate advances if the parties seem to have requested it for purely tactical reasons[6].

As the separate advances on costs are subject to higher margins when considered separately, the parties pay higher advances. However, it should be noted that this does not mean that the arbitral tribunal and the ICC would be paid more at the end of the arbitration. The Court shall calculate the arbitral tribunal's fees and the ICC administrative expenses considering the global amount of the claims[7].

Conclusion

The separate advances on costs can be advantageous for the parties where one of the parties abstains from the payment, even though it has claims or counterclaims. The sanction of withdrawal pursuant to Article 36(6) is applied only to claims whose advances on costs have not been paid by the relevant party. This definitely incentivizes the parties to pay the advances on costs concerning their own claims or counterclaims.

On the other hand, it should be considered that the Court does not fix separate advances without a request from the parties. Also, it should be emphasized that the Court is reluctant to fix separate advances on costs pursuant to Article 36(3) of the Rules.

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6 Secretariat's Guide, p. 376.

7 Secretariat's Guide, p. 375-376.

Objection regarding a Dispute being Non-Arbitrable*

Att. Selen Ozturk

Introduction

Arbitration is based on the principle of the resolution of disputes arising between the parties by arbitral tribunals instead of national courts, and it is an accepted and frequently preferred alternative dispute resolution method. However, not all disputes may be resolved by arbitration. Within this context, the determination as to whether a dispute may be resolved by arbitration is defined as arbitrability. Arbitration is possible in situations where the dispute is definite and the matter of the dispute is arbitrable.

Arbitrability is regulated under Art. 408 of the Civil Procedure Code No. 6100 ("CPC"). Pursuant to said article, disputes arising out of rights *in rem* over immovable properties or disputes, which are not subject to the will of the parties, are not arbitrable. Moreover, International Arbitration Law No. 4686 ("IAL") comprises provisions regarding arbitrability. As per Art. 1/4 IAL, IAL shall not be applied to disputes resulting from rights *in rem* over immovable properties and disputes which are not dependent on the will of the parties.

This article shall briefly examine the notion of arbitrability, the persons/parties that may raise an objection regarding the dispute being non arbitrable, the institution/authority authorized to examine this objection, the scope of the examination by the courts in the event of an objection as such and the time when the objection may be asserted.

Arbitrability

Arbitrability is the notion provided by states to determine which disputes may be resolved by arbitration. Accordingly, arbitrability may

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* ***Article of June 2014***

involve different points in different national laws. Therefore, our assessments shall be primarily based on Turkish legislation.

CPC Art. 408 and IAL Art. 1/4 set forth that issues related to the *in rem* rights over immovable properties are not arbitrable. Pursuant to said rule, a dispute shall be non artibtrable where the immovable properties constituting the subject of the dispute are located in Turkey and the dispute is related to the rights *in rem* over these immovable properties. The main purpose for the condition stating that the location of the immovable properties must be in Turkey is that the dispute is of vital importance for Turkish public order. Immovable properties located in foreign countries do not have the same importance for Turkish public order. In addition to the disputes related to rights *in rem* on immovable properties, the Turkish Court of Cassation extends the non-arbitrability principle to some lease contracts as well[1].

Moreover, Art. 408 CPC and Art.1/4 IAL provide that disputes related to subjects that are not dependent on the will of the parties shall not be arbitrable. In this regard, only the issues that the parties can decide by their own will are arbitrable.

Pursuant to Art.15 IAL, parties can bring an action for the setting aside of an arbitral award held with respect to a dispute arising from a non-arbitrable subject in the civil court of first instance.

The Party Entitled to Raise Objection

The determination of the party entitled to submit the objection of non-arbitrability depends on whether there is a case before national courts or if the dispute is examined before the arbitral tribunal. Where there is a case pending before national courts, it is not possible for the party raising an objection of arbitration to submit a non-arbitrability

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1 For example, the Turkish Court of Cassation held that the disputes related to the actions for the determination of the lease price are not arbitrable Please See.: Y. 4. HD. 11.11.1965 t., 7792/5764; Y. 4. HD 13.9.1965 t., 6722/4090 (İBD 4. HD/2, s.29 ve s. 110-111)); Y. 3. H.D, 2.12.2004 t., 2004/13018 E., 2004/13409 K..

Similarly, the Turkish Court of Cassation held that parties cannot conclude an arbitration agreement for the disputes related to the evaluation cases for immovable properties that are subject to the Law on Leases numbered 6570 Please See.: Y. 6. HD. 3.11.1964 t., 375/5196; Y. 6. HD. 10.7.1970 t., 3032/3170 (İBD 1971/1-2, p. 144-145)

objection. Similarly, the party commencing the arbitration proceedings cannot submit a non-arbitrability objection.

Ex Officio Examination of the Arbitrability

It is disputed whether arbitrators can examine arbitrability without any objection having been raised since arbitration proceedings are strictly connected to the consent of the parties. The legal approach of the minority in the doctrine is that arbitrators shall take into consideration the arbitrability issue on exceptional occasions where the public order is violated. However, the majority opinion states that non-arbitrability cannot be reviewed *ex officio* since the competence of arbitrators is derived from the consent of the parties and thus, parties may even execute such arbitral award voluntarily, without the intervention of any execution authority, even if the dispute is not arbitrable[2].

The issue of whether the national courts can *ex officio* examine the arbitrability of a dispute depends on the stage of the proceeding. Within this regard, it should be underlined that Art. 15 IAL grants the authority to judges to examine the arbitrability of a dispute without the request of the parties.

Authority which will Examine the Objection on Arbitrability

The authority which will examine whether the arbitration agreement is arbitrable or not is an important issue if there is a pending case before the state courts and an arbitration proceeding at the same time. The authority which will decide on the objection of arbitrability shall be determined within the context of and in accordance with the rules on plea of jurisdiction.

There are two opinions in the doctrine on how the court should proceed in an objection asserted before the court where the arbitration and the court proceedings are both in Turkey.

The first opinion states that such an objection must be examined by the court. This opinion bases its explanation on Art. 5 IAL. As per said article, if a dispute constituting the subject of an arbitration agree-

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[2] **Burak HUYSAL**, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, İstanbul 2010, p. 335.

ment has been brought over a court, the other party may raise an objection of arbitration and where this objection is accepted, the lawsuit shall be dismissed on procedural grounds. Therefore, the court is authorized to assess the objection of arbitration. This opinion, accordingly, states that the court shall not just determine the existence of the arbitration agreement but also analyze the validity of the agreement.

The other opinion holds that the objection on arbitrability shall be resolved by the arbitrators, pursuant to Art. 7(H) IAL. Pursuant to said article, the arbitrator or the arbitral tribunal may decide on its own competence, including the objections on the existence or validity of the arbitration agreement. Therefore, the arbitrators are authorized to decide on the existence and validity of the arbitration agreement. In accordance with this view, the judge faced with an arbitrability objection has two options. The first option is that the court shall consider the kompetenz-kompetenz principle and render a decision stating that the decision on whether the arbitration agreement is arbitrable or not shall be given by the arbitrators. The second possibility is to give a decision by making an assessment in accordance with Art. 2/3 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), on whether the application of the arbitration agreement is impossible or not[3]: The Court of Cassation has resolved in one of its 2007 decisions that it is within the competence of the arbitrators to examine the objection[4].

In case only one of the proceedings is in Turkey, the arbitrators shall assess the objection in accordance with IAL. If the arbitration is out of the scope of IAL, then the issue shall be assessed in accordance with Art. II of the New York Convention.

Timing of the Objection

Art. 7/H IAL stipulates that the objection regarding the incompetence of arbitrators or the arbitral tribunal shall be submitted with the first plea at latest.

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[3] **Mustafa ERKAN**, Milletlerarası Tahkimde Yetki Sorunları, Ankara 2013, p. 74.

[4] Yargıtay 15. HD, 2007/2145 E., 2007/4389 K., 27.6.2007.

Conclusion

As explained above in detail, the issue of which subject is arbitrable depends on the discretion of the states and it is not possible to have an arbitration proceeding for issues which are not arbitrable. In this context, another important point is to determine the competent authority that shall review the objection of arbitrability. The objection of arbitrability shall be examined together with the objection of jurisdiction in the resolution of this problem. There are different legal approaches as to whether and to which extent the courts or arbitral tribunals shall review the objection of arbitrability.

The Objection of Arbitration and the Courts' Degree of Review of the Arbitration Agreement*

Att. Selen Ozturk

Introduction

As is known, arbitration is an accepted and frequently preferred alternative dispute resolution method based on the resolution of disputes by persons called arbitrators in arbitral tribunals instead of national courts. Where the parties voluntarily agree to resort to arbitration, if the resolution of the issue by arbitration is not prohibited by the law, the dispute may be resolved through arbitration. Therefore, a valid arbitration agreement/arbitration clause must be concluded between the parties. One of the outcomes of a valid arbitration agreement or an arbitration clause between the parties is that in case a party brings a claim on the merits in the courts, the defendant party may invoke the arbitration agreement and raise an objection of arbitration[1].

This newsletter article shall discuss the provisions regarding objection of arbitration and highlight the court's limit of review of the validity of an arbitration agreement.

Objection of Arbitration

UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 ("Model Law"), Art. 8/1 states that a court before which an action is brought concerning a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting their first statement on the substance of the dispute, refer the parties to arbitration unless it finds that

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* *Article of February 2014*

[1] **Ziya AKINCI**, Milletlerarası Tahkim, İstanbul 2013, p.122.

the agreement is null and void, inoperative or incapable of being performed.

Most national laws contain clauses similar to the Model Law and the related articles require the assertion of the defendant of the existence, validity and effective implementation of the arbitration agreement. Since the parties are free to waive their right to have a dispute decided by arbitration, the courts are not obliged *ipso facto* to inspect the arbitration clause. By not invoking the arbitration agreement the defendant makes clear that it does not insist on its right to arbitration but tacitly accepts the plaintiff's choice of referring the dispute to the state courts[2]. Generally, it is accepted that the objection of arbitration must be made before the merits of the case are reviewed.

Article 5 of International Arbitration Law No. 4686 ("IAL"), inspired by the Model Law, regulates the objection of arbitration. In accordance with said article; where a claim, which has been resolved by the parties as the subject of an arbitration agreement, has been brought before a state court, the defendant may raise an objection with regards to the referral to arbitration. The allegation with regards to the objection of arbitration and the resolution of disputes with regards to the validity of the arbitration agreement is subject to the provisions on preliminary objections of the Civil Procedure Code ("CPC"). Pursuant to this article, the objection of arbitration is regulated as a preliminary objection[3] and may be asserted by the defendant. The period to raise an objection of arbitration is limited. In case the objection of arbitration is not proclaimed within the prescribed period, the court may stay their proceedings and henceforth the parties may not hinder the resolution of the dispute before the state courts[4]. If the objection by the

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2 **Julian D M LEW, Loukas A MISTELIS, Stefan M KRÖLL**, Comparative International Commercial Arbitration, Kluwer Law International 2003, p. 340.

3 Before the entry into force of the CPC, the objection of arbitration was not accepted as a preliminary objection. With CPC, objection of arbitration is accepted as a preliminary objection but 11th Chamber of Court of Cassation in its decision dated 16.01.2012, No. 2011/15015 E., Decision No. 2012/178 K. stipulated that if the objection of arbitration is not invoked by the defendant as a preliminary objection, it is possible to allege it with the explicit/implicit consent of the plaintiff. Additionally Nuray Ekşi states that the objection of arbitration which is not claimed on time may be invoked afterwards only with the explicit consent of the plaintiff. please see **Nuray EKŞİ**, Hukuk Muhakemeleri Kanunu'nda Tahkim, İstanbul 2013, p. 121-122.

4 **Hakan PEKCANITEZ, Oğuz ATALAY, Muhammet ÖZEKES,** Medeni Usul Hukuku, Ankara 2013, p. 542.

defendant is made on time and accepted, the action shall be dismissed in compliance with Art. 5 IAL and the court shall not decide on the merits of the case.

The Court's Review of the Arbitration Agreement's Validity

Even though objection of arbitration is regulated in most national laws, the extent of review of the arbitration agreement's validity, in other words "the degree of review" is subject to distinctive provisions under different national law systems.

In general, two approaches are adopted with respect to this issue. The first approach is the opinion which sets forth that courts shall engage in a complete review and analyze if the arbitration agreement is valid or not. For instance, United States courts consider the criteria in the New York Convention and engage in a complete review with respect to the validity of an arbitration agreement. Moreover, Art. 8 of the Model Law requires that the court shall determine if the arbitration agreement is null and void, inoperative or incapable of being performed. In some countries this article is interpreted in a restrictive way. However, during the drafting of the Model Law, the addition of the word "explicitly" before the words "null and void" was not accepted, and it was stated that a complete review would be more appropriate. In compliance with this in one of its verdicts, the 9th Chamber of the Court of Cassation concluded as follows: "*The court did not analyze the objection of the validity of the agreement including an arbitration clause; the evidence of the plaintiff has not been collected in this regard. It should be stated that the court did not decide on its lack of jurisdiction due to an invalid arbitration agreement. Therefore, the allegations of the plaintiff must be analyzed, evidence in this respect must be collected and a decision must be rendered afterwards.* (*9th Chamber of Court of Cassation, date 22.01.2007, Essence No. 2006,25759, Decision No. 2007/109*)[5]."

The second approach on this issue is the opinion defending that the courts should only verify the prima facie validity of the arbitration agreement/clause without conducting a profound examination. The prominent view in here depends on the idea that international arbitra-

5 http://www.kazanci.com/kho2/ibb/giris.htm.

tion is prior and superior to state courts with respect to the resolution of disputes[6]. The defenders of this approach oppose to the prolongation of arbitration process and defend that this process will be prolonged in the courts and arbitration would lose its function. It is observed that French law actually supports this opinion. Art. 1458 of the French Code of Civil Procedure reflects this view and includes one of the strictest articles to that extent. In accordance with said article, if a dispute pending before an arbitral tribunal on the basis of an arbitration agreement is brought before a state court, the court shall declare itself incompetent. In case the dispute is not yet before an arbitral tribunal, the state court shall nevertheless declare itself incompetent, provided that the arbitration agreement is not manifestly null and void. Accordingly, in France, courts may only engage in a superficial review of an arbitration agreement in case of objection of arbitration; and upon deciding on the existence of an agreement, the objection may be accepted. The jurisdiction to review the validity of an arbitration agreement has been left to arbitral tribunals.

Conclusion

Arbitration is based on the voluntary resolution of disputes between parties by persons called arbitrators in arbitral tribunals instead of national courts. In this regard, where a party brings a dispute before the court which is subject to an arbitration agreement, the defendant may invoke the arbitration agreement. Objection of arbitration is regulated under national laws and international regulations on arbitration. It is important that even though the parties are determined to solve the dispute through arbitration, if a party applies to the state court, the other party is entitled to make an objection. Likewise the party who seeks to prevent the arbitration proceeding mostly resorts to state courts and tries to hinder the proceeding. In this context the objection of arbitration and the degree of review of the courts are important with respect to the effectiveness of the arbitration proceedings.

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[6] **Bilgehan YEŞİLOVA**, Milletlerarası Tahkimin Hukuki Niteliği Üzerine Düşünceler ve Güncel Gelişmeler, TBB Dergisi, Sayı 76, 2008, p. 124.

Settlement of Parties and Awards by Consent in ICC Arbitration*

Att. Ezgi Babur

As per the records of the International Chamber of Commerce ("ICC"), approximately forty-seven percent of ICC arbitrations are withdrawn before a final award is rendered[1]. In case of a settlement, in order to avoid additional costs, the parties should promptly inform the ICC Secretariat and the arbitral tribunal of the settlement. Once a settlement is reached, the parties may request that the arbitration be withdrawn. Another option is to request an award by consent, which shall be examined in our article.

In General

Awards by consent are set forth under Article 32[2] of the ICC Arbitration Rules ("Rules"). Pursuant to said Article, if the parties reach a settlement after the file has been transmitted to the arbitral tribunal in accordance with Article 16 of the Rules, the settlement shall be recorded in the form of an award made by consent of the parties, if so requested by the parties and if the arbitral tribunal agrees to do so.

As is known, following a settlement, the parties are at liberty to simply request that the arbitration be withdrawn. In this case, the parties should nevertheless inform the arbitral tribunal, and the tribunal should formally order the termination of the proceedings. Upon receiv-

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* ***Article of March 2014***

1 **Jason Fry, Simon Greenberg, Francesca Mazza**, *The Secretariat's Guide to ICC Arbitration*, ICC Publication 729 (Paris, 2012), p. 323 ("Secretariat's Guide").

2 Please note that no modification has been made to the relevant Article within the 2012 modifications to the Rules.

ing this order, the Court will bring the matter to an end by making its decision on the costs of the arbitration[3].

However, the parties may prefer an award by consent, which may have advantages in terms of enforcement. Additionally, breach of an award by consent may be subject to sanctions by the arbitral tribunal and the Court[4].

Procedural Issues on Awards by Consent

As for the timing of the settlement, it should be made after the file has been transmitted to the arbitral tribunal. The reason behind this is that any award should result from a genuine dispute.

As the award by consent is an award, it has to meet the form requirements of any other ICC award. It should contain basic data such as how the dispute arose, the arbitration agreement, the composition of the tribunal, the general procedural history and the background to the settlement, insofar as it is applicable and relevant[5]. The arbitral tribunal should also comply with the particular requirements of the place of arbitration, if any.

An award by consent would record the respective obligations of the parties, such as the making of a payment, its currency and the interest rate. As is known, pursuant to Article 32(2) of the Rules, all awards are required to be reasoned. This requirement would apply differently to awards by consent. The only reasons the arbitral tribunal should provide are the parties' settlement and agreement on the issues within the award by consent. It is not necessary that the arbitral tribunal provides further reasons[6].

Another issue concerning awards by consent is the allocation of the costs of the arbitration. The award will finally record the parties' agreement on the allocation of the costs, pursuant to Article 37(4) of

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3 **H. Lloyd, M. Darmon, J. P. Ancel, L. Dervaird, C. Liebscher, H. Verbist**, *Drafting Awards in ICC Arbitrations*, ICC International Court of Arbitration Bulletin Vol.16/No.2 – Fall 2005, p. 38 ("Drafting Awards in ICC Arbitrations").

4 Secretariat's Guide, p. 324.

5 Drafting Awards in ICC Arbitrations, p. 38.

6 Secretariat's Guide, p. 327.

the Rules. The arbitral tribunal should invite the parties to agree on the allocation of costs. These costs should include those fixed by the Court.

The Role of the Arbitral Tribunal

The arbitral tribunal should assist the parties to properly transform their settlement to a proper award. However, this scrutiny should be done with great care and sensitivity, since it is not the arbitral tribunal's function to advise a party about the settlement. Sometimes, settlements may include issues that go beyond the scope of the issues. Such a settlement agreement may be recorded in the award by consent provided all parties agree; however, the award must clarify that additional matters have been treated by the parties as falling within the overall dispute[7].

The arbitral tribunal should notify the parties in case the settlement is incomplete, ambiguous, or conditional upon matters that may be subject to future disagreements[8]. On the other hand, it should be emphasized that the award by consent may not contain any decision by the arbitral tribunal. The arbitral tribunal may not decide on the remaining issues on which the parties did not reach an agreement, in order to complete the award[9].

Arbitral Tribunal's Refusal to Issue an Award by Consent

Article 32 of the Rules does not oblige the arbitral tribunal to make an award by consent. An arbitral tribunal is free to refuse to issue an award by consent; however, it should be noted that this is rare in practice. It is important that the arbitral tribunal is satisfied that every party has requested the award. Silence or apparent acquiescence would not be sufficient[10]. Factors such as whether the settlement agreement is contrary to mandatory law or public policy, or whether the award could

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[7] Drafting Awards in ICC Arbitrations, p. 39.

[8] Secretariat's Guide, p. 326.

[9] Secretariat's Guide, p. 327.

[10] Drafting Awards in ICC Arbitrations, p. 38.

be potentially unenforceable, and verification of the fact that every party requested the award may be considered by the arbitral tribunal in determining whether to issue an award by consent[11].

Conclusion

The parties may request awards by consent when they reach a settlement following the transmission of a file to the arbitral tribunal. They have to meet the form requirements applicable to other ICC awards. As awards by consent are arbitral awards in technical terms, they have advantages in terms of enforcement. Without any doubt, awards by consent are of great importance in the arbitration practice.

11 Secretariat's Guide, p. 326.

Requirement of Specific Authority for Representatives to Arbitrate in Turkish Law*

Prof. Dr. H. Ercument Erdem

Introduction

The issue of authority for representatives in arbitration is among the preliminary questions that require assessment both by arbitrators and national courts, if the lack thereof is alleged. The lack of authority causes numerous problems, including the arbitration agreement being null and void, any award thereunder being subject to annulment and not being enforceable. Such nullity will result in a dispute, mandatorily being resolved by national courts regardless of the intention to submit a legal dispute to arbitration.

Turkish law provides for certain requirements in order for a party to execute an arbitration agreement, or refer a matter to arbitration through a proxy. Voluntarily appointed proxies of such a party need to be expressly and specifically authorized to arbitrate within their powers of attorney.

This Newsletter article shall assess the specific authority requirement for representation in arbitration under Turkish law.

Specific Authority for Representation in Arbitration under Turkish Law

Authority and the provisions governing the formation, scope and effects of a power of attorney are regulated mainly under two principle codes, Turkish Code of Obligations no. 6098[1] ("TCO") and the Civil Procedure Code no. 6100[2] ("CPC").

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* ***Article of December 2014***

[1] Official Gazette 4 February 2011, No. 27836. The TCO entered into force on 1 July 2012.

[2] Official Gazette 4 February 2011, No. 27836. The CPC entered into force on 1 October 2011.

Art. 71 et seq. CPC is comprised of provisions governing the power of attorney. Art. 72 CPC states that the former Code of Obligations no. 818 ("Former CO") provisions[3] shall apply to powers of attorney. The subsequent provisions regulate both the scope of a power of attorney and matters that require specific authority in procedural law. Art. 74 CPC foresees that an attorney must be specifically authorized in order to realize certain actions, which include "*conclud[ing] an arbitration or arbitrator agreement*". Therefore, a generic power of attorney is insufficient unless it expressly authorizes the attorney to conclude arbitration or arbitrator agreements.

The TCO regulates the power of attorney, its establishment, scope and effects in its Art. 502 et seq. Art. 504/3 TCO also states that a proxy may not realize certain transactions, unless specifically authorized for such transaction in the power of attorney. "*Refer[ring] to the arbitrator*" falls within the scope of those transactions that require specific authority to be provided in a power of attorney.

The above statutory provisions thus provides for limits to the general representative authority of voluntarily appointed proxies to conclude arbitration agreements. A representative may not realize certain specific transactions on behalf of its principle that includes the execution of an arbitration agreement, based on a generic power of attorney, which does not provide specific authority for such actions.

Legal Persons

Real persons realize transactions on behalf of themselves personally. Legal entities, on the other hand, act through their bodies, who realize transactions on behalf of the legal entity. The transactions realized by the bodies of a legal entity are deemed to be made by the legal entity itself, rather than through proxies. Therefore, persons forming the bodies of legal entities, who are authorized to act on behalf of the legal entity, do not act as representatives, but the principal legal entity itself. Thus, specific authority is not required for the board of directors of a joint stock company or a manager of a limited liability company to conclude arbitration agreements.

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[3] The Former CO to which Art. 72 CPC refers was abrogated by and replaced with the TCO.

The bodies of the entity are not required to be specifically authorized to execute an arbitration agreement. They execute such agreements as the principal, not as the representative. Hence, the specific authority requirement under the CPC and the TCO as assessed, above, is not binding on the bodies of a legal entity.

Notwithstanding, should a legal entity specifically authorize a third person as an attorney or proxy to execute an agreement with an arbitration clause, or an arbitration agreement on its behalf, such power of attorney must include specific authorization regarding the arbitration agreement.

Commercial Auxiliaries

The authority of commercial auxiliaries of a merchant to conclude arbitration agreements on behalf of the principals is a matter that requires assessment with regard to specific authority. Commercial representatives, as foreseen under Turkish law, may be classified as dependent or independent auxiliaries, or auxiliaries with or without representative powers. This classification sheds light on the authority of such auxiliary to execute an arbitration agreement on behalf of the merchant.

Commercial representatives, who both are a dependent auxiliaries and have representative powers, are persons appointed and authorized by the merchant in order to manage the commercial enterprise and represent the merchant in transactions governing the enterprise (Art. 547 TCO). The commercial representative is defined as the alter ego of the merchant. Therefore, instead of defining the scope of authority, the exceptions to authority of the commercial representative must be specified. In fact, the authority of a commercial representative may be limited solely in two ways: by conferring it to the transactions of a branch office, or through foreseeing joint representation with another person. Therefore, it is accepted that the authority to execute an arbitration agreement on behalf of the merchant is inherent in the commercial representative.

Commercial proxies are persons appointed by the merchant to manage the enterprise or certain operations thereof, without conferring the authority to act as a commercial representative (TBK m. 551). The

authority granted shall comprise of the ordinary business of an enterprise. The authority of commercial proxies may be limited, as opposed to that of the commercial representatives. Unless expressly authorized, commercial proxies may not realize certain transactions, including filing of lawsuits or participating in and following up pending lawsuits. It is accepted that the execution of an arbitration agreement may not be considered to be an ordinary task. Therefore, unless expressly specifically authorized to do so, commercial proxies may not execute arbitration agreements on behalf of the merchant.

Commissioners and marketers are subject to the rules governing the power of attorney (Art. 520/2 and 532/2 TCO). Therefore, specific authority is required for them to execute arbitration agreements.

Agencies that are independent auxiliaries contractually undertake to permanently act as intermediary for agreements, or execute agreements on behalf of the merchant regarding a commercial enterprise within a designated territory (Art. 102 Turkish Commercial Code No. 6102[4] ("TCC")). An agent must be expressly authorized in order to conclude agreements on behalf of the merchant (Art. 107 TCC). Therefore, specific authority is necessary for execution of arbitration agreements by agents.

Consequence of Lack of Specific Arbitration

The rulings of the Supreme Court of Turkey requires the existence of specific authority in order for a representative to execute an arbitration agreement, and to declare arbitration agreements concluded in the absence of such specific authority as null and void. A ruling of the Assembly of Civil Chambers dated 22.2.2012 and no. 11-742/82[5], which reads "*... Accordingly, in order for a representative to conclude an arbitration agreement, specific authority must be granted. Otherwise, the arbitration agreement [to which its] principal [is a party] is legally null and void...*" approved the dismissal of a local court's decision that declared there was no authority to review a dispute due to the existence of an arbitration agreement. Scholars also believe that a lack of authority relates to public policy that needs to be

4 Official Gazette 14 February 2011, No. 27846. The TCC entered into force on 1 July 2012.

5 www.kazanci.com (accessed on 5 January 2015).

assessed ex officio by arbitrators or local courts and that arbitration agreements or arbitration clauses in other agreements executed by unauthorized representatives (for example agents without specific authority) should be deemed invalid.

In this regard, an arbitral award rendered under such arbitration agreement may be annulled, or its enforcement may be refused. The invalidity of the arbitration agreement, or incapacity, is among the reasons specified under Art. V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention) for refusing recognition and enforcement of an award. Under Turkish law, lack of authority is not the equivalent to a lack of capacity, and it gives the principal the right not to be bound by an act that is realized by an unauthorized representative. Nevertheless, a lack of authority is regarded as incapacity in commercial arbitrations, and within the scope of Art. V/1/a of the New York Convention. Additionally, pursuant to Art. V/2/b of the New York Convention, the recognition and enforcement of an award that would be in violation of public policy may also be denied.

Nevertheless, a party who fails to assert any objection regarding lack of authority throughout the arbitral proceedings, bringing the matter to the attention of the judges at the enforcement stage of an award, may be deemed as an abuse of its rights. In fact, a Supreme Court 11th Civil Chamber ruling dated 09.04.2004 and no. 6774/3751 declared such objection asserted for the first time at the enforcement stage to be in violation of the good faith principle, and overruled the local court's enforcement decision[6].

Moreover, there is an inclination towards the apparent authority theory in the practice of arbitration. Accordingly, if a party created the appearance of authority of its representative, leading the counter-party to believe in such authority, such party may be bound by the arbitration agreement of its unauthorized representative. In addition, it is argued that the "public policy," the violation of which is among the reasons to refuse enforcement under the New York Convention, should be con-

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6 Supreme Court 11. Civil Chamber ruling dated 09.04.2004 and no. 6774/3751, **Nuray Ekşi**, Milletlerarası Deniz Ticaret alanında "Incorporation" Yoluyla Yapılan Tahkim Anlaşmaları, İstanbul 2010, p. 69, 70.

strued in a narrow, strict, and exceptional manner, accepting supranational, international, and fundamental principles of law, as public policy. It is also accepted in the practice of international arbitration that a party may not be disadvantaged, due to a lack of specific authority of its counterparty under the laws applicable to it, and that such limitations governing authority under local laws shall not be given effect to in international arbitration.

In assessing the consequences of a lack of specific authority, the separability principle must also be underlined. Accordingly, even if the arbitration agreement is in the form of an arbitration clause in another agreement, the underlying contract, and the arbitration agreement/ clause, are considered to be separate, severable and autonomous. Therefore, the invalidity of the underlying agreement will not necessarily impact the validity of the arbitration agreement. The same principle applies if the arbitration agreement is invalid, then the underlying agreement may continue to be valid and in force.

The lack of specific authority will result in the invalidity of the arbitration agreement due to the provisions of Turkish law assessed above. Nevertheless, if no specific authority is required for the execution of the underlying agreement, it will continue to bear effect, except for its arbitration clause.

Conclusion

The CPC and the TCO require the granting of specific authority to voluntarily appointed representatives, in order for such representative to execute an arbitration agreement on behalf of their principals. Specific authority is not required for commercial representatives, who are accepted as the *alter ego* of a merchant. The bodies of a legal entity are not regarded as representatives or proxies, as they act as, and on behalf of, the legal entity itself. Nevertheless, if a representative is voluntarily appointed, this requirement shall apply.

If an arbitration agreement is concluded by a representative in the absence of such specific authority, it shall be deemed null and void, as accepted in Supreme Court rulings. Any arbitration award rendered under such agreements may be annulled, or their recognition or enforcement may be refused. Nevertheless, alleging lack of authority

at the enforcement stage, after participating in arbitral proceedings, without presenting any such objections, will be deemed to be an abuse of a right.

If the arbitration agreement is executed in the form of an arbitration clause in another agreement, the same principal shall apply. Nevertheless, the invalidity of the arbitration clause shall not affect the validity of the main agreement, as the arbitration clause is considered to be a separate and autonomous agreement.

Istanbul Arbitration Center*

Att. Leyla Orak Celikboya

Arbitration Centers

Globalization, cross-border transactions and transnational disputes increase the need for a reliable dispute resolution mechanism, which inevitably results in emphasis on international arbitration. Despite the costs, corporations are inclined to prefer arbitration over litigation before courts, recognizing it as better suited to meet their needs[1].

Although *ad hoc* arbitration remains a valid and effective choice, agreements usually include dispute resolution clauses that refer disputes to arbitration under well known arbitration institutions. While the International Chamber of Commerce ("ICC") remains the most preferred institution, followed by the World Intellectual Property Organization ("WIPO") and the American Arbitration Association ("AAA"), other arbitration institutions, such as the London Court of International Arbitration ("LCIA") and Singapore International Arbitration Center give rise to new arbitration centers[2].

Factors such as costs, distance and logistics, expertise in a field or competence in national laws favor choosing various arbitration institutions. For instance, the similarity of Turkish Law with Swiss Law is one of the reasons why Switzerland is chosen as the place of arbitration by Turkish parties, and the "Swiss Rules" are chosen as applicable

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* ***Article of July 2014***

1 See International Arbitration Survey of PriceWaterhouseCoopers, Queen Mary University School of International Arbitration for the year 2013 http://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf (accessed on July 30, 2014).

2 For the breakdown of choice of selected arbitration institutions see the WIPO Center International Survey on Dispute Resolution in Technology Transactions for the year 2012 on http://www.wipo.int/export/sites/www/amc/en/docs/surveyresults.pdf (accessed on July 30, 2014).

rules of arbitration[3]. The diversification of choices result in an increase of arbitration centers, not just in Europe and America but also in Asia, such as Singapore and Hong Kong. States increasingly promote their institutions for international arbitration, stressing their geopolitical advantages and arbitration friendly legal infrastructure.

Istanbul as International Center of Finance and Arbitration

Istanbul is not only the financial center of Turkey, but also, due to its geopolitical advantages and developing economy, a prominent and increasingly dominant headquarters in the region for cross-border financial transactions. Unsurprisingly, the Turkish Higher Planning Council adopted a resolution, dated September 29, 2009, and numbered 2009/31[4], designating Istanbul as the center of international finance, and foreseeing the establishment of the Istanbul International Finance Center ("IFC")[5]. One of the pillars of the IFC and the second priority specified in its Strategy and Action Plan, dated October 2009, is the establishment of an independent and autonomous institutional arbitration center that is capable of competing internationally with respect to cost, speed and effectiveness[6].

Draft Law on Istanbul Arbitration Center

In accordance with this objective of establishing an institutional arbitration center, the Council of Ministers submitted a Draft Law on the Istanbul Arbitration Center ("Draft Law")[7] to the national parliament on March 25, 2013. The Draft Law was referred from the Justice Commission to the Turkish Grand National Assembly on July 15, 2014, and is currently in the assembly's agenda. Even though an accurate projection cannot be made on the timing of the promulgation of

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[3] See, **Prof. Dr. Ziya Akıncı,** "*Neden İstanbul Tahkim Merkezi?*", http://journal.yasar.edu.tr/wp-content/uploads/2014/01/3-Ziya-AKINCI.pdf (accessed on July 30, 2014).

[4] Published in the Official Gazette dated October 2, 2009, and no. 27364.

[5] See Newsletter article "*Will Istanbul Become A Center For International Arbitration?*" dated November 2009 http://www.erdem-erdem.com/en/articles/will-istanbul-become-a-center-for-international-arbitration/ (accessed on July 30, 2014).

[6] See http://www.ifm.gov.tr/Shared%20Documents/Strategy%20and%20Action%20Plan%20for%20IFC%20Istanbul.pdf (accessed on July 30, 2014).

[7] See http://www2.tbmm.gov.tr/d24/1/1-0758.pdf (accessed on July 30, 2014).

the Draft Law, and despite the risk of predominance by other political agendas, the Istanbul Arbitration Center is expected to be established in 2015.

In preparing the Draft Law, the working group examined numerous arbitration institutions including the ICC, AAA and LCIA. The two institutions chosen as models by the working group were the German Institution of Arbitration, and the Arbitration Court of the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic. The Draft Law regulates the establishment of the Istanbul Arbitration Center, defining its duties, bodies, structure and envisions two separate arbitration courts for national and international disputes.

Arbitration Rules

The Draft Law does not provide for the arbitration rules, or the resolution of disputes referred to the Istanbul Arbitration Center; but addresses its organization. Pursuant to the Draft Law, the Istanbul Arbitration Center will have the duty to determine and establish the rules for, as well as promote arbitration and other alternative dispute resolution mechanisms.

The arbitration rules to be set by the Istanbul Arbitration Center will not be the first set of institutional arbitration rules in Turkey. The Union of Chambers and Commodity Exchanges in Turkey (“TOBB”), the Istanbul Chamber of Commerce (“ITO”) and the Izmir Chamber of Commerce have institutional arbitration rules. Notwithstanding, neither institution acts as an international arbitration center. The ITO rules require that at least one of the parties to a dispute is its member; rendering their scope mostly local. Moreover, these rules require that the matter to be resolved through arbitration be a commercial dispute. The number of arbitrators available in these institutions is very limited. Therefore the establishment of the Istanbul Arbitration Center and the preparation of its rules are essential.

Organization

The Draft Law foresees that the İstanbul Arbitration Center is established as a legal entity subject to civil law provisions. The center

shall be composed of a general assembly, a board of directors, auditor, advisory board, national and international arbitration courts and a secretary general.

Emphasis should be made on the composition of certain bodies. Pursuant to the Draft Law, the Istanbul Arbitration Center shall have a general assembly which, among others, shall have the duty of forming the board of directors, approving the applicable arbitration rules, and the budget.

The general assembly shall consist of 23 members. Among these members, six shall be elected by the TOBB (which already has an institutional arbitration); three shall be elected by the Council of Higher Education; and the Ministry of Justice, the Capital Markets Board, the Istanbul Stock Exchange, the Banking Regulation and Supervision Authority shall each elect one member. This composition could easily raise concern about the independence of the Istanbul Arbitration Center, as many members of the general assembly are indirectly elected by the state. Moreover, only five members are required to have a legal background. Especially bearing in mind the nature of the duties of the general assembly, such as approval of the rules, we believe that more lawyers should be engaged.

Material Milestones for an Arbitration Center

The Draft Law constitutes merely the starting point for Istanbul becoming an internationally recognized center of arbitration. The rules to be adopted also are among the first steps. In fact, the rules of arbitration adopted by institutions mostly referred to in practice are not drastically different from each other. Undoubtedly, the rules to be adopted by the Istanbul Arbitration Center need to be suitable for international arbitration, and should not disregard the internationally accepted and frequently applied rules. However the choice of an arbitration institution by the parties for dispute resolution in their transactions is less determined by the institution's rules, and more by matters which specifically affect the arbitral proceedings, such as the choice of arbitrators or enforceability of awards.

Thus, the autonomous character of an institution, the appointment of impartial and independent arbitrators, as well as the arbitration-

friendliness of the applicable legislation and the general practice of courts play an important role.

The International Arbitration Code No. 4686 mainly adopts the UNCITRAL Model Law on arbitration. Additionally, Civil Procedure Code No. 6100, which entered into force as recent as October 1, 2011, also reflects the model law. Turkey is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, in addition to other international treaties on arbitration. In addition to the legislative infrastructure, the recent Turkish jurisprudence mostly favors arbitration. Notwithstanding, reasons for overturning enforcement requests of arbitration awards, such as the time limit for rendering awards and public order, and the lack of coherence between courts and chambers of the Court of Cassation determining the practice regarding arbitration, still continue to overshadow the acceptance of Turkey as an arbitration friendly country. The unification of jurisprudence favoring arbitration is therefore necessary in order for the Istanbul Arbitration Center to be an internationally recognized arbitration institution.

As emphasized in the legislative justification of the Draft Law, the independence and autonomy of Istanbul Arbitration Center will play a central role in it being recognized as an international center for arbitration. As briefly explained above, the current composition of bodies may need to be reconsidered in order to avoid doubts of impartiality which foreign parties may have when deciding whether or not to refer their disputes to be resolved before the Istanbul Arbitration Center. Additionally, expertise in arbitration, constant promotion, consistency and continuity will be necessary and essential.

Conclusion

International arbitration is increasingly chosen as the dispute resolution mechanism in cross-border transactions. The ICC, AAA, LCIA and other arbitration institutions are preferred by international actors. Cost, reliability, independence, choice of arbitrators, expertise, location, arbitration-friendliness and many other factors play an important role in parties referring their disputes to be resolved under the rules of these arbitration institutions.

As a material part of the vision of the IFC project aiming to render Istanbul a regional and global finance center, the foundation of an international arbitration center is planned in Istanbul. Accordingly, the Draft Law recently included in the agenda of the Turkish Grand National Assembly foresees the establishment and structure of the Istanbul Arbitration Center. Once the Draft Law is promulgated, the Istanbul Arbitration Center that will be established will have the duty, among others, to determine the arbitration rules and promote arbitration.

In order for Istanbul to become a center for international finance and arbitration, factors such as arbitration-friendliness, expertise, autonomy and independence, will be essential. The composition of the bodies of the Istanbul Arbitration Center will have a material effect on its independence, which needs to be carefully assessed prior to the promulgation of the Draft Law.

In short, while the promulgation of the Draft Law and the establishment of the Istanbul Arbitration Center will be important milestones, they will only be the starting points for Istanbul to be internationally recognized as a center for arbitration on par with Zurich, Geneva, Paris, London, New York, Singapore and others.

COMPETITION LAW

Draft Act on the Protection of Competition Was Published*

Prof. Dr. H. Ercument Erdem

A Draft Act ("Draft Act") to amend the Act on the Protection of Competition No. 4054 ("Competition Act"), which entered into force by being published in the Official Gazette dated 13.12.1994 and numbered 22140, was submitted to the Presidency of the Grand National Assembly of Turkey on 23.01.2014[1].

The first Draft Act ("First Draft") foreseeing some amendments to the Competition Act was submitted to the Presidency of the Grand National Assembly of Turkey on 31.07.2008 . The Draft Act includes developments since 2008, and thus extends the content of the First Draft.

Violations of competition and fines to be applied to such violations are examined in this article.

Grounds for the Preparation of the Draft Act

The Draft Act was prepared on the basis of two main grounds:

Harmonization with European Union Acquis. Turkey is a candidate state to the European Union ("EU"). In order for Turkey to obtain EU membership status in the future, it must adapt its legislation to the EU *acquis*. Within this scope, amendments made in EU competition

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* ***Article of January 2014***

[1] To access the Draft Act, please see http://web.tbmm.gov.tr/gelenkagitlar/metinler/278800.pdf (accessed on: 05.02.2014).

[2] To access the First Draft, please see http://www2.tbmm.gov.tr/d23/1/1-0636.pdf (accessed on: 06.02.2014). In addtition, on the First Draft, please see **ERDEM, Ercüment**: *"Rekabetin Korunması Hakkında Kanun Tasarısı ile Rekabet Hukukunda Yeni Bir Dönem Hedefi"*, May 2009, http://www.erdem-erdem.av.tr/articles/rekabetin-korunmasi-hakkinda-kanun-tasarisi-ile-rekabet-hukukunda-yeni-bir-donem-hedefi/ (accessed on: 06.02.2014).

law should be transposed into Turkish legislation, and thus the Competition Act should be amended accordingly.

Harmonization with Secondary Legislation. The Competition Act has been in effect since 05.11.1997. Meanwhile, new communiqués were issued as secondary legislation and various amendments were made in important communiqués, such as the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board No. 2010/4[3] ("Communiqué No. 2010/4"). Thus, the Competition Act should be reviewed in light of current needs.

Important Novelties provided by the Draft Act

The Draft provides important amendments and novelties:

"De Minimis" Rule. A parallel regulation to the "*de minimis*" practice of EU legislation is adopted under Art. 4 of the Competition Act. In cases where thresholds like market shares and turnover determined in advance by the Competition Board ("Board") are exceeded, agreements, concerted practices and decisions of associations of undertakings cannot be the subject of investigation. The Board can enact communiqués in this regard.

The Board will then be able to concentrate on competition violations, which may have more negative effects on competition through such an amendment. Thus, said amendment is deemed to be appropriate.

Extension of the Exemption. Art.5 of the Competition Act, which regulates individual exemption, is extended and the exemption provisions in various articles of the Competition Act are brought together. Exemptions may be made conditionally or related to some engagements. Moreover, the Board may exclude agreements, concerted practices and/or decisions of undertakings from block exemption if it determines that they have "*incoherent*" effects on individual exemption conditions.

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[3] To access to the Communiqué No. 2010/4, please see http://www.rekabet.gov.tr/File/?path=ROOT%2fDocuments%2fTebli%C4%9F%2f2012_3.pdf (accessed on: 05.02.2014).

There is no doubt that the amendments are related to the protection of the competitive market. However, the definition of "*incoherent effects*" should be stated in the secondary legislation and thus the secondary legislation should be reviewed accordingly. For instance, the Guidelines on the General Principles of Exemption[4], which was published in the official website of the Competition Authority ("Authority") on 29.01.2014 does not include the notion of "*incoherent effect*".

Concentrations, Notification and Inspection. Mergers and acquisitions as regulated under Art. 7 of the Competition Act are defined as concentration operations, and thus said article is regulated accordingly. The establishment of joint ventures performing on a lasting basis all the functions of an autonomous economic entity are also defined as a concentration. The test of "substantial lessening of effective competition" is adopted instead of the "dominant position" test in accordance with EU legislation in order to determine the distortive effects of concentrations.

The Board may give conditional authorization to undertakings in order to eliminate competition concerns.

The amendments are deemed appropriate and permit full compliance between the Competition Act and the secondary legislation, such as the Communiqué No. 2010/4. However, relevant article of the Draft Act amending Article 7 of the Competition Act is very detailed. For instance, the said article stipulates the cases where the control will be deemed permanently changed although such details may be stated in the secondary legislation, such as the Communiqué No. 2010/4. Thus, the relevant article of the Draft Act amending Article 7 of Competition Act shall be simplified and include only the essential points.

Negative Clearance. Negative clearance is removed from the Draft Act, but the grounds for this removal are not stated in the legal justification. This might have been done in order to reduce the work-load of the Board since undertakings can evaluate whether they distort the

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[4] To access to the Guidelines on the General Principles of Exemption, please see http://www.rekabet.gov.tr/File/?path=ROOT%2fDocuments%2fG%C3%BCncel%2fk%C4%B1lavuzlar%2fMUAFIYET%C4%B0N+GENEL+ESASLARI+KILAVUZU.pdf (accessed on: 05.02.1014).

competition in light of secondary legislation relating to group exemption and personal exemption, or they can consult the Board. However, it would be more appropriate to explain the grounds for this removal.

Negative clearance was also removed from the EU competition legislation through Regulation No. 1/2003. Therefore, full compliance is established with EU law through this amendment.

Competition Advocacy. The Board is entitled to give opinions to institutions, organizations or professional associations with the status of public entity regarding administrative acts, which may have similar consequences to competition violations, or seek the nullity of such acts before tribunals in order to establish and foster a competitive environment.

The Board is used to providing such opinions to public organizations. Thus, such amendment creates a legal ground for the Board's behavior.

Re-establishment of Competition after Violation. In case there is a violation of competition, the Board may decide on "*behaviors to be adopted or not by undertakings or associations of undertakings or to structural remedies such as the transfer of shares or some lines of business in order to re-establish competition*".

The Competition Act does not foresee "structural remedies" for the re-establishment of competition. Thus, the biggest difference provided within the Draft Act is that the Board can take "*structural remedies*" as well. Such regulation is appropriate since it clarifies the nature of commitments and clarifies the Board's powers.

Furthermore, all transactions contrary to the Competition Act are invalid. The same provision is also stated in the Draft Act (Art. 30 of the Draft Act). "Invalidity" should be understood as "absolute nullity" in competition law. Therefore, the transaction will be considered as never having happened, and thus the competition environment before the transaction took place should be re-established. Powers granted to the Board show how competition may be re-established.

Conciliation. The Draft Act gives the possibility to undertakings, which violated competition rules, to collaborate with the Board. In fact, this possibility was already granted by secondary legislation. The

Active Cooperation/Leniency Regulation ("Leniency Regulation") was published in the Official Gazette dated 15.02.2009 and numbered 27142[5]. Therefore, the integration of such provision in the Draft Act constitutes the legal grounds for the Leniency Regulation.

However, the Leniency Regulation includes the terms "active collaboration" and "leniency" and not the term "conciliation". Thus, in order to create uniformity within the competition legislation, it would be more appropriate to use the term "active collaboration" or "leniency" in lieu of "conciliation".

Sanctions. In parallel with the Competition Act, the Draft Act foresees both penal and legal sanctions. In this section, sanctions applied by the Board to undertakings and/or associations of undertakings are examined.

- ***Penal Sanction.*** No essential amendment is made in the Draft Act concerning penal sanctions. In other words, a fine may be imposed by the Board "*up to ten percent of annual gross revenues of undertakings and associations of undertakings or members of such associations which generate by the end of the financial year preceding the decision, or which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it*". Nevertheless, this provision is neither in compliance with EU competition rules, nor with general rules of law since it is not clear whether "the annual gross revenue" means the total annual gross revenue or the annual gross revenue generated in the line of business, where the violation has occurred. This provision is not in compliance with EU competition rules since it is clearly stated under EU competition legislation that total annual gross revenue or the annual gross revenue generated in the line of business, where the violation has occurred, should be taken into account. Such provision is neither in compliance with the "Draft Regulation on Fines to be imposed in cases of Violation of the Act on the

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5 To access to the Leniency Regulation, please see http://www.rekabet.gov.tr/File/?path=ROOT%2fDocuments%2fY%25c3%25b6netmelik%2fyonetmelik8.pdf (accessed on: 06.02.2014).

Protection of Competition"[6], which was submitted to public opinion by being published in the official website of the Authority on 20.01.2014. In light of the above-stated, the article of the Draft Act amending Article of the Competition Act on penal sanctions (Art. 16 of the Competition Act) should be amended and should foresee that the annual gross revenue generated in the line of business, where the violation has occurred, should be taken into consideration in the determination of the fine.

Additionally, both the Competition Act and the Draft Act state that the annual gross revenue "*which was generated by the end of the financial year preceding the decision, or which was generated by the end of the financial year closest to the date of the decision*" should be taken into account. However, EU legislation states that the annual gross revenue, which was generated during the last full business year of its participation in the infringement, should be taken into consideration. There is no doubt that EU legislation is more equitable since the fine may be proportional to the competition violation.

- ***Legal Sanction.*** As per the Draft Act, all kinds of violations of competition (agreements, concerted practices and decisions and practices of associations of undertakings in contradiction with competition law, abuse of dominant position and distortion of competition through mergers and acquisitions) are invalid. The Competition Act, contrary to the Draft Act, states that only agreements, concerted practices and decisions and practices of associations of undertakings are invalid. The amendment made with the Draft Act is appropriate since it includes all kinds of violation of competition. As also stated above, "invalidity" should be understood as "absolute nullity" in competition law. In other words, the agreement, concerted practice or merger and acquisition should be considered as never having occurred and thus, the competitive environment in place before the violation should be re-established.

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6 To access to the Draft Regulation on Fines to be imposed in cases of Violation of the Act on the Protection of Competition, please see http://www.rekabet.gov.tr/default.aspx?nsw=SdERe VrahMk8KfxDspf7tQ==-H7deC+LxBI8= (accessed on: 06.02.2014).

The legal justification of the Draft Act states that general provisions of the Code of Obligations shall apply in order to re-establish competition.

Conclusion

Draft Act includes not only regulations of EU competition law, but also novelties brought by secondary legislation. Nevertheless, attention shall be drawn to the below stated points:

- Although the legal justification of the articles is extremely important since it permits a just interpretation of the articles, deficiencies in the legal justification exist for articles such as the removal of the negative clearance.
- There are still differences between the EU and Turkish competition laws. For instance, the annual gross revenue to be taken into account for the determination of the fine is different in both systems. These differences should be eliminated.
- Board is granted the power to take "structural remedies" and thus the Draft Act determines how competition will be re-established in case of violation of competition.
- Board powers should not be expanded unlimitedly. Thus, the Board should not be entitled to decide on "structural remedies", or such power should be limited.

Coherence should be ensured between the terms of both the Competition Act and secondary legislation.

Regulation Project on Fines Was Published*

Prof. Dr. H. Ercument Erdem

Article 16 entitled "Administrative Fine" of the Act on the Protection of Competition No. 4054 ("Competition Act") regulates fines for undertakings, associations of undertakings and employees and/or administrators of such undertakings or associations of undertakings, who engage in anti-competitive activities banned under Articles 4, 6 and 7 of the Competition Act.

The same article also states that the criteria to be taken into account when determining fines will be determined in communiqués to be issued by the Competition Board ("Board").

Within this scope, the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position ("Regulation" or "Regulation on Fines") entered into force by being published in the Official Gazette dated 15.02.2009 and dated 27142[1].

The Regulation on Fines has been in effect for more than five years. During this period, some deficiencies in the Regulation on Fines were identified[2]. In order to remedy these deficiencies, the Regulation Project on Fines to Apply in Cases of Violations of the Act on the Protection of Competition ("Regulation Project" or "Regulation Project on Fines") was prepared and submitted to public opinion on

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* ***Article of March 2014***

1 To read the Regulation of Fines, see the following link: http://www.rekabet.gov.tr/File/?path=ROOT%2fDocuments%2fRegulation%2fyonetmelik11.pdf (accessed on: 28.03.2014).

2 To see the deficiencies in the Regulation of Fines, see **ERDEM, Ercument**: "Ceza Yönetmeliği, Avrupa Birliği Mevzuatına Gerçek Bir Uyum Mu Yoksa Bir İllüzyon Mu?", Hukuk Postası Mayıs 2012, http://www.erdem-erdem.av.tr/articles/ceza-yonetmeligi-avrupa-birligi-mevzuati-na-gercek-bir-uyum-mu-yoksa-bir-illuzyon-mu/ (accessed on: 28.03.2014).

January 17, 2014 by being published on the official website of the Competition Authority[3].

Why a New Regulation?

The grounds for the Regulation are set forth under the General Preamble in the Regulation on Fines. Contrary to the Regulation on Fines, the Regulation Project on Fines includes neither a general preamble, nor justifications for articles. However, it may be stated that the Regulation Project on Fines was prepared in order to (1) remedy deficiencies met in practice and (2) keep up with European Union competition legislation.

In light of the foregoing, it would be appropriate to include a general preamble and justifications for articles in the Regulation Project on Fines.

What are the Novelties in the Regulation Project on Fines?

Novelties Related to Base Fine

- The Competition Act does not explain whether the total turnover of the undertaking or the turnover of the undertaking in the relevant product and geographic market shall be taken as a basis for the calculation of the fine. Nevertheless, the Regulation Project on Fines clearly states that the turnover of the undertaking in the relevant product and geographic market shall be taken as a basis for the calculation of the fine.

Even though this amendment is appropriate, it is not in conformity with the Competition Act; and regulations should be in line with laws. The Draft Act on the Protection of Competition ("Draft Act") to amend the Competition Act, submitted to the Presidency of the Grand Assembly of Turkey on 23.01.2014, also does not amend Article 16, entitled "Administrative Fine", of the Competition Act referenced above. Therefore, it would be appropriate to urgently amend the

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[3] To reach the Regulation Project on Fines, see the following link:

http://www.rekabet.gov.tr/File/?path=ROOT%2fDocuments%2fG%C3%BCncel%2fk%C4%B1lavuzlar%2fcezaaa.pdf (accessed on: 27.03.2014).

Competition Act and to adopt the system brought by the Regulation Project on Fines.

- The turnover to be taken into consideration in calculating the total fine is specified as the revenue "… *generated at the end of the fiscal year preceding the final decision, or if that cannot be calculated, by the end of the fiscal year closest to the date of the final decision …*" under the Competition Act, the Regulation on Fines and the Regulation Project on Fines. Nevertheless, European Union competition law expressly states that the turnover to be taken into consideration is the turnover of the undertaking's last business year during which the infringement took place. Thus, similar to the Regulation on Fines, the Regulation Project on Fines also contrasts with European Union competition law in this respect.

  The consequence of the above-stated provision in the Regulation of Fines, maintained in the Regulation Project on Fines is unfair. The turnover of undertakings after they have committed a competition violation may increase without any relation to such violation. This situation may result in heavy fines imposed on undertakings.

  In light of the foregoing, it would be appropriate to amend such provision such that the turnover of an undertaking's last business year during which the infringement took place will be taken into account.

- The Regulation on Fines foresees the increased amount of fines by half in the event the violation of competition continues for a period of one to five years, and the doubling of the amount of the fine if the violation of competition exceeds five years. Contrarily, European Union competition law foresees a fine imposed based on the number of years the violation of competition continues and therefore relates the duration of the violation with the amount of the fine by multiplying the fine by the number of infringing years. The system foreseen by the Regulation on Fines is clearly not in compliance with European Union competition law. Moreover, this system does not comply with the relative equality principle either, since the time periods

set forth for the increase of fines are too broad. In other words, an undertaking having violated competition for a much longer time and an undertaking that violated the competition for a much shorter time will be faced with fines increased to the same extent.

Contrary to the Regulation on Fines, the Regulation Project on Fines foresees a fine imposed based on the number of years the violation of competition continues. I think that the system brought by the Regulation Project on Fines is appropriate.

- The Regulation Project on Fines refers to provisions of the Communiqué Concerning Mergers and Acquisitions Calling for the Authorization of the Competition Board No. 2010/4 ("Communiqué No. 2010/4") on the calculation of turnover. However, the Regulation Project on Fines uses several terms such as "annual gross revenue" and "net sale" for turnover.

  Contrary to Communiqué No. 2010/4, the Guidelines on Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions only uses the term "turnover". Within this scope, it would be appropriate to use the unique term "turnover" in the Regulation Project on Fines in order to create term uniformity between legislation.

  On the basis of the above-stated, Article 16 of the Competition Act (and the Draft Act) should also be amended accordingly and the unique term "turnover" should be used.

Novelties Related to Aggravating Circumstances

In General

The Regulation on Fines does not limit the number of aggravating circumstances.

However, this system was amended in the Regulation Project on Fines and a limiting system was adopted. Within this scope, three aggravating circumstances are enumerated: (1) to have the role of leader in, or instigator of, the infringement, (2) to refuse to comply with the Board's commitments and (3) to repeat the infringement.

I think that the new system brought by the Regulation Project on Fines is appropriate since mitigating and aggravating circumstances are clearly enumerated in Turkish penal law. In other words, penalties may not be decreased or increased if not clearly permitted by law (Art. 61/10 of the Turkish Penal Code). Otherwise, the principle of "certainty in crimes and punishments" will not be respected, which may cause arbitrariness in punishments.

Provision Related to "Repetition"

The Regulation Project on Fines states that the fine will be increased by up to 100% for each infringement in case a new competition infringement is realized by the same undertaking within eight years as of the notification of the justified decision. In other words, the Regulation Project on Fines sets forth a general repetition provision. Such provision does not take into consideration the nature of the repeated infringement. However, it would be more appropriate that the Regulation Project on Fines foresees a special repetition provision such that the concept of aggravating circumstances is applied to undertakings repeating the same infringement. Otherwise, an undertaking, which has infringed a competition rule may be confronted with a fine based on aggravated circumstances for a very different type of infringement.

Novelties Related to Mitigating Circumstances

Contrary to aggravating circumstances, the Regulation Project on Fines does not provide a limiting enumeration of mitigating circumstances. The provision related to mitigating circumstances is in compliance with both Turkish penal law and European Union legislation.

Novelties Related to Minimum and Maximum Limits to Fines

The Regulation on Fines states, contrary to the Competition Act, that fines to be imposed on undertakings or associations of undertakings should be between 2% and 4%, and those to be imposed on managers and employers should be between 3% and 5%.

This contradiction was completely eliminated from the Regulation Project on Fines, which foresees, in compliance with the Competition

Act, (1) that undertakings, which violate competition may be subject to fines of up to 10% of their revenues within the scope of the investigation and that (2) managers and employees may be subject to fines of up to 5% of the fine imposed on the undertaking or association of undertakings.

Deterrence in Competition Infringements

The Regulation Project on Fines sets forth that the Board may increase the fine to be imposed on undertakings that have a particularly large turnover beyond the sale of goods or services to which the infringement relates. However, this provision is not in compliance with the new system brought by the Regulation Project on Fines which holds that the turnover of the undertaking in the relevant product and geographic market shall be taken as a basis for the calculation of the fine. Moreover, neither does the provision state the increase amount to be applied by the Board, which may cause arbitrariness.

To Whom does the Regulation Project on Fines Apply?

Parties to a Concentration

The Regulation Project of Fines clearly states that mergers and acquisitions are within the scope of the Regulation Project. This is in complete compliance with Communiqué No. 2010/4, as Article 10 of said Communiqué states that fines will be imposed as per Article 16 of the Competition Act in cases where (1) all information is not provided completely and correctly and (2) mergers and acquisitions subject to authorization are implemented without the authorization of the Board.

Persons Involved in Competition Infringement

The Regulation Project on Fines sets forth, by referring to Article 14 of the Faults Act dated 30.03.2005 and numbered 5326[4], that fines should also be imposed on persons involved in competition infringement.

However, the Competition Act states, by referring to Article 17/2 of the Faults Act, that the Board should take into account facts such as

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[4] Faults Act regulates faults and not crimes.

the period of the infringement or the repetition of the violation in determining the fine.

In other words, Article 17/2 of the Faults Act does not refer to persons involved in competition infringement. Thus, the reference made in the Regulation Project on Fines does not have any grounds in the Competition Act. Within this scope, it would be appropriate to amend this reference and to replace Article 14 of the Faults Act by Article 17 of the Faults Act.

Managers and Employees of Undertakings or Associations of Undertakings

The Regulation on Fines states that fines should be imposed on "*each of the managers and employees of the undertaking who were detected to have had a decisive influence on the cartel*". However, the Regulation on Fines does not define the notion of "decisive influence".

This deficiency was remedied under the Regulation Project on Fines since it states that the fine should be imposed on managers and employees of undertakings "*having a decisive influence in the creation or application of the competition infringement through acts such as coordination, organization, encouragement or persuasion*". It must stated that this is an appropriate provision.

In addition to the above-stated, mitigating and aggravating circumstances are not mentioned in the Regulation Project on Fines. However, mitigating and aggravating circumstances enable the Board to adequately and appropriately determine the administrative fine to be imposed. Thus, it would be appropriate that mitigating and aggravating circumstances are introduced in the Regulation Project on Fines.

When will the Regulation Project on Fines Enter into Force?

The Regulation Project on Fines brings a punitive regulation and thus, it is subject to the general principles of penal law. One of the principles of penal law is the lex mitior principle. Within this scope, the most favored provision will be applied to investigations opened during the Regulation on Fines but still not finalized after the Regulation Project on Fines enters into force.

Conclusion

Updates in competition legislation by the Competition Authority in light of deficiencies met in practice are welcome. The submission to public opinion of the Regulation Project on Fines is one of the Competition Authority's projects to update competition legislation.

It should be noted that the Regulation Project on Fines remedies a lot of deficiencies met in practice. Nevertheless, it is important to highlight the main points below for review:

- Addition of a general preamble and article justifications in the Regulation Project on Fines;
- Content and language uniformity between the Regulation Project on Fines and the Draft Act;
- Amending of the provision which states that the turnover "*…generated at the end of the fiscal year preceding the final decision, or if that cannot be calculated, by the end of the fiscal year closest to the date of the final decision …*" should be taken into account in the determination of the fine, such that the turnover of the undertaking's last business year during which the infringement took place will be taken into account in the determination of the fine.
- Replacing the general repetition provision by the special repetition provision;
- Deleting the provision related to deterrence;
- Deleting the provision related to participation or adding grounds for participation in the Competition Act;
- Determining mitigating and aggravating circumstances for managers and employees.

Proposal for Directive on Certain Rules Governing Antitrust Damages Lawsuits*

Prof. Dr. H. Ercument Erdem

Introduction

The proposal for a Directive on certain rules governing lawsuits for damages under national law for infringements of the competition law provisions of the European Union ("EU") and of the member states ("Proposal for Directive")[1] was adopted by the European Parliament on April 17, 2014 and is expected to be approved in the near future by the EU Council of Ministers. Once the Directive is adopted, member states will have two years to implement the Directive's provisions into their national legal system.

Objective of the Proposal for Directive

The Proposal for Directive seeks to provide the victims of infringement of the EU competition rules full compensation for the harm they suffered. Infringement of competition law is determined as the infringement of Article 101 or 102 of the Treaty of the Functioning of the EU or of national competition law.

Also, the Proposal for Directive seeks to remove existing obstacles in the member states which relate to: obtaining evidence, lack of effective collective redress mechanisms, the absence of clear rules on the passing-on defense, bringing an action for damages, quantifying antitrust harm, etc.

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* ***Article of April 2014***

1 Please see. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0404:FIN:EN:PDF (Access: 29.04.2014).

Right to Full Compensation

Since the national rules of member states regarding actions for antitrust damages are diverse throughout the EU, certain legal uncertainty may occur for the parties involved in lawsuits for antitrust damages. In order to remedy this diversity, the Proposal for Directive ensures that the infringement victims of the EU competition rules have access to an effective mechanism for obtaining full compensation for the harm they suffered.

As per Article 2 of the Proposal for Directive, anyone who has suffered harm caused by an infringement of the EU or national competition law shall be able to claim full compensation for that harm.

The full compensation shall include compensation for actual loss and for loss of profit, and payment of interest from the time the harm occurred until the compensation for said harm has actually been paid.

Disclosure of Evidence

The claimants can face some difficulties in obtaining the necessary evidence for damages lawsuits in competition cases where they must establish a causality link between the infringement and the harm suffered. Therefore, certain regulations have been introduced to remedy these difficulties. Pursuant to Article 5 of the Proposal for Directive, where a claimant presents reasonably available facts and evidence showing plausible grounds that he has suffered harm caused by the defendant's infringement of competition law, national courts may order the defendant or third party to disclose evidence.

Also, the Proposal for Directive ensures the opportunity to ask the judge to order the claimant or a third party to disclose of evidence on request of the defendant.

National courts of the member states are able to limit disclosure of evidence when determining whether any disclosure requested by a party is proportionate with the legitimate interests of the parties and any third parties.

Limits on the Disclosure of Evidence

Pursuant to Article 6 of the Proposal for Directive, absolute protection is provided for two types of documents, which are: (i) the

leniency corporate statements and (ii) settlement submissions. The disclosure of these documents seriously risks the effectiveness of the leniency program and settlements procedures. Under the Proposal for Directive, a national court can never order disclosure of such documents in an action for damages.

Sanctions

The national courts can impose sanctions on parties, third parties and their legal representatives in the event of failure or refusal to comply with any court's disclosure order, the destruction of relevant evidence, failure or refusal to comply with the obligations imposed by a court order protecting confidential information or abuse of the rights related to the disclosure of evidence.

Limitation Periods

The Proposal for Directive introduces time limits in order to provide harmonization among the member states. As per Article 10 therein, the limitation period shall not begin to run before an injured party knows or can reasonably be expected to have knowledge of the competition law infringement. Therefore, the victims of the competition law infringement are allowed sufficient time (at least 5 years) to bring an action for damages after they know or can reasonably be expected to know of the infringement. When a competition authority conducts investigations or proceedings related to an alleged infringement, which is the subject of a damages lawsuit, the limitation period is suspended. The suspension period shall end at the earliest 1 year after the infringement decision has become final or the proceedings are terminated.

The limitation period shall not begin to run unless the victims of the infringement know or can reasonably be expected to be aware of the infringing behavior, of the qualification of such behavior as an infringement of EU or national competition law and of the fact that the infringement caused harm to them by identified cartel members.

Joint and Several Liability

The Proposal for Directive introduces certain modifications based on a liability regime. As per Article 11 therein, where several under-

takings infringe the competition rules jointly, they shall be jointly and severally liable for the entire harm they cause due to the infringement.

Through the Proposal for Directive, an undertaking which has been granted immunity from fines by a competition authority under a leniency program shall be liable to injured parties, other than its direct or indirect purchasers or providers, only when such injured parties are unable to obtain full compensation from the other undertakings involved in the same infringement of competition law.

Quantification of Harm

The proposed Directive provides assistance to victims of infringement in quantifying the harm caused by the competition law infringement. The national courts are empowered to determine and estimate the amount of harm.

Also, the infringers are entitled with a right to rebut the presumption with regards to the existence of harm resulting from a cartel. Therefore, from now on the infringing undertaking can rebut this presumption and prove that the cartel has not caused harm.

Passing-on of Overcharges and Passing-on Defense

Direct purchasers (first purchasers) who are exposed to overcharges resulting from the infringement of competition law may pass-on these overcharges to their purchasers instead of suffering. Therefore, direct purchasers pass-on, in whole or in part, the overcharge resulting from the infringement to indirect purchasers at the next level of the supply chain (such as a retailer or consumer).

As a result of such passing-on of overcharges, the defendant (infringing undertaking) may claim that the claimant (direct purchaser) has not suffered any harm since he passes-on overcharges to his purchasers. Therefore, the Proposal for Directive codifies a defense under Article 12 whereby the infringing undertaking can invoke a defense against a claim for damages that the claimant has passed on the whole or part of the overcharge resulting from the infringement. The burden of proving the passing-on always lies with the infringing undertaking.

As regards the quantification of the passing-on, the national courts are empowered to estimate which share of that overcharge was passed on.

Conclusion

The Proposal for Directive introduces certain conditions and standards in order to ensure that real and legal persons suffering from cartelization obtain compensation by bringing actions damages. Further, with the Proposal for Directive, an attempt is made to harmonize applicable competition law rules among member states, the passing-on defense is clearly codified and obtaining and disclosing evidence, as well as joint and several liability regimes are regulated. Once the Proposal for Directive is entered into force, it will certainly have effects on the Turkish competition law.

The Implications of the Directive on Certain Rules Governing Antitrust Damages Lawsuits on Turkish Law*

Prof. Dr. H. Ercument Erdem

Introduction

The Directive on certain rules governing actions for damages under the national law concerning infringements of the competition law provisions of the Member States, and of the European Union (the "Directive")[1], was adopted by the European Union Council of Ministers (the "Council") on 10 November 2014. Pursuant to Article 23, the Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Union. Member states will have two years to implement the provisions of the Directive into their legal systems.

My earlier article of April, 2014, elaborated on The Draft Directive. In this article, I will deal with its possible implications on major points of Turkish competition law.

The Role of the National Court for the Establishment of Competition Law Infringement

The Directive does not provide any rule that an infringement of competition law has to be first established by any national competition authority or the Commission. To the contrary, the preamble (§ 13) of the Directive makes it clear that "*the right of compensation is recognized … regardless of whether or not there has been a prior finding of an infringement by a competition authority*." Therefore, under the regime provided by the Directive, any person who has suffered harm

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* ***Article of November 2014***

1 Please see. http://ec.europa.eu/competition/antitrust/actionsdamages/damages_directive_final_en.pdf.

because of an infringement of competition law can directly initiate a claim for damages before the national courts. It will be up to the claimant to prove that there is an infringement of competition law, and the national law will govern this infringement.

This issue was subjected to lengthy debate under Turkish law. Some legal scholars argued that the Competition Authority is the specialized body to establish competition infringement, and that the national courts do not have enough experience, knowledge, or sufficient staffing to assess competition infringements. Therefore, any claim of compensation has to be based on the prior finding of infringement by the Competition Authority. Other legal scholars advocated in favor of the power and the role of the national courts in assessing competition infringements. Further to those legal scholars, the courts are the ultimate body to make this assessment, either directly, or through acting as review court, of the Competition Authority's decision. Therefore, there is no need to await a final decision of the Competition Authority, which may be long in coming.

The approach of the national courts has substantially diverged on this question. Some courts have accepted claims for damages without a prior assessment being provided by the Competition Authority. These courts have made their own analyses of infringements by using court-nominated experts, and thus, rendered their decisions. Some other courts, in the absence of the prior assessment of the Competition Authority, have suspended the case, and ordered the claimant to apply to the Competition Authority to establish competition infringement. Notwithstanding these differences of views, the courts' practice now seems to be established in favor to await the assessment of the Competition Authority, if the claim of compensation is not based on a decision of the Competition Authority.

Although the practice of the courts differs from what was provided by the Directive, I am of the opinion that this practice is more reliable, since it respects the expertise and knowledge of the Competition Authority. In many instances, the establishment of the competition infringement is difficult, and requires particular knowledge and expertise that ordinary courts may not have. In particular, in consideration of cartels, the hidden nature of a cartel makes it difficult to identify. The

Competition Authority uses particular powers that ordinary courts do not possess, such as inspections and investigations. The civil law courts are not permitted to conduct their own investigation, and are bound by evidence presented by the parties. In the case of abuse of dominant position, its assessment may require a complicated economic analysis and modeling: Again, ordinary courts do not have such ability.

Limitation Periods

Clear rules for limitation periods are regulated under the Directive to provide adequate time within which to bring an action. Pursuant to Article 10 of the Directive, Member States shall enact rules that are applicable to the limitation periods. These rules shall establish these commencement periods, the duration of the periods, and when these periods are interrupted or suspended. Limitation periods shall not begin to run before the infringed party has knowledge of the infringement. These periods shall be at least five years. The limitation periods shall be suspended or interrupted in cases where a competition authority investigates or commences proceedings with regard to an infringement for which the action for damages is related. The suspension period shall end, at the earliest, one year after finalization of the infringement decision, or upon termination of the proceedings. Through this provision, the injured party can choose to wait until the public proceeding is terminated before bringing the claim.

The regime provided by the Directive differs substantially from Turkish law. The Act on the Protection of the Competition Law (the "Act") does not contain any rules with respect to limitation periods. Therefore, the provisions of the Turkish Code of Obligations (the "TCO") apply. Pursuant to Article 72 of the TCO, the claim for damages becomes time-barred, two years from the date upon which the injured party became aware of the loss or damage and of the identity of the liable person, but, in any event, ten years after the date upon which the loss or damage was caused. However, if the action for damages is derived from an offence for which criminal law envisages a longer limitation period, that longer period also applies to the civil law claim.

The two years' limitation period entered into force on 1st July 2012. Prior to that date, this limitation period was only one year. This short limitation period caused many problems in practice. In most cases, the injured party became aware of the damages, as well as the identity of the person who had caused the damages at the time when either he/she filed a complaint before the Competition Authority, or when the Competition Authority launched an investigation concerning the infringement. Decisions to launch an investigation are published on the web site of the Competition Authority, and create, therefore, public awareness. The claim concerning compensation has to be initiated within two years (this limitation period was one year, before) from the date the injured party was made aware of the infringement. In many instances, the claimants, who waited until the end of the investigation phase, passed the limitation period, and their claims were rejected. Moreover, complaints filed before the Competition Authority, or the request to set aside the Competition Court's decision, does not suspend the limitation periods.

In light of the Directive, a more detailed provision on the limitation period may be provided in the draft law on the amendment of the Act (the "Draft Law").

Passing on of Overcharges and Passing on Defense

Anyone who suffered damages, whether as direct or indirect purchasers, can claim compensation. Article 12 of the Directive provides that Member States are obliged to regulate procedural rules in order to prevent overcompensation. These procedural rules intend to avoid compensation for the actual loss that exceeds the overcharge harm suffered. Direct purchasers can pass on overcharges that they are exposed to due to a competition law infringement to indirect purchasers, such as in situations where price increases are "passed on" through the distribution chain. Direct customers of an infringer often increase their prices to offset the increased price they had to pay. Pursuant to Article 13, a defendant can invoke a defense claim for damages by claiming that the claimant passed on the overcharge that occurred as a result of the infringement. The burden of proof shall be on the defendant (infringed undertaking). National courts are empowered to determine the share of any overcharge that was passed on. The Directive intends

that only the persons who suffered damages shall receive compensation.

The Act does not provide such a detailed provision. Although Articles 12 and 13 of the Directive could be seen as part of the proof of damages, or calculation of the compensation, it will certainly aid civil law judges on compensation awards. Therefore, a new provision to be included in the Draft Law would be helpful.

Consensual Dispute Resolution

Out-of-court resolutions to establish compensation can often be easier and less expensive. This is the main reason behind the regulation of consensual dispute resolutions in the Directive. Article 18 of the Directive provides for suspension of limitation periods to allow parties to settle through consensual dispute resolution, without losing their right to commence court proceedings. National courts can suspend their proceedings for up to two years. As a result of a consensual settlement, the claim of the injured party shall be reduced by the share of the co-infringer. The remaining claims of the injured party shall be brought against co-infringers who do not settle.

Although the Act does not prevent the parties from a consensual dispute resolution, neither does it encourage them. Incentives in favor of consensual dispute resolution are good examples for the Turkish legislator to implement, as well.

Conclusion

The detailed provisions of the Directive will certainly influence the Competition Authority and its practice. In spite of the fact that the Act contains provisions regarding the private law consequences of competition infringement, the Competition Authority does not closely monitor problems arising out of these provisions. The Directive now gives the opportunity to the Competition Authority to reconsider this position. It is time to include more detailed provisions in the Draft Law, and complete these provisions through a Communiqué and Guide.

Abuse of Dominant Position through Vertical Agreements*

Legal Trainee Mehves Erdem

Introduction

Article 6 of the Act on the Protection of Competition numbered 4054 (“Competition Act”) prohibits the abuse by undertakings of their dominant positions. The abuse of dominant position can appear both on horizontal and vertical level.

The Guide on Vertical Agreements (“Guide”)[1] defines vertical agreements as “*agreements executed between two or more undertakings at different levels of production or distribution chain in order to procure, sell or resell goods or services*.”

Undertakings in dominant positions execute such vertical agreements to foreclose the market.

Foreclosure is “the strategic behavior of one or a group of undertakings to restrict the entry of the competitors to downstream or upstream markets[2]”

Undertakings voluntarily accept these vertical restrictions in case their profit exceeds losses. The exception is the imposition of undertakings in dominant positions.

If the competitors of an undertaking in dominant position are pushed out of the market, it is accepted that there is an abuse of dominant position.

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* ***Article of November 2014***

1 For the Guide see; http://www.rekabet.gov.tr/File/?path=ROOT/Documents/Kilavuz/kilavuz11.pdf.

2 **EKDİ, Barış**, Hâkim Durumda Bulunan Teşebbüslerin Dikey Anlaşmalar Yoluyla Piyasayı Kapatması, Ankara 2009, p. 2009. For the book see:

http://www.rekabet.gov.tr/File/?path=ROOT/Documents/Akademik+%C3%87al%C4%B1%C5%9Fmalar/tez115.pdf.

Abuse through vertical agreements can be classified as follows: exclusive purchase agreements, tying and discrimination.

Exclusive Purchase Agreements

An undertaking in the dominant position can push its competitors out of the market and lessen the competition by forcing exclusive agreements. This will limit customer preferences.

In these kinds of agreements the buyer is under the obligation to supply the goods and services subject to the agreement from an exclusive supplier. In order to create exclusionary effect, these agreements have to provide provisions, which will restrict purchase and sale of competitor goods, or exclusive purchase obligation should cover goods of the competitors[3].

Exclusive practices contain anti-competitive outcomes such as, monopolization of producers' distribution service, substantial lessening of competition, entry barriers and prevention of competitor growth.

Many exclusive agreements were subject to the Competition Board ("Board") decisions in Turkey. In Karbogaz decision[4] the undertaking in the dominant position in liquid carbon dioxide market executed long-term exclusive agreements with its customer and abused its dominant position. It was claimed that the undertaking is "restricting market activities of present or prospective competitors by creating entry barriers". The Board ruled administrative fine and requested the amendment of the agreements.

Another example is the Turkcell decision. Turkcell is an undertaking in the dominant position in GSM service and mobile marketing service market. In this decision it was claimed that Turkcell used its dominance and forced its customers to get service exclusively from Turkcell. The Board decided that the exclusivity created by Turkcell on its customers pushed competitors out of the market and therefore is an abuse of dominant position[5].

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3 As an example see the decision, Case 85/76 Hoffman-La Roche v Commission (1979) ECR 461, (1979) 3 CMLR 211, p.109.

4 Board decision dated 23.8.2002 and numbered 02-49/634-257.

5 Board decision dated 23.12.2009 and numbered 09-60/1490-379.

Tying

Tying is regulated under Article 4 Paragraph f of the Competition Act. The undertaking in the dominant position, ties the product which the undertaking is in the dominant position with another product different in terms of qualification and commercial use. This will create exclusivity by preventing undertakings active in the tied product market to conduct business with the buyers. This is considered an abuse of the dominant position.

The Guide also characterizes *tying* as an abuse of dominant position in cases where the undertaking is dominant in that market. The undertaking in dominant position can execute tying agreements both with its distributors and buyers. In practice it appears as tying the sale of one good to another. In order to consider these agreements as an abuse of dominant position, tying should not be based on reasonable causes such as cost and distribution advantages, quality and security[6].

As a result of tying it is easier for undertakings to prevent another undertaking to be dominant in the market or to preserve its own dominance in the market by pushing out its competitors or creating entry barriers for new undertakings.

In many Board decisions it is seen that banks oblige its customers who benefit from credits to transact insurance operations through specific insurance agencies[7].

Discrimination

Article 6 Paragraph b of the Competition Act regulates discrimination as "*making direct or indirect discrimination by offering different terms to purchasers with equal status for the same and equal rights, obligations and acts*".

Discrimination is imposing different conditions for equal acts to buyers by an undertaking in dominant position. Discriminatory behav-

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6 As an example see the decision, Case C-333/94P Tetra Pak International SA v. Commission (1996) ECR I-5951, (1997) 4 CMLR 662, p.34-38.

7 Board decisions: dated 24.04.2008 numbered 08-30/376-126; dated 20.05.2009 numbered 09-23/492-118 dated 05.08.2009 numbered 09-34/786-191; dated 05.08.2009 numbered 09-34/787-192.

iors are; discriminatory pricing, refusal to deal and other discriminatory practices. Undertakings use customer differences to implement discrimination in order to increase their profit. An undertaking in a dominant position can directly or indirectly discriminate.

Direct discrimination is generally seen as imposing different pricing to buyers. Imposing different pricing is also an example for price discrimination.

Imposing price discrimination through vertical agreements creates anti-competitive effects such as pushing competitors out of the market and putting buyers in disadvantageous positions in competition.

In indirect discrimination, same actions have different outcomes. For example, implementing different price regulations to two different buyers but providing discounts to only one buyer is an indirect discrimination. In the Digiturk decision the Board ruled administrative fine on the ground that Digiturk imposed discrimination in favor of Show TV and abused its dominant position[8].

The Guide evaluated discrimination as an abuse; however, it does not consist any specific regulations.

Conclusion

Undertakings in dominant positions foreclose the market through vertical restrictions. These are exclusive purchase agreements, tying and discrimination. Discrimination is seen mainly as, discriminatory pricing, refusal to deal and other discriminatory practices. Vertical restrictions push competitors out of the market, put buyers in disadvantageous positions in competition and limit customer preferences. In many Board decisions vertical restrictions were accepted as abuse of dominant position and undertakings were subject to administrative fines.

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8 Board decision dated 28.08.2002 and numbered 02-50/636-258.

LAW OF OBLIGATIONS

Ordinary Partnerships*

Att. Berna Asik Zibel

Ordinary partnerships are governed by Article 620 et seq. of the Turkish Code of Obligations No. 6098 (“TCO”).

An ordinary partnership agreement is defined as an agreement whereby two or more persons undertake to join efforts and/or goods to reach a common goal, which ultimately is to generate a profit. A partnership, which does not meet the criteria of legally designed partnerships (i.e. companies under the Turkish Commercial Code No. 6102), is deemed to be an ordinary partnership.

Main Features of Ordinary Partnerships

Unlike companies under Turkish Commercial Code No. 6102 (“TCC”), an ordinary partnership does not constitute a legal entity. Since it does not have a legal personality, it cannot separate itself from its partners in its relations with third parties. In other words, ordinary partnerships cannot acquire rights and undertake obligations themselves separately from their partners. Thus, an ordinary partnership cannot stand as a plaintiff or defendant in a lawsuit. A lawsuit to be filed against an ordinary partnership must be filed against all partners and, a lawsuit must be filed jointly by all partners on behalf of the ordinary partnership. On the other hand, partners of an ordinary partnership may apply to the tax office and obtain a tax number in order to conduct commercial activities and to issue invoices.

Unless the contribution of a partner, itself, is subject to a form requirement under the applicable laws (e.g. immovable property, trademark, receivable, etc.), an ordinary partnership is not subject to a form

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* ***Article of April 2014***

requirement. The only requirement is the agreement of partners which may either be written or oral, without any notarization or registration requirement. However, in practice, ordinary partnership agreements are executed in a written form and even, in the presence of notary publics, for the ease of proof.

Each partner should make a contribution to the partnership in the form of cash, receivables, goods or efforts. Unless otherwise agreed under the ordinary partnership agreement, each partner's contribution should be equal and should be in the character and significance required by the goal of such partnership.

Moreover, unless the partners agree to the contrary, the share of each partner in profit and loss should also be equal, irrespective of the value of their contributions. Pursuant to Article 623/2 of the TCO, if the share of a partner specified in the ordinary partnership agreement is determined only for losses or only for profits, such share will be considered as agreed both for losses and profits. It is only possible for a partner to join solely to profits but not to losses, if such partner contributes his efforts to the partnership.

Governance and Representation of Ordinary Partnerships

Pursuant to Article 624 of the TCO, resolutions of an ordinary partnership should be adopted unanimously, unless the partners agree that they can be adopted by a majority vote; and in such case, a majority is determined based on the number of the partners, and not the percentage of their contributions to the partnership.

As a general rule, the TCO provides that all partners have the right of management and representation of the partnership, unless otherwise agreed by the partners. The partners may assign the representation and management authority to one or more partners, or to a third person. As per Article 625 of the TCO, any partner holding management authority may act on his/her own but any other partner with management authority may stop a transaction by objecting to it prior to its completion. Unanimity is required to appoint someone to the general management of the partnership and to conduct activities under the extraordinary course of business. However, in case of emergency, all partners with the management authority may take necessary measures.

According to Article 637 of the TCO, the partner, who enters into a transaction with a third party in his name but on behalf of an ordinary partnership, personally becomes the debtor or the creditor of such third party. Where a transaction is conducted by one partner in the name of an ordinary partnership, the other partners become the debtor or the creditor under such transaction in accordance with the representation rules of law. The partner, who is entitled to manage the partnership, is also considered as entitled to represent the partnership against third parties. However, having said that, for material dispositive transactions, representation authority given by unanimous vote and a clear indication of this authority in said partner's proxy are required. In ordinary partnerships, partners have joint ownership on property and several liabilities for obligations. However, partners may decide to write specific provisions into a written partnership agreement, in order to share liability, e.g. whereby the partner causing the other partners to pay indemnification agrees to reimburse or hold harmless the other partners.

The management authority assigned to one of the partners cannot be terminated or limited without just cause. Where there is just cause, even if otherwise agreed, each of the other partners can terminate another partner's management authority. The TCO does not contain an exhaustive list of just causes, but provides examples under Article 629, e.g. extreme breach of duty, loss of competence for good management.

Rights and Obligations of Partners

The most important obligations of the partners in an ordinary partnership are the non-competition obligation and duty of care. The non-competition obligation regulated under Article 626 TCO is a broad obligation, which can be considered a prohibition of action against the ordinary partnership's interests. None of the partners may enter into transactions, which may cause damage to or which conflict with the partnership's goal.

According to Article 628 TCO, each partner should take a certain level of care and expend a certain level of effort for the partnership similar to the care and effort put into his own work. Every partner should indemnify losses caused as a result of his fault, and such losses

should not be deducted from the benefits they provide to the partnership. As per Article 628/2 TCO, a partner, who is being paid by the partnership for an assigned duty, is responsible as a "proxy" in accordance with the provisions of the TCO on proxy contracts.

Pursuant to Article 627 TCO, partners shall be responsible to a specific partner who incurred expenses or debts for the partnership. All partners shall also be responsible for the incurred damages, results and risks arising directly from such management rights. A partner who lends money to the partnership may ask for interest as of the lending date and a partner who expends effort for the business of an ordinary partnership, without any obligation, may request an equitable payment.

Changes in the Partnership

To join an ordinary partnership as a new partner, the consent of all partners is required. Similarly, to transfer shares of the partnership to a third party in an ordinary partnership, such third party cannot become a partner without consent of the other partners, and cannot acquire the right to interfere with the management of the partnership.

The acceptable reasons for the exit or the squeeze out of a partner from an ordinary partnership, which may be regulated under the partnership agreement, are: serving a termination notice to the other partners, being declared legally incapacitated, insolvency, foreclosure of a partner's liquidation share and death. In the event of the exit or squeeze out of a partner from the ordinary partnership, the partnership share of such partner is automatically transferred to the other partners *pro rata* to their shares. Other partners should return the goods to the exiting/squeezed out partner whom he brought into the partnership, release him from the several liability for the due debts of the partnership and pay him the liquidation share, which should be paid if the partnership is liquidated on the date he exits or is squeezed out. If the assets of the partnership are not sufficient to pay the debts of the partnership at the exit/squeeze out date, such partner should pay the loss *pro rata* to his share. In addition, the exiting/squeezed out partner joins the profit and loss of the works which were not completed while he was a partner.

Termination and Liquidation of the Ordinary Partnership

Pursuant to Article 639 TCO, ordinary partnerships may be terminated due to the following reasons:

- Achievement of the goal stipulated in the partnership agreement, or the goal of the partnership becoming impossible to achieve;
- Death of a partner, provided that no prior agreement has been reached with the descendants of the partner for continuation of the partnership;
- A partner being declared legally incapacitated, a partner's insolvency or foreclosure of a partner's liquidation share;
- By unanimous decision of all partners;
- Expiry of the term determined in the partnership agreement;
- Termination by a partner upon notice where (i) such right is given to such partner in the partnership agreement, (ii) the partnership is formed for an indefinite period of time, or (iii) it is decided in the partnership agreement that the partnership shall cease with the death of a partner; or
- Court decision regarding the termination of the partnership based on a just cause (the termination of the partnership may be requested by one of the partners based on a just cause without giving any further notice before the expiration of the agreed term).
- Each partner may request termination by giving six months' notice, if (i) the partnership is formed for an indefinite period of time, or (ii) the partnership agreement provides that the partnership shall cease upon the death of a partner. Turkish law requires such a termination right to be performed in good faith and not with appropriate timing for the partnership. Termination in such a manner may only be required after the end of the partnership's fiscal year, if a yearly accounting term is accepted by the partnership. If an ordinary partnership continues to engage in business after the expiry of its term, it turns into an ordinary partnership with an indefinite period.

If the partnership terminates due to a reason other than the termination notice, the management authority of a partner should cease when he learns about the termination or when he could have become aware of it had he taken sufficient care.

Pursuant to Article 642 TCO, the partnership can be liquidated based on the value of the contributions. The profit of the partnership, if any, shall be distributed among the partners only after (i) the partnerships' debts, (ii) partners' expenditures and advance payments, and (iii) the capital contributions are paid off. Losses shall be borne by the partners personally if the assets of the partnership are not sufficient to pay off the above listed items. Termination or liquidation of the partnership does not amend or otherwise affect the validity of the partnership's commitments already made towards third parties. In other words, termination or liquidation of a partnership does not invalidate or otherwise terminate the partnerships obligations (e.g. debts that are not due at the time of termination). The partners remain personally, jointly and severally liable for performance and/or payment for such obligations.

Conclusion

Ordinary partnerships are mostly formed for joint venture projects because it allows partners to seek a common goal by undertaking different and separable parts of a project (e.g. construction, financing, management, etc.), and does not impose a commercial company structure. Therefore, it is preferable. On the other hand, the liability rules of the ordinary partnership (i.e. the personal liability of the partners) prevent parties from engaging in ordinary partnerships at all times.

Culpa in Contrahendo[*]

Att. Naciye Yilmaz

A contractual relationship between parties is generally formed through several stages of negotiations before the conclusion of the contract. During these negotiations, where one party's behavior is considered damaging, it is possible to invoke *culpa in contrahendo*. It is debated by scholars whether or not the concept of *culpa in contrahendo*, is included in the well-known and established liability forms of the Turkish Code of Obligations. In this Newsletter Article, the definition of, legal characteristics and conditions to establish *culpa in contrahendo*, as well as precedents, shall be examined.

Definition

Culpa in contrahendo is not regulated clearly under the Turkish Code of Obligations No. 6098 ("CO"). *Culpa in contrahendo* originated in the Swiss and German law systems and was introduced to Turkish law by scholars and through precedents. The concept is based on a duty to bargain in good faith, negotiate with care and not lead the other party to act to its own detriment before the conclusion of the contract. Where these principles are not respected, compensation shall be due pursuant to the equity principle.

Turkish scholars agree that the related concept is based on Article 2 of the Turkish Civil Code No. 4721 ("CC"). Article 2 of the CC mentions that every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations, and that the manifest abuse of a right is not protected by law.

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[*] ***Article of April 2014***

Legal Characteristic

Scholars debate the character or nature of legal liability under culpa in contrahendo.

Some contend that *culpa in contrahendo* creates liability due to noncompliance with the contract, as the contractual relationship itself is deemed to encapsulate the pre-contractual phase. Therefore, the parties may be held liable for actions that constitute breaches of the contract during the entirety of the pre-contractual phase[1].

On the other hand, some scholars hold that liability pursuant to *culpa in contrahendo* is based on tort liability[2]. Accordingly, there is no contractual relationship during the pre-contractual phase. Consequently, only the dispositions and principles of tort liability may be applied to the behavior of the damaging party.

Apart from the above, another opinion upholds the *sui-generis* liability concept for *culpa in contrahendo*[3]. The Federal Supreme Court of Switzerland sustains this opinion in its decisions. Pursuant to this opinion, the basis of the liability is the breach of mutual trust and the relationship of confidence created during the negotiations for the conclusion of a contract, and of the principle of good faith and diligence.

Conditions to establish *Culpa in Contrahendo* Liability

In order to invoke *culpa in contrahendo*, a pre-contractual relationship between the parties should be established, since the parties are obliged to negotiate in good faith and with diligence. Where a party breaches these obligations and harms the other party, the second condition for liability, the damage with the causal link, is also fulfilled.

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1 **Eren,** defends that the liability due to a damage caused during the contract negotiations phase is a contractual liability. **Eren, Fikret:** *Borçlar Hukuku Genel Hükümler*, 14. Baskı, Yetkin Yayınları, Ankara, 2012.

2 Please refer. **Kılıçoğlu, Ahmet M.,** *Borçlar Hukuku Genel Hükümler,* Turhan Kitabevi, Ankara, 2006, p. 60; **Uygur, Turgut,** *Açıklamalı – İçtihatlı Borçlar Kanunu, Sorumluluk ve Tazminat Hukuku,* Seçkin, Ankara, 2003, p. 234.

3 **Gezder,** defends that there is a legal lack for *culpa in contrahendo*, therefore the liability under *culpa in contrahendo* should be a *sui-generis* liability. **Gezder, Ümit:** *Culpa in Contrahendo Sorumluluğu,* Beta, İstanbul, 2009.

Lastly, as a third condition, the damage should be resulted from a faulty behavior.

Framework of the *Culpa in Contrahendo* Liability

Certain liabilities arising from the fault of one of the parties before the conclusion of a contract are regulated under legal dispositions, while many such liabilities have been introduced by scholars and court practices.

As mentioned before, *culpa in contrahendo* is not regulated under Turkish legislation, however, it is generally accepted that certain liability dispositions are based on the concept of culpa in contrahendo. For instance, as per Article 35 CO, a party acting in error and invoking that error to repudiate a contract is liable for any loss or damage arising from the nullity of the agreement where the error is attributable to his own negligence.

Moreover, Article 44 CO regulates that where the principal or his legal successors have omitted to insist on the return of instruments setting out the authority of the agent, they are liable to *bona fide* third parties for any loss or damage arising from that omission.

Similarly, pursuant to Article 47 CO, where a person having no representative authority acts as an agent of the principal, any damage caused by the invalidity of the contract shall give rise to liability.

Situations which may be defined as *culpa in contrahendo* are also described by scholars and precedents.

For instance, some scholars hold that the party providing misleading information during the pre-contractual phase shall be responsible pursuant to *culpa in contrahendo*. Besides, it is also contrary to the good faith principle and diligence obligation in the pre-contractual phase to hide information which should be provided to the other party and to continue negotiations knowing that the subject of the contract is impossible[4].

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[4] **Oğuzman, Kemal / Öz, Turgut:** *Borçlar Hukuku Genel Hükümler Cilt I*, Vedat Kitapçılık, İstanbul 2011, p. 428.

The Turkish Court of Appeal awarded compensation for liability as a result of *culpa in contrahendo*. Therefore, the liability as a result of *culpa in contrahendo* results in a compensation obligation.

For instance, according to the Turkish Court of Appeal, the party which misleads the other party by pretending to want to conclude a contract in the future without having any strong intention to do so, is liable for being misleading[5]. In so far as contract negotiations establish a legal relationship between the parties, the parties should bargain in good faith during this legal relationship (Article 2 of CC).

Similarly, the Court of Appeal also upheld[6] that the parties are bound to take such precautionary measures as are necessary for the protection of each other's person or property during the pre-contractual phase. Moreover, the parties are liable of damages arising from a fault or negligent behavior in this phase.

Conclusion

Consequently, it may be concluded that a legal relationship is naturally established between parties convened to negotiate a possible contract. This legal relationship obliges the concerned parties to act in good faith and diligently. In case there is a breach of these obligations and resulting damage, this damage should be compensated pursuant to the concept of culpa in contrahendo, which is not clearly regulated under Turkish laws, but has been established and enhanced by scholars and precedents.

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5 Please see. Decision of 3rd Civil Chamber of Court of Appeal dated 15.09.1997 and numbered 1997/8864, www.kazanci.com.

6 Please see. Decision of Court of Appeal Assembly of Civil Chambers dated 13.02.2013 and numbered 2013/239, www.kazanci.com.

Consequences of Obligor's Default in Synallagmatic Contracts and the Difference between Positive and Negative Damages*

Att. Suleyman Sevinc

As is known, the Turkish Code of Obligations ("TCO") No. 6098 was published in the Official Gazette dated 04.02.2011 and numbered 27836, and entered into force on 01.07.2012.

The general conditions and consequences of an obligor's default are provided between Articles 117 and 126 TCO. However, the consequences of the obligor's default in synallagmatic contracts are provided in Art. 123 et seq. TCO. In such case, the creditor is entitled to optional rights among which he shall make a choice.

The conditions for the creditor to exercise these rights and the legal content of the notions of positive and negative damages are explained below, together with the examples given in order to point out their position in practice.

The Consequences of the Obligor's Default in Synallagmatic Contracts

The consequences of an obligor defaulting within the scope of a synallagmatic contract are provided in Articles 125 and 126 TCO.

Pursuant to these, the creditor shall have optional rights where the obligor is in default. These optional rights are as follows:

- First, the creditor may claim the specific performance of the obligation together with compensation for the delay. It shall be underlined that this right is not intrinsic to synallagmatic contracts, but it is a general consequence of the default of the debtor in any kind of contract.

* ***Article of April 2014***

- Another optional right of the creditor is to claim compensation for positive damages by waiving the right to claim specific performance.
- Lastly, the creditor may claim compensation for negative damages by rescinding the contract.

Leaving aside the exceptions provided by Art. 124 TCO, in order to exercise one of the other two optional rights, rather than claiming the specific performance of the obligation together with compensation for delay, a proper time period shall be granted by the creditor to the obligor as a last chance to perform his obligation, or a request to that effect shall be demanded from the judge. In addition to this, the obligor's fault is another required condition for obtaining compensation for delay and compensation for positive or negative damages. In case the creditor claims compensation for positive damages by waiving the specific performance or compensation for negative damages by rescinding the contract, this fact shall be immediately notified to the obligor.

The consequences of the obligor's default in long term synallagmatic contracts are stipulated under Art.126 TCO. Therein, it is stipulated that the creditor has the right to terminate the contract and claim compensation for damages incurred due to rescission in addition to their right to claim the specific performance and compensation for delay.

Specific Performance and Compensation for Delay

As mentioned above, claiming the specific performance together with compensation for delay is a general consequence of the obligor's default and is not intrinsic to synallagmatic agreements. Thus, the creditor may request at any time from the obligor in default the specific performance of the obligation together with compensation for the damage arising from the delay.

Compensation for delay is provided for in Art.118 TCO. In said Article, it is stipulated that the obligor in default shall compensate, unless he proves his non-negligence related to the delay, the damages incurred by the creditor because of the delay in performance of the obligation. It is a presumption that the obligor in default is at fault.

Claiming Compensation for Positive Damages by Waiving the Specific Performance

Pursuant to Art.125 TCO, the creditor may claim compensation for damages incurred because of the non-performance of the obligation by notifying immediately that he waives his right to claim the specific performance of the obligation together with compensation for delay.

Where this optional right is used, the contract remains in force. Therefore, the creditor shall still perform his obligation.

The condition of being at fault in the occurrence of the default is also required as a condition in order to claim compensation for positive damages. The assumption of fault mentioned above also applies in this respect.

The creditor shall immediately notify the obligor if he wishes to exercise this option. In case the creditor does not notify at the end of the allotted time, he is deemed to have waived this right and his only remaining option is to claim the specific performance together with compensation for delay.

Claiming a Compensation for Negative Damages by Rescinding the Contract

In case the obligation is not performed within the time granted, the creditor may rescind the contract and claim compensation for negative damages, provided that he immediately notifies this fact to the obligor at the end of the allotted time.

In case either of the parties has already performed his obligation, this shall be returned as rescission from the contract is retroactive. Although it is in dispute whether the return shall be realized based on unjust enrichment or by being incongruent to the contract, the Turkish Court of Cassation has favored the first view.

It is not required that the obligor is at fault for being in default in order for the creditor to exercise the right to rescind the contract. However, as for other compensations mentioned above, the fault of the obligor is required as a condition for claiming compensation for negative damages, which is deemed to exist as a presumption.

The Difference between Positive and Negative Damages

A creditor who does not wish the specific performance of the obligation may claim compensation for positive damages by waiving the specific performance or compensation for negative damages incurred by rescinding the contract, provided that he complies with the conditions mentioned above.

Positive damage is damage incurred by the creditor because the obligor has not performed his obligation or has not performed as required. Positive damage is the difference between the creditor's asset and the consequence of non-performance of the obligation, or the performance of it but not as required, and the assumption as to how his asset would benefit if the obligation had been performed in compliance with the contract. Therefore, the legal interest protected by the compensation of positive damages is the creditor's interest in the performance of the obligation.

It is accepted in decisions of the Turkish Court of Cassation that lost profit is one of the causes for positive damages. This refers to the loss occurred due to the fact that the obligor did not perform his obligation, or has performed it but not as required and that the creditor had to procure the same product or service from another source. Expenses, such as for a notary, of time granted, other related expenses and those incurred by the creditor for having to replace the non-performed contract with another, constitute examples of positive damages.

On the other hand, the notion of negative damage refers to losses by the creditor in relation to his reliance on the validity of the contract. Negative damage is the difference in the creditor's asset in the period after the contract was rescinded and the presumed state or condition of the asset had the parties never entered into such contractual relationship. Thus, the legal interest protected by the compensation of negative damages is the creditor's reliance on the validity of the contract.

Examples of negative damages include any kind of expenses related to the conclusion of the contractual relationship (such as fees and stamp tax payments, travel expenses, notary expenses, etc.), expenses incurred because of the return of obligations already performed within the scope of the rescinded contract and lawsuit expenses. Among legal scholars, it is generally admitted that the losses incurred from missing

the opportunity to enter into other possibly advantageous contracts due to reliance on the validity of the rescinded contract constitute another example negative damages and that it shall also be compensated.

Conclusion

Pursuant to the Turkish Code of Obligations No. 6098, where the obligor is in default in a synallagmatic contract, the creditor shall have optional rights. These optional rights include the ability to claim the specific performance of the obligation together with compensation for delay, compensation for positive damages incurred by waiving specific performance and compensation for negative damages as a result of rescinding the contract. The compensation of positive damages aims at protecting the creditor's interest in the performance of the obligation in compliance with the contract, while the aim of compensating negative damages is to protect the creditor's reliance on the validity of the contract.

Termination of Contracts on Lease of Residential Premises and Roofed Workplaces by Notice at the End of a Ten-Year Extension Period*

Att. Suleyman Sevinc

The Turkish Code of Obligations ("TCO") No. 6098 was published in the Official Gazette dated 04.02.2011 and numbered 27836, and entered into force on 01.07.2012.

Provisions regarding the termination of lease contracts of residential premises and roofed workplaces are set forth between Articles 347 and 356 of the TCO. As an alternative to bringing a suit for termination, termination of a contract by notice is one of the important novelties of the TCO which needs to be analyzed in depth. Pursuant to the last sentence of TCO Art. 347/1, landlords have the right to terminate a lease contract without any reasonable ground at the end of a ten year extension period.

Pursuant to Provisional Art. 2 of Law No. 6101 on the Effectiveness and Execution Procedure of the Turkish Code of Obligations ("Law No. 6101"), Art. 347 TCO will become applicable as of 01.07.2014 for contracts that completed the ten-year extension period on 01.07.2012, and will be applicable as of 01.07.2017 for contracts that had less than five years of remaining term as of 01.07.2012.

Possibility of Termination pursuant to TCO Art.347 and its Legal Justification

It is stipulated in Art. 347 of the TCO that a lease contract with a fixed term will be deemed to be extended for one more year with the same conditions unless the tenant serves a termination notice at least

* *Article of January 2014*

fifteen days before the end of the contractual term. On the other hand, the landlord may not terminate the contract due to expiry of the contractual term. It should be emphasized that this provision corresponds to Art.11 of abrogated Law No. 6570 on Real-Estate Leases ("Law No. 6570")[1].

The novelty of this Article is the right of landlords to terminate a lease contract without showing any reasonable ground at the end of the ten-year extension period, provided that the landlord notifies the tenant at least three months before the end of any extension period. Previously, landlords were allowed to terminate a lease contract only in case of events which justified termination and were specified under the relevant articles of Law No. 6570 and the Code of Obligations No. 818. It is also determined that landlords may terminate a lease contract that does not have a fixed term in accordance with general provisions through a termination notice served ten years after the conclusion of such contract.

The legal justification of this Article, which substantially affects many lease contracts and which is considerably in favor of landlords, is the societal disturbance caused by landlords not being able to have direct possession of the property for long periods. In this respect, when the conditions of said Article are met, the landlord is able to terminate a lease contract through a unilateral notification, without the burden of providing reasonable grounds and without being obliged to compensate the tenant, and he will use the lease himself or make a new contract with a new tenant after obtaining direct possession of his property.

Postponement of the Effective Date

Provisional Art. 2 of Law No. 6101 sets forth an exception and provides for a one-time postponement of a landlord's right to terminate lease contracts on residential premises and roofed workplaces. The legal justification for this postponement is to prevent potential damage to tenants and other potential problems that would be caused by the immediate application of Art. 347/Par.1.

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1 **Cevdet Yavuz**: Borçlar Hukuku Dersleri (Özel Hükümler), İstanbul 2011, p. 288.

Thus, said Article becomes applicable after five years as of the effective date of the TCO (01.07.2012) for lease contracts whose ten-year extension period has not expired and which had a remaining term of less than five years on this date (01.07.2012). On the other hand, it will become applicable after two years as of the effective date of the TCO (01.07.2012) for lease contracts whose ten-year extension period had expired on or before the same date.

For instance, a lease contract which completed the ten-year extension period on or before 01.07.2012 may be terminated by the landlord as of 01.07.2014 without showing any reasonable ground; while a lease contract whose ten-year extension period had not expired on or before 01.07.2012, but which had less than five years of remaining term as of this date, may only be terminated as of 01.07.2017. At this point, it should be stressed that a termination notice served in accordance with the latter should be served at least three months before the end of the extension period.

Nature and Function of the Notice

Pursuant to Art. 348, a termination notice for lease contracts on residential premises and roofed workplaces must be in written form, otherwise, they shall be invalid. This rule is mandatory; no contract that is not compliant with this rule may be concluded.

Unlike filing a lawsuit for the termination of lease contracts of residential premises and roofed workplaces, the method of termination through notice does not require a court judgment in order to terminate a lease contract. In this respect, this unilateral notice stipulated under the Art. 347 TCO has a destructive/innovative effect and will be effective once the other party receives notice.

The contractual relationship shall end with the arrival of the termination notice sent by the landlord to the tenant, and upon notice the tenant shall be deemed as an unfair occupant. If the tenant does not evacuate the real property subsequent to the termination notice, two possibilities may occur:

- The first possibility is that the landlord may request adequate pay for usage of the real property after the tenant's receipt of the termination notice before the Civil Court of First Instance by

filing a suit based upon illegal occupation. The Court shall determine the adequate pay by considering current leasing value of the real property under lease. However, the landlord will not be able to bring an action for eviction since the contractual relation ended and an action for eviction may be filed only if the conditions stipulated between the articles 350 and 354 of the TCO are met.

- The second possibility, pursuant to Article 4/1(a) of the Civil Procedure Law, is that since there is a dispute arising from a tenancy relationship, irrespective of the value and amount of the subject matter, it is possible for the landlord to file an action for eviction before the Civil Court of Peace.

The approach of the courts will determine the solution, which will be applied if the tenant does not evacuate the real property subsequent to receipt of the termination notice.

Conclusion

The TCO has brought a significant novelty with respect to the termination of lease contracts on residential premises and roofed workplaces. It sets forth that the landlord may terminate lease contracts with no reasonable ground at the end of the above-mentioned extension periods. The reason for this regulation is that the legislator seeks equilibrium between conflicting interests; one being the ownership rights of landlords, whereas the other is the protection of the tenants' possession rights. Therefore, implementation of said provision was postponed as a precautionary measure until the dates of 01.07.2014 and 01.07.2017 so as to protect tenants. Landlords will be able to terminate their lease contracts on the basis of the above- mentioned provision as of these dates.

The General Conditions of Surety Insurance*

Assoc. Prof. H. Murat Develioglu

The General Conditions of Surety Insurance ("General Conditions"), published by the Undersecretariat of Treasury, entered into force on 01.02.2014. The General Conditions, which are a novelty to our current legislation, is supposed to solve the problems of guaranty with respect to big construction projects or tenders, to remove employers' concerns relating to the performance of contractors and to replace guarantee letters issued by the banks. Information on the main features of this regulation is provided below, together with general information on the subject, types and obligations of parties affected by this regulation.

The Subject of the Insurance

Insurance companies can become a surety for debtors and provide insurance to beneficiaries against the risk of non-fulfillment of the obligation defined in the insurance policy. The content of the insurance is determined pursuant to the conditions and terms set forth in the General Conditions, as well as the special conditions of the policy.

Some of the Risk Types that may be Secured

Examples of risk types that can be insured are provided in Section A.2 of the General Conditions. Pursuant to said section – without the obligation to respect the numerus clausus principle - the following risks may be secured by surety insurance:

- The risk that the party receiving advance payment for a project or the provision of a good or service does not fulfill his obligations to the beneficiary and does not refund the advance payment.

* ***Article of March 2014***

- The risk that damage occurs after a certain period after the work has been delivered due to a workmanship defect in cases where the work performance shall be evaluated after the delivery such as a construction project, engineering and production of machines.
- The risk that the employer is damaged because of the illegal practices of the workers named in the surety bond, such as fraud and embezzling.
- The risk that public receivables, which may potentially occur because of the possibility of litigation before national courts in which the customs offices, tax offices or courts are the beneficiaries, and because of the possibility of obtaining goods from customs or a mistake in customs clearing, are covered.
- The risk that payments due to subcontractors and workers are not realized.
- The risk that the employer of the Project does not fulfill his obligations in accordance with the terms and conditions determined in the agreement[1].
- The risk that the debtor does not properly fulfill his obligations as set forth in the agreement.

The Obligations of the Parties

The obligations of the parties before the surety bond is concluded are as follows:

- The insurant is obliged to present immediately to the insurer the statements of account of the last year and if any, the independent auditing report and to provide the necessary explanations on this subject upon the request of the insurer[2].

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[1] In such case, the insurance company can have the work completed through an agreement with a new contractor.

[2] In addition, the insurance company can demand, at every stage, detailed information on the developments and strategic changes of the debtor's activities, and important subjects concerning the credibility of the debtor. As a result of the evaluation of this information, the insurance company may request an assurance form the debtor for providing a new surety or for continuing an existing one in case his credibility is essentially distorted.

- The insurant is obliged to inform the insurance company about his cash or non-cash loans and the significant changes which may potentially affect the decision on providing insurance.
- The insurant cannot grant a lien or mortgage right, etc. on his assets in favor of the third parties without the knowledge of the insurance company.

It should be noted that unlike the insurant, no obligation is imposed on the insurance company for the period before the issuance of the surety bond.

After the issuance of the surety bond, it may be concluded that the parties shall fulfill the following obligations:

- The insurant shall inform the insurance company if he foresees potential damage because of a delay in the communication, on the carrying out of instructions or due to negligence after the insurance surety has been issued.
- The insurant accepts that the beneficiary shall inform the insurance company on subjects relating to the surety bond.
- On the other hand, the insurance company should pay attention to the choice of principal surety in case there is an indirect surety.
- The insurance company is obliged to delete the record of the surety from the private account where situations provided in Section B.2 of the General Conditions occur.

After the risk occurs, the following obligations shall be considered:

- The insurant shall act in order to fulfill his obligation as if there was no insurance agreement after the risk occurs.
- In case the obligation is not fulfilled and the surety becomes effective, the insurant cannot object to the request of conversion of the surety into payment with respect to its cause, amount or balance.
- The insurance company, where the beneficiary requests compensation, can inform the insurant and may ask him to take

measures. However, this is not mandatory, thus the payment may be made to the beneficiary without an answer or confirmation from the insurant.

- Afterwards, the insurance company shall seek recourse from the insurant for all the compensation and legal, administrative and additional costs it paid.

Conclusion

Surety insurance is an essential novelty brought to our current legislation. The main purpose of this regulation is to remove insurance problems in big projects and tenders that require financing. Yet, pursuant to the General Conditions regulation provided by the Undersecretariat of Treasury, insurance companies can now grant security by acting as surety. In case the surety risk defined in the policy occurs, the insurance company pays the beneficiary and seeks reimbursement of the paid amount from the insurant.

The Court of Cassation Decision dated 13.02.2013 and numbered 2012/14777 E. 2013/2711 K. concerning the Validity of the Suretyship Commitment within the framework of General Transaction Terms*

Assoc. Prof. H. Murat Develioglu

Introduction

Due to the proliferation and diversification of banking transactions, banks' increasing intentions to manage and finalize their actions and operations with greater speed, and to standardize such actions and operations by categorizing such, the number of banking agreements containing general transaction terms has increased. While formulating their loan agreements, banks ensure a third party to provide a mortgage on an immovable property of his/her own, in favor of the bank. They frequently choose to add clauses to the official mortgage agreement, concerning the mortgagor in question, as also being a surety of the bank within the scope of the loan agreement.

As specified in the decision dated 13.02.2014 and numbered 2012/14777 E, 2013/2711 K of the 19th Civil Chamber of the Court of Cassation, these types of clauses shall be subject to the validity assessment of general transaction terms, within the framework of the relevant articles provided in the Code of Obligations ("TCO") No. 6098.

The Summary of the Decision

In the decision in question, a mortgage has been established on the immovable property registered in the defendant's name, in order to provide a security for the loan agreement signed by and between the plaintiff bank, and the company that is not a litigant. In addition, a

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* ***Article of December 2014***

clause has been added to the mortgage agreement table designating the mortgagor, which is also the defendant, as a joint debtor and surety, limited within the mortgage margin. Ordinary execution proceeding to the detriment of the defendant has been initiated; however, the proceeding has been ceased upon the defendant's objection. In response, the plaintiff has filed an action of the annulment of objection demanding an execution denial indemnity and the continuation of the execution proceedings.

Considering the fact that the defendant has become surety for the debt by providing a mortgage, the court of first instance has decided that the execution proceedings shall continue in the manner of foreclosure of the mortgage, but not in the manner of ordinary execution. Therefore, the court of first instance ruled for continuation of the execution proceedings with respect to the other defendants; on the other hand, ruled partial dismissal in favor of the mortgagor-defendant due to its above mentioned reasoning. Plaintiff bank has appealed against this ruling. Consequently, the Court of Cassation rendered a judgement regarding the validity of the suretyship clause added to the mortgage agreement table.

Assessments within the General Transaction Terms

In accordance with TCO Article 21, the validity of the clauses designating the mortgagor as a joint debtor and surety shall be contingent upon the refutation of the bank that they gave the adequate information to, and shared the content of the agreement with the mortgagor, while formulating the agreement. Such clauses added to the agreement to the detriment of the mortgagor shall be considered as non-conforming with the nature and characteristics of the mortgage agreement; hence, it shall be deemed to not have been written[1].

By evaluating the mortgagor's commitment of being joint surety to the loan debt, within the scope of the mortgage agreement as a clause imposed by the banks, unilaterally, the Court of Cassation enabled such clauses to be subject to the assessment of the general transaction terms.

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[1] Yeni Borçlar Kanunun Getirdiği Başlıca Değişiklikler ve Yenilikler, **Prof. Dr. Turgut. Öz**, p.8, Istanbul 2012.

The 19th Civil Chamber of the Court of Cassation decided that the clause rendering the mortgagor, which is also the defendant, as a joint surety shall be evaluated within the scope of general transaction terms, by stating that this is not in compliance with the nature and the characteristics of the mortgage agreement. In accordance with TCO Article 21/II, and the foregoing, the Court of Cassation decided that this clause attached to the mortgage agreement table shall be considered within the scope of assessment of the general transaction terms and, accordingly, shall be deemed to not have been written.

Evaluation within the framework of the Implementation Law

Despite the above mentioned explanations, the 19th Civil Chamber of the Court of Cassation has foreseen a time limitation for the implementation of general transaction terms assessment on the clauses rendering joint suretyship for the mortgagor, attached to the mortgage agreement made in the scope of the loan agreement.

Court of Cassation referred to Articles 1 and 7 of the Law regarding the Entry into Force and Implementation of the Turkish Code of Obligations numbered 6101 ("Implementation Law") in the case in question. In accordance with Implementation Law Article 1, "*The acts and actions occurred prior to the date of entry into force of the Turkish Code of Obligations, the consequences and legal grounds of such acts and actions shall be subject to the rules of the law which is in effect on the date of the occurrence*." In addition, Implementation Law Article 7 states that the articles of the TCO regarding public order and public moral shall be implemented in the pending actions.

Although the joint suretyship clause attached by banks to mortgage agreements shall be deemed as a general transaction term, by virtue of Court of Cassation's attribution of these two articles and on the grounds that

i. the mortgage was established prior to 01.07.2012, which is the effective date of the TCO, and

ii. the clauses should not have been considered within the scope of Implementation Law Article 7, which relates to public order and morality, the sanctions of which are deemed as non-written due to incompliance with the nature and characteristics of the

> agreement, shall not be applied to the mortgages existing prior to the effective date of the TCO.

The mortgage that is subject to this lawsuit was established in 2008, which is prior to the effective date of the TCO. Due to this fact, and in the light of the Implementation Law, Articles 1 and 7, the Court of Cassation has decided that the regulations on general transaction terms of the TCO shall not be implemented in this case, and the plaintiff bank shall be able to continue the execution proceeding to the detriment of the defendant, determined as a joint surety that is limited to the mortgage margin in the mortgage agreement table, within the scope of the Law that was in effect on the date of the execution proceeding.

Conclusion

Although it is stated in the decision that the objections shall be refused, and the execution proceeding shall continue, due to the fact that the execution proceeding was initiated prior to the effective date of the TCO, the Court of Cassation has enabled the validity assessment of the general transaction terms for the clauses imposed by the banks to the mortgage agreement determining the mortgagor as a joint debtor and surety. In light of this decision, and pursuant to the Implementation Law, Articles 1 and 7, following 01.07.2012, the effective date of the TCO, the clauses that the banks add to the loan agreements, which render the mortgagor as a joint debtor and surety, shall be deemed to not have been written.

The Problem of whether the General Provision regarding Personal Guarantees in Article 603 of the Law of Obligations shall be applied to Bill Guarantees*

Assoc. Prof. H. Murat Develioglu

Introduction

The Law of Obligations No. 818 did not entail any regulation with respect to conditions for validity for personal guarantee agreements, other than surety. Neither is there any such regulation about this in the Swiss Law of Obligations. However, Article 603 entitled "Scope of Application", which was added with the Turkish Law of Obligations No. 6098[1] ("TLO"), regulates this issue and brings novelties with regards to agreements which are concluded in any other name but are related to personal guarantees granted by real persons, thus the scope of application of the provisions regarding surety are extended. The justification of the aforementioned article sets forth that this provision, in essence, shall be applicable to agreements concluded in any other name on behalf of the creditors in order for them to be exempt from the provisions protecting the surety, for instance to guarantee agreements.

For bill guarantees, which qualify as personal guaranties and are found in Turkish Commercial Code No. 6102[2] ("TCC"), it is a question of debate whether TLO Art. 603 is applicable or not. The discussions and decision of the Court of Cassation with respect to this issue are examined below.

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* ***Article of August 2014***

1 Published on the Official Gazette dated 11 January 2011 and no. 27836, and entered into force on 1 July 2012.

2 Published on the Official Gazette dated 14 February 2011 and no. 27846, and entered into force on 1 July 2012.

General Information and Conditions of Validity with respect to Surety Agreements

Pursuant to TLO Art. 581, surety agreements are agreements in which the surety undertakes to be personally liable to the creditor for the consequences of the obligor's non-performance of his obligation. This agreement also imposes an ancillary obligation to the surety. The surety agreement is concluded between the creditor and the surety. The conditions of a surety agreement are: the existence of a valid main obligation and a surety agreement, the intention of being a surety and the form requirements.

These conditions are listed below:

Form Requirement

Pursuant to TLO Art. 583/1, agreements which are not concluded in writing, and which do not bear the hand writing of the surety with respect to the maximum amount, the date and joint suretyship in case there is joint suretyship, shall not be valid.

Capacity for Being a Surety:

Real Persons' Capacity for Being a Surety

Establishing a surety agreement is forbidden for minors and persons with limited capacity.

Persons with a legal advisor cannot be a surety without the permission or approval of their advisors.

A person who is not a surety during the period running as of the announcement of the term given for a bankruptcy agreement is specified as an example of a situation which limits the capacity for being a surety.

Legal Person's Capacity for Being a Surety

The Ultra vires principle is effective for legal persons; thus, surety agreements must serve the purpose of associations or foundations.

By stating that, "*Trading companies, pursuant to Article 48 of the Turkish Civil Law, may take advantage of all the rights and undertake*

the depts. Legal exceptions are reserved with respect to this matter" under TCC Art. 125/2, the ultra vires principle was abandoned for trading companies. The exception specified in the article is Art. 371/2 TCC with respect to joint stock companies. As per said article, joint stock companies are bound by the transactions concluded between their authorized persons and third parties for issues other than the company's principle field of operation, where the third parties are acting in good faith.

Consent of Spouse

Pursuant to TLO Art. 584, written consent of the spouse is required in order for a real person to be a surety. However, as stated in the article, if there is not a separation decision given by the court or unless the statutory right of living separately has arisen, such consent is a condition for validity.

If the creditor of the main obligation is the spouse of the surety, consent of the spouse is no longer a condition for validity. Consent of the spouse is not necessary regarding the amendments to the surety agreement made in favor of the surety.

General (Brief) Information on Bill Guarantee

A bill guarantee is a document used to secure a debt, arising from a negotiable instrument of law. Form requirements with respect to bill guarantees are specified under TCC Art.701. Pursuant to said article, a bill guarantee shall be written on a bill of exchange or allonge in order to be valid. The writing shall state "for bill guarantee" or a corresponding expression shall be used and the signature of the person providing the bill guarantee is required.

Since a bill guarantee is a security institution peculiar to negotiable instruments of law regulated under the TCC, it cannot be seen as a surety agreement specified under the TLO. Besides, there are special provisions that separate bill guarantees from surety. First of all, surety provides an ancillary security whereas a bill guarantee is independent and has principal character. Moreover, in contrast to a surety, a bill guarantee annotation must be written on a bill of exchange, bond or allonge.

Agreements Included in the Scope of Article 603 and the Issue of whether said Provision shall be Applicable to Bill Guarantees

Article 603 sets forth the following regulation: "*the provisions regarding the form of the surety, legal capacity for being a surety, and consent of the spouse are also applicable to other agreements entitled differently where real persons provide personal guarantee.*" In the doctrine, the application area of this article is a question of debate. There is no doubt that guarantee and assurance debt participation agreements for the purpose of assurance are within the scope of Art.603. The characteristics of these agreements are that their forms and provisions are not explicitly determined within the law.

On the other hand, implementation of Art. 603 was debatable for agreements whose forms and provisions have already been specified in the law, such as the bill guarantee. There were two opinions about this matter. The first opinion defended that this provision should be applied to bill guarantee relationships as well. For justification, the defenders of this opinion asserted that TLO Art. 603 is a mandatory provision and non-application of this regulation to bill guarantees may prevent the purposes of the provision by tangling around it. Authors who defend the second opinion hold that since the form requirements of a bill guarantee are specified in the TCC, bill guarantees cannot be subject to TLO Art.603.

Court of Casssation's Opinion

The Court of Cassation decision, dated 04.07.2013[3]. states that, "*Under the Turkish Commercial Code, the consent of the spouse requirement is not regulated in order to make a commitment. Since negotiable instruments are regarded as business transactions pursuant to the Article 3 of the Turkish Commercial Code No. 6102, there is no place for the application of Art. 584 of the Law of Obligations in the present case since Law of Obligations counts as a general provision against the provisions of the Turkish Commercial Code*", and therefore embraces the second opinion.

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[3] Supreme Court, 12th Civil Chamber decision numbered 2013/16400 E., 2013/25100 K., and dated 4.7.2013.

In another decision[4], the Court of Cassation notes the differences between the bill guarantee and surety, and again reaches the same conclusion; specifying that TLO Art.603 cannot be applied to bill guarantees due to the existence of special provisions under the TCC.

Conclusion

Article 603 entitled "Application Area", which was not present in the Law of Obligations No. 818, generated different opinions. However, pursuant to recent decisions rendered by the Court of Cassation, it may be concluded that a new regulation will not have an impact on the bill guarantee relationship, which is regulated through the special provisions in the TCC. Bill guarantees shall only be subject to the provisions in the TCC.

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4 Supreme Court, 12th Civil Chamber decision numbered 2013/10055 E., 2013/24337 K., and dated 27.6.2013.

PROCEDURAL LAW

Amendments to the Judicial System by Law No. 6545*

Att. Ecem Susoy

Law No. 6545, which Amends Turkish Criminal Law and Certain Codes[1] ("Law No. 6545"), entered into force through its publication in the Official Gazette dated June 28, 2014 and numbered 29044. Law No. 6545 particularly amends the administrative procedural system, the structure of the criminal courts of peace and the commercial courts of first instance.

Amendments Regarding the Administrative Procedural System

The most important aspects of the amendments regarding the administrative procedural system made by Law No. 6545 are amendments with respect to the legal remedy system by enabling the process of appeal and setting forth an expedited trial procedure.

Amended Legal Remedy System:

The existing administrative procedural system, before the amendments made by Law No. 6545, was formed by a judicial system of two instances. The courts of first instance were the first judicial stage; and the regional administrative courts and the Council of State, respectively, constituted the subsequent stage of the administrative procedural system as an authority of objection and appeal. With the new regulation, the administrative judicial system shall be implemented through a system of three instances constituted by (i) judgment of the courts of first instance, (ii) first appeal and (iii) second appeal. The aforesaid

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* ***Article of July 2014***

[1] The Law No. 6545 was published in the Official Gazette dated June 28, 2014 and numbered 29044 and entered into force on June 28, 2014. Please see: http://www.resmigazete.gov.tr/eskiler/2014/06/20140628-9.htm (accessed on: 12.08.2014).

amendments to the legal remedy system shall also be applied where appeals are made against tax courts' decisions.

With the entry into force of Law No. 6545, appealing to regional administrative courts against the decisions of the courts of first instance has become possible. Accordingly, the jurisdiction of the regional administrative courts are stated as follows; to examine the appeals against the final decisions of the courts of first instance that are open to appeal and the decisions regarding requests related to the issue of stay order and conclude them, to settle the disputes concerning the jurisdiction and competency between the courts of first instance in its judicial locality, to decide the transfer of the action to another court which is in the same judicial locality with the relevant regional administrative court or appoint the competent court in case of a factual and legal obstacle with its judicial locality in ruling the action.

In the new system, it is possible to appeal to regional administrative courts against the decisions of the administrative and tax courts within 30 days from the decision's notification. However, the decisions of administrative and tax courts regarding the tax actions, full remedy actions and actions for nullity against the administrative acts of which the matter in dispute is not higher than five thousand Turkish Lira are definitive and may not be appealed. Accordingly, if regional administrative courts conclude that the decision of the court of first instance is in compliance with law, it will refuse the request of appeal. In case of the request's acceptance, it will be decided by considering the basis of the action. The first appeal shall be subject to the same form and procedure as the second appeal. Pursuant to Law No. 6545, the decisions of regional administrative courts are definitive where they are not open to second appeal.

The Law No. 6545 has amended Article 46 of the Administrative Jurisdiction Procedure Law No. 2527. Especially, there is a possibility to lodge an appeal with the Council of State within thirty days from the decision's notification against the decisions of regional administrative courts and the final decisions of the judicial chambers of the Council of State regarding tax actions and full remedy actions and actions concerning administrative acts of which the matter in dispute is higher than one hundred thousand Turkish Lira, actions for zoning plans,

actions arising from subdivision operations, actions concerning the grant of the operation permit to the coastal facilities.

Council of State examines whether the decision is in compliance with the law during the second appeal procedure. Following this examination, if it is concluded that the decision is in compliance with law, it approves the decision and the approved decision is definitive. Otherwise, the examined decisions are reversed and dispatched to the regional administrative court that tried the action before, for it to rehear the action. The regional administrative court may adopt the reversed decision of the Council of State or insist on its own decision. Where it adopts the reversed decision of the Council of State, the appeal examination of this decision shall be limited to its accordance with the reversed decision. If the regional administrative court insists on its own decision by disregarding the reversing decision, it will be examined and concluded in Council of State plenary session of the chambers for administrative actions or for tax actions, according to the subject of the request. Ultimately, it is compulsory to adopt the decisions of the Council of State plenary sessions of the chambers for administrative actions and for tax actions.

The Ministry of Justice shall establish regional administrative courts within three months from the entry in force of Law No. 6545. The existing regional administrative courts shall continue their operations until the date the new regional administrative courts are established. As of the date when new regional administrative courts are established, files present at the existing regional administrative courts shall be assigned to recently established regional administrative courts.

Expedited Trial Procedure

As per the new regulation, an expedited trial procedure is applicable for the disputes arising from the following affaires: tender processes excluding the decisions related to the preclusion from participating in tenders; expedited expropriation procedures; High Board of Privatization’s decision; sales, appropriation and renting operations in accordance with the Law on the Encouragement of Tourism No. 2534; decisions of environmental impact assessments excluding administrative sanction decisions in accordance with Environmental Law No.

2872; disputes related to the Council of Ministers' decision in accordance with the Law on Transformation of Places at Disaster Risk No. 6303.

According to the expedited trial procedure, the term of litigation is thirty days and the time for preparation of defense is fifteen days beginning from notification date of the complaint. Moreover, decisions related to the request of stay order may not be appealed. These actions must be concluded within one month at the latest, beginning from the consummation of the action. Expedited trial procedure provides only the second appeal procedure which may be requested within fifteen days beginning from the notification of the final decision. The second appeal request must conclude within two months at the latest.

Amendments Regarding the Criminal Courts of Peace

As per Law No. 6545, the criminal courts of peace are replaced with the criminal judicature of peace. The criminal judicature of peace takes judicial decisions, deals with affaires and examines the objections against all these.

Moreover, certain changes appear in legal remedies within the scope of the Law of Criminal Procedure No. 5271. Before such amendments, criminal courts of first instance examined the objections made against decisions of the criminal court of peace. In accordance with the new regulation, objections made against the criminal judicature of peace are examined by the subsequent numbered judicature of peace, in case there is more than one criminal judicature of peace within the relevant judicial locality.

Amendments Regarding the Commercial Court of First Instance

The Law No. 6545 contains structural changes regarding the commercial courts of first instance, such as abandoning the single judge system and bringing the court board system.

The court board is composed of a chief judge and two members. Law No. 6545 lists the actions to be concluded by the commercial court of first instance. Some of these actions are listed as follows: actions for which the value of the claim is over three hundred thousand Turkish lira; actions regarding bankruptcy, postponement of bankrupt-

cy, removal of bankruptcy, closing of bankruptcy, concordatum; actions based on restructuring; actions for annulment and nullity of general assembly resolutions; liability actions to be filed against the managing and auditing body; actions regarding objections against arbitration clauses, actions for setting aside of arbitral awards, actions on the appointment and refusal of the arbitrator and actions regarding recognition and enforcement of the foreign arbitral awards.

Conclusion

Law No. 6545 has amended the administrative procedural system, the structure of the criminal courts of peace and the commercial courts of first instance. In consideration of the new regulation, the administrative judicial system shall be implemented through a system of three instances. On the other hand, an expedited judicial procedure appears in the administrative judicial system for the first time. Moreover, the criminal courts of peace have been removed and the criminal judicature of peace is formed by the new regulations of Law No. 6545. Further, the single judge system in the commercial court of first instance has been removed and the actions to be concluded by the commercial court of first instance are listed.

Innovations Brought to the Preliminary Injunction by the Code of Civil Procedure*

Att. Alper Uzun

Introduction

As is known, a preliminary injunction is a provisional legal protection, aimed at the prevention of damages to a party in a dispute prior to the final determination of the merits of the legal case. The Code of Civil Procedure ("CCP") No. 6100, which entered into force on 1st of October 2011, provides innovations to the preliminary injunction. These innovations concern jurisdiction to impose a preliminary injunction and possible legal remedies against such decisions. In line with these innovations, other changes are provided in order to resolve problems and disambiguate some of the clauses regarding the preliminary injunction.

The Approach of the CCP to Provisional Legal Protections

It is observed that the notion of "provisional legal protection" is important in the CCP and that it is the first appearance of this notion in the code, although it is used frequently among legal scholars. Yet, Section 10 of the CCP is entitled "Provisional Legal Protections" and preliminary injunctions are addressed in Article No. 389 et seq. in this Section.

The legal justification of the CCP states that provisional protections are very important and some specific regulations are provided for this purpose, as final legal protection may require prolonged and detailed examination. It is emphasized that the State shall not only regulate and uphold the right to appeal legal remedies or the methods of legal protection, but it also has an obligation to assure the efficiency

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* *Article of February 2014*

and applicability of these rights and methods by establishing a proportional and engaged solutions for the need for legal protection.

Provisions, Innovations and Their Legal Justifications Relating to Preliminary Injunctions

"Preliminary Injunction" is provided in the first Article below Section 10 of the CCP entitled, "Provisional Legal Protection". Article No. 389 CCP stipulates the conditions for granting a preliminary injunction. Pursuant to this article, in order to grant a preliminary injunction, there must be a concern that an inconvenience or a serious damage would occur as a result of a delay, or a change in the current situation, which would cause a difficulty or impossibility related to the exercise of a right.

The Request for a Preliminary Injunction

Article No. 390 regulates the request for a preliminary injunction. Accordingly, before the main lawsuit is filed, a preliminary injunction can be requested from the court, which has authorization and competence to hear the main lawsuit. If the main lawsuit was already filed, a preliminary injunction must be requested from the court during the litigation procedure. In this respect, there is a difference between the CCP and Code No. 1086, which was annulled. As a consequence, preliminary injunction requests from courts which have no relation to the concrete case; vagueness and abuses regarding the authorization and competence of these courts, which may render preliminary injunctions, are prevented.

The Second Paragraph of Article 390 sets forth that, a judge may grant a preliminary injunction without listening to the other party, where there is an obligation to protect the rights of the claimant immediately. Although the right to be heard is an essential, unalienable right, it will be necessary to consider immediate provisional legal protections in some cases; this may mean that informing the other party could result in diminishing the effectiveness of provisional protections. Therefore, a judge has the discretion to grant a preliminary injunction, depending on the conditions of the concrete case, without the obligation to hear from the other party.

In the same Article, it is stipulated that the party who requests a preliminary injunction has to specify explicitly the grounds and the type of preliminary injunction in their petition, and has to prove why they are justified with respect to the merits of the main case. The aim of this provision is to ensure that the party requesting a preliminary injunction examines and clearly establishes the subject of, grounds for and type of injunction before making their request.

The Notion of "Approximate Proving"

The notion of "approximate proving", which was acknowledged by legal scholars, is mentioned in the CCP with a special objective. As is known, if it is not clearly regulated by law or it is not necessitated by the situation, the judge must reach a complete proving for the case necessarily. Instead of a total conviction, a probable conviction is deemed to be enough with respect to reduced level of proof. An approximation is determined as sufficient for provisional legal protection since there are circumstances, such as not having enough time to listen to the other party, or to examine all evidence in detail.

In the case of an approximate proving, judge admits that the claim for preliminary injunction is most likely true, but he also shall not ignore the fact there is a slight possibility for the opposite situation. Thus, courts generally demand that the party requesting a preliminary injunction deposit a guarantee in consideration for the possibility that the requesting party might be wrong.

Guarantee

Pursuant to Article No. 392 CCP, the party who requests a preliminary injunction is obliged to provide a guarantee in order to pay the damages sustained by the other party or third parties, in case the preliminary injunction is later determined to be unjust. However, there is an exception to this rule. The court may decide not to take a guarantee, by stating its grounds explicitly; if the situation requires granting the decision without guarantee or the request is based on an official document, to prove the claim.

The Decision to grant an Injunction

Following the request, the court may grant any type of injunction that would remove the inconvenience or prevent the damage, such as maintenance or sequestration of a right or good, or doing or undoing something. In the legal justification of the CCP, it is emphasized that a decision, which would by its nature resolve the main dispute, shall not be rendered as a preliminary injunction.

There was no explicit term for the execution of a preliminary injunction in the abolished Law No. 1086. However, pursuant to Article No. 393 CCP, once granted, the orders for a preliminary injunction must be executed within one week as of the date of its rendering. Otherwise, even if the action was filed within the prescribed time, the decision on injunction is rescinded by itself.

The Legal Remedies and Objections against the Decision to grant an Injunction

One of the most important innovations brought by the CCP is in Article No. 394, which addresses objections to the granting of an injunction and the legal remedies attached to such an objection. The other party may object to the conditions of the preliminary objection, or to the venue of the court or to the guarantee at the same court that rendered the decision. The objection must be submitted within one week, as of the date of the injunction executed, if the parties attended the execution. If the parties did not attend the execution of the injunction, then the objection can be made within one week, as of date of notice of the execution notes, to the relevant parties. Similarly, third persons, whose interests are explicitly violated, may also object to the conditions of the injunction and to the guarantee, within one week as of the date that they learned the preliminary injunction.

The last decision which rendered after objection can also be appealed. This right for appeal is an innovation for our civil procedure law. This application will be examined primarily and the decision which will be rendered after the examination will be a final decision. The fact that there is an application of legal remedy does not prevent the execution of the injunction.

To Change or Lifting of the Preliminary Injunction

Pursuant to the CCP, the court can lift or change the preliminary injunction if the person against whom the preliminary injunction was ordered or executed deposits a guarantee, which shall be accepted by the court. Besides, it is also possible to lift or change a preliminary injunction without a guarantee, if it is determined that the circumstances are changed. In this case, it is possible to make an objection to the decision of the court following the above-mentioned procedure. It is also stated in the justification of the Code that a preliminary injunction serves to safeguard rights, not to punish or suppress the other party. For this reason, if the conditions, which made the preliminary injunction essential, change after the decision to grant it is rendered, it has to be lifted or changed according to this alteration. Otherwise, there will be negative results which will be incompatible for protecting the purpose of preliminary injunction and the balance of benefit of the parties'.

The Proceedings That Complete a Preliminary Injunction

If a preliminary injunction is granted before filing a lawsuit, the claimant must file the main lawsuit and receive a document that he filed the lawsuit within 2 weeks as of the date of his request for a preliminary injunction. Otherwise it is arranged that preliminary injunction will be released by itself, without a transaction. As the preliminary injunction is a provisional legal protection, the main claim must be converted to a lawsuit and submitted to the relevant court within the shortest time possible.

Unlike the annulled Code No.1086, effective period, or term, of a preliminary injunction is stated in the CCP. Accordingly, a preliminary injunction will remain in effect until the final decision of the court is rendered.

Unjust Injunction and Compensation

The party in whose favor a preliminary injunction is granted is obliged to indemnify the damages resulting from an unjust preliminary injunction where the preliminary injunction is determined to be unjust, or the rescission of the injunction occurs or a rescission of the injunc-

tion is granted following an objection being filed. This lawsuit will be time barred in one year following the finalization of the decision or the rescission of the injunction. Detailed information on this action is provided in our July 2011 Newsletter.

Conclusion

The CCP No. 6100, which entered into force on 1st of October 2011, provides new rules with respect to preliminary injunctions. The preliminary injunction, which is a temporal legal protection, is reformed by taking into consideration problems and ambiguities observed by legal scholars and in practice. In addition, two main innovations are provided by the CCP with respect to preliminary injunctions. These innovations are related to the jurisdiction of courts that grant preliminary injunctions and on the legal remedies, or right to object, to these decisions.

Special Enforcement Proceedings in Turkish Legislation: Enforcement by Foreclosure of Collateral and Bankruptcy[*]

Att. Alper Uzun

Introduction

According to Turkish enforcement legislation, the legal remedies for execution proceedings and the rights granted to the creditor, depend on the legal power of the documents possessed on which the proceeding is based. There are different types of proceedings for each legal circumstance. In each type of procedure, the period for payment and objection and also the consequences of objection are different.

According to Article 45 of the Enforcement and Bankruptcy Law ("EBL"), if a creditor has a security over the assets of the debtor (e.g. mortgage, movable pledge, share pledge, bank account pledge), the creditor has to initiate special execution proceedings against the debtor first, which is called "enforcement by foreclosure of collateral". If the security is not enough to cover the credit, then the creditor may initiate other execution proceedings, which will be determined according to the power of the documents that the creditor possesses.

Enforcement by Foreclosure of Collateral

One of the special enforcement proceedings regulated under the Turkish legislation, which is "enforcement by foreclosure of collateral" divides into two categories that are called "enforcement by foreclosure of collateral on movables (or, foreclosure of pledged property)" and "enforcement by foreclosure of mortgage".

According to the enforcement by foreclosure of collateral on movables (or foreclosure of pledged property), the creditor may initiate the

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[*] ***Article of May 2014***

standard execution proceeding against the debtor and the debtor will receive a “payment order”, which notifies that the asset will be sold unless the debtor can pay the debt in 15 days or objects against the payment notice in 7 days. This proceeding allows the debtor to object to the payment notice before the execution office.

In the second cae of “enforcement by foreclosure of mortgage”, there will be two ways for execution proceedings which will differ based on the kind of the legal documents and objection opportunities granted to the debtor.

If the official document, known as an agreement table, which is prepared by the land registry office and shows the degree of mortgages, contains an unconditional acknowledgment of debt, then the creditor may initiate the more secure execution proceeding and the debtor will receive an “execution order”. In this proceeding, the debtor will be sent notice that the asset will be sold unless the debtor can pay the debt in 30 days or can submit a decision for adjournment of execution.

If the agreement table does not contain an unconditional acknowledgment of debt, the creditor may initiate the standard execution proceeding against the debtor and the debtor will receive a “payment order”, which states that the asset will be sold unless the debtor can pay the debt in 30 days or objects to the notice of payment due within 7 days. As it is seen, this proceeding allows the debtor to object to the payment notice before the execution office. If the debtor objects to the execution proceeding, the creditor must initiate a lawsuit to continue the proceedings.

Bankruptcy Proceedings

For unsecured debts, the creditor may initiate an ordinary execution proceeding or a bankruptcy proceeding against the debtor.

In some cases, the ordinary execution proceeding may be ineffective and may end without obtaining a satisfactory result for the creditor. Therefore, Turkish legislation allows the creditor to initiate a bankruptcy proceeding against the debtor.

Where the creditor initiates a bankruptcy proceeding, the creditor starts this proceeding by making a demand to the execution office

located in the area where the debtor's principal place of business is registered at the trade registry. After initiation, the debtor will receive a payment order, which gives notice that the creditor may file a bankruptcy lawsuit unless the debt is paid within 7 days or an objection is submitted before the execution office. If the debtor submits an objection, then the creditor may initiate a lawsuit for cancellation of the objection. At the end of the judgment, the court may accept the case and decide to declare the debtor bankrupt. As is known, declaration of bankruptcy means that all of the debtor's assets will be organized to pay all their debts.

According to Article 177 EBL, the creditor may also file a lawsuit for bankruptcy directly against the debtor where the debtor suspends the payments, runs away, makes fraudulent transactions or hides assets from creditors.

However, the debtor may also initiate a lawsuit for the postponement of bankruptcy. The representatives of the company or any of its creditors may request postponement of bankruptcy, i.e. where bankruptcy is deferred until a more in-depth review of the actual financial situation is conducted. Postponement of bankruptcy will only be considered when the company submits to the court a proposal to restructure its financing, primarily to the benefit of its creditors. Should the court consider the restructuring plan viable, it may grant the company bankruptcy postponement for a period of one year. The postponement period may be extended, subject to the determination of the courts but shall not exceed four years. The court that rendered the decision to postpone bankruptcy may take all necessary measures to protect the assets of the company and may appoint a trustee upon making its decision. If the court does not accept the restructuring plan or is convinced that the debtor company cannot continue its activities, then the court will dismiss the request for postponement and decide to open the debtor's bankruptcy proceeding because in such a lawsuit the claimant claims that the debtor ran into debt and the debtor will go bankrupt if it is not postponed.

Some restrictions are imposed on creditors enforcing their rights over companies under postponement of bankruptcy. For example, during the postponement period, no proceedings may be filed against the

company and any proceedings previously initiated are suspended. Prescription periods and statutes of limitations deadlines shall be suspended until the end of the postponement of bankruptcy. It is important to note that foreclosure proceedings, mortgage claims and commercial pledges may be initiated or continued during such postponement period. Although such proceedings may be in effect, it is important to highlight the fact that during the postponement period, creditors may not take repossession measures, and the sale of pledged property may not be carried out.

Conclusion

According to Turkish enforcement legislation, there are different types of proceedings for each legal circumstance. The legal remedies for execution proceedings and the rights granted to the creditor depend on the legal power of the documents possessed on which the proceeding is based on. If a creditor has a legal security over the assets of the debtor, then the creditor has to initiate special execution proceedings against the debtor first, a process called “enforcement by foreclosure of collateral”. For unsecured debts, the creditor may initiate a bankruptcy proceeding against the debtor, where the ordinary execution proceeding seems ineffective.

Substantial Amendments to the Administrative Procedure[*]

Att. Alper Uzun

Law No. 6545, which entered into force through publication in the Official Gazette dated 28.06.2014, essentially amends the Administrative Procedure Law ("APC") and adopts new provisions pertaining to the administrative procedure.

With the amendment of Law No. 6545 several substantial changes concerning the administrative procedure have been adopted, such as the structuring of Regional Administrative Courts as courts of intermediary appeal ("*istinaf*"), the replacement of the objection procedure by the intermediary appeal procedure, the adoption of an expedited trial procedure for certain cases, revision of judgments which are subject to appeal and the abolishment of the procedure for the revision of judgment.

Expedited Trial Procedure

Adoption of the expedited trial procedure is one of the substantial amendments adopted by Law No. 6545. As indicated by the texts of legislative intent for the articles, certain administrative proceedings have a different nature than the others and delay in the process of rendering such judgments may result in damages difficult or impossible to irrevocable or impossible to compensate. Since such proceedings are required to be finalized as soon as possible, expedited trial procedure is adopted in order to be applied in such cases.

Dispositions concerning expedited trial procedure are set forth in Art. 20/A of the APL as follows:

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* ***Article of September 2014***

1. *Expedited trial procedure is applicable for the disputes resulting from the following acts:*
   a) *Acts concerning auctions except decisions on prohibition from bidding,*
   b) *Acts of expedited expropriation,*
   c) *Decisions of the High Board of Privatization,*
   d) *Acts regarding the sale, allocation and rental in accordance with the Tourism Promotion Law No. 2634 dated 12/3/1982,*
   e) *Acts resulting from Environmental Impact Assessment except administrative sanctions in accordance with the Environment Law No. 2872 and dated 9/8/1983, and*
   f) *Council of Ministers' Decisions adopted in accordance with the Law on the Transformation of Areas at Risk of Natural Disaster No. 6306 and dated 16/5/2012.*

The second paragraph of said article defines the application of the expedited trial procedure. Accordingly, the lawsuit should be initiated within thirty days instead of sixty, and the term for preparation of defense is set forth as fifteen days instead of thirty. These lawsuits must be concluded within one month at the latest, starting from the consummation of the file. It is also regulated that the appeal should be filed within fifteen days starting from the final judgment, the term for filing the defense is fifteen days, and the process of appeal should be finalized within two months.

As is seen, the expedited trial procedure contains significant amendments which accelerate the proceedings with respect to normal trial procedure. The expedited trial procedure shortens the term of litigation, term for preparation of defense and the period of appeal for the parties; and the term of inspection for the courts. Additionally, objection with regard to decisions granted for the requests of stay of order and the procedure of revision of decision is abrogated with the new amendments.

On the other hand, it is clearly stated in the relevant article of Law No. 6545 regarding the intermediary appeal that, the procedure of intermediary appeal is not applicable in the expedited trial procedure.

Amendments to Intermediary Appeal and Other Appellate Procedures

As is known, the intermediary appeal is an intermediate legal remedy for the judgments of the court of first instance to be reviewed by the higher court and a legal procedure prior to the appeal procedure.

The intermediary appeal procedure, which was introduced to our legal system in 2004 through amendments made to Civil Procedure Law, has been introduced to the administrative procedure by virtue of Law No. 6545 as well. According to this significant amendment in administrative legal remedies, the concept of "objection", which was found in the first part of APC Art. 45 entitled "Legal Remedies for Court Judgments", has been replaced with the "intermediary appeal". As a result of this amendment, in order to determine whether intermediary appeal or appeal will be in question concerning a decision, the concept of "appeal" which was formerly regulated in APC Art. 46 has been amended accordingly.

In accordance with the amendment made to APC Art. 45 through Law No. 6545, even if it is regulated otherwise in another code, the judgments of administrative and tax courts of first instance shall be subject to intermediary appeal. The intermediary appeal shall be made to the "regional administrative courts", which is within the same judicial locality with the relevant court of first instance, within thirty days from the notification of the judgment. However, it is also regulated that, the judgments of administrative and tax courts regarding tax actions, full remedy actions and actions for nullity against the administrative acts of which the matter in dispute is not higher than five thousand Turkish Lira are definitive and may not be appealed. Another significant issue regulated within the same article is that, the decisions of the regional administrative courts, which are enumerated under APC Art. 46. are definitive and they are not subject to appeal. As mentioned above, in the expedited trial procedure, the intermediary appeal procedure cannot be applied.

With the provisions on intermediary appeal procedure newly introduced to the APC, Art. 46 entitled "Appeal" has also been amended, and the judgments subject to appeal have been rearranged. Accordingly, even if otherwise provided under different laws, the final

judgments of the Council of State's administrative law divisions and the judgments regarding the cases listed under the abovementioned article delivered by regional administrative courts may be appealed to the Council of State within thirty days following their notification. It must be emphasized that, as a result of this amendment, tax cases, full remedy actions and actions for annulment against administrative acts for which the value of the claim is less than a hundred thousand Turkish Liras cannot be appealed to the Council of State. Thus, judgments concerning cases for which the value of the claim is less than five thousand Turkish Liras are not subject to intermediary appeal, and the judgments concerning cases for which the value of the claim does not exceed a hundred thousand Turkish Liras are not subject to appeal.

In addition to the amendments made by Law No. 6545, revision of judgment is abrogated for administrative cases.

Conclusion

To sum up, significant amendments have been made to the APC by Law No. 6545 which entered into force by promulgation on June 28th, 2014.

Accordingly, the intermediary appeal procedure has been introduced as a legal remedy in administrative procedure instead of objection procedure and the Regional Administrative Courts of Appeal have been structured as authorities of intermediary appeal. Additionally, the expedited trial procedure has been introduced for certain cases in order for them to be concluded faster, the judgments subject to appeal are subject to regulation, some judgments cannot be appealed and the revision of judgment has been abolished.

ENERGY LAW

Renewable Energy Under the Electricity Market Law*

Att. Berna Asik Zibel

Under the "Law on Use of Renewable Energy Resources for Electric Energy Generation"[1] ("Renewable Energy Law"), renewable energy resources are listed as hydraulic, wind, solar, geothermal, biomass, biogas (including landfill gas), wave, current and tidal energy, which are non-fossil energy resources.

The new Electricity Market Law[2], which entered into force on March 30, 2013 ("EML") contains some new provisions regarding renewable energy resources.

In this article, we will review the provisions of the EML specific to renewable energy resources, including solar and wind energy.

License Terms and Generation Activity based on Renewable Energy Resources

One of the most important provisions regarding renewable energy resources under the EML is related to licensing. Pursuant to the general provisions on licensing, legal entities, which will conduct market activities, shall obtain separate licenses before starting their operation, for each activity and for each facility when those activities will be conducted at different facilities. However, the EML sets forth an exception for generation facilities based on renewable energy resources under Article 5, paragraph 2(f). According to this provision, generation facilities based on the same type of renewable energy resources, which are located at the surface of more than one premises, can be considered under one generation license provided that they are connected to the

* ***Article of June 2014***

1 Official Gazette 18 May 2005, no. 25819.

2 Official Gazette 30 March 2013, no. 28603.

system from the same point. The implementation terms and conditions of this provision will be determined by the Energy Market Regulatory Authority ("EMRA").

Article 7 of the EML sets forth the provisions related to generation activities based on renewable energy resources. According to this article, the legal entities generating electricity based on renewable energy resources can obtain a "renewable energy resource certificate" from the Ministry of Energy and Natural Resources ("Ministry"). In that regard the Ministry adopted the Regulation on Certification and Support of Renewable Energy Resources[3] ("Certification Regulation"). And the detailed rules on the renewable energy resources certificate ("YEKBEL") and the support mechanism for the renewable energy resources ("YEKDEM") are regulated in this Certification Regulation.

The EML sets forth some incentives for electric generation activities based on renewable energy resources. Pursuant to Temporary Article 4 of the EML, facilities generating electricity based on renewable energy resources may apply to the relevant ministry for obtaining the necessary permit, right of lease or usufruct of immovable properties which are qualified as forest areas or owned by the treasury, or under the possession of the state in order to utilize those areas for energy transmission lines. For generation facilities which are already in operation or that will have begun their operation until December 31, 2020, the rents or fees of such aforementioned areas shall decrease 85% during the first ten-years of investment or operation.

Activities based on Renewable Energy Resources without a License

Article 14 of the EML regulates the activities which can be conducted without a license. Some of those activities are based on renewable energy resources. According to this article, generation facilities based on renewable energy resources,

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[3] Official Gazette 1 October 2013, no. 28282.

- the installed capacity of which is maximum 1 mW, and
- which utilize all of their generated energy without giving it to the connection or distribution system and which have the same measurement point of generation and consumption, can conduct their activities without a license.

The Council of Ministers is authorized to increase the installed capacity of renewable energy plants to operate without a license to 5 mW.

In accordance with Article 14 of the EML, the Ministry adopted the Regulation on Unlicensed Electric Generation[4] ("Unlicensed Generation Regulation").

According to Article 5 of the Unlicensed Generation Regulation, generation facilities based on renewable energy resources, the installed capacity of which is maximum 1 mW or below the increased installed capacity by the Council of Ministers are not obliged to obtain a preliminary license or license and to incorporate a company. This provision is in compliance with Article 7 of the Electricity Market Licensing Regulation[5] ("Licensing Regulation").

Provisions on Solar and Wind Energy Resources

Article 7 of the EML stipulates the terms of preliminary license application for generation facilities based on wind and solar energy. According to this article, in the event that an application is made by the owner of the immovable property on which the generation facility will be established, other applications are not taken into consideration for evaluation. During the applications, it is necessary to submit wind or solar measurements for a minimum term of one year, which have been obtained within the last three years and in compliance with the standards. By taking into consideration the technologies used by TEIAS[6] and the relevant distribution company; only the applications, which receive positive opinion for compatible connection, shall be subject to

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4 Official Gazette 2 October 2013, no. 28783.

5 Official Gazette 2 November 2013, no. 28809.

6 The abbreviation is for Turkish Electric Transmission Joint Stock Company. It is the only company in Turkey which conducts transmission activities with a transmission license.

evaluation. In the event that there is more than one application, which require connection to the same connection point or same connection area, a contest shall be organized for selection of the applicants who offer and undertake to pay the highest total contribution fee per unit megawatt.

Provisions on Hydroelectric Power Plants

Besides general provisions regarding the renewable energy resources, the EML also regulates a few provisions specific to the hydraulic resources.

As is known, signing a water utilization right agreement is required to obtain a license for electric generation activities based on hydraulic resources. Pursuant to Article 29, for the applications for signing a water utilization right agreement, the General Directorate of State Hydraulic Works ("DSI"[7]) is entitled to determine the legal entity, which will sign the water utilization right agreement. In case of more than one application for one resource, the legal entity, which offers to pay the highest hydroelectric resource contribution fee, shall be selected for signing the agreement and notified to EMRA. The contribution fee shall be paid every year by the end of January and recorded as revenue to the DSI's budget.

Temporary Article 15 of the EML sets forth a provision specific to idle hydroelectric power plants. According to this provision, the right holders of the hydroelectric power plants; which generated electricity before the previous Electricity Market Law No: 4628[8] ("Previous Law") entered into force, and later on, stopped their activities or could not connect to the distribution system, may sign a water utilization rights agreement with DSI with a fee of TRL 0,01/kilowatt-hour without requiring an announcement by DSI, provided that an application shall be made within six months as of the date the EML entered into force and the application area does not coincide with already existing projects.

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7 The abbreviation is well known and accepted term in Turkish for the General Directorate of State Hydraulic Works.

8 Official Gazette 3 March 2002, nr. Reiterated 24335.

Conclusion

As reviewed within this article, there are very few provisions in the EML specific to renewable energy resources. Mostly, those provisions regulate either very general issues or temporary issues. Detailed rules have been regulated with secondary legislation and there is more than one regulation setting forth the applicable provisions on generation of electricity based on renewable energy resources.

The exemption set forth under Article 5 paragraph 2(f) of the EML, related to the activities of several generation facilities based on renewable energy resources under one license, may be considered as a positive development for market progress. In addition, increase of the maximum limit for the activities without requiring a license to 1mW is also a significant revision.

Model Contract Used in the Construction Sector Series*

Att. Tuna Colgar

FIDIC (International Federation of Consulting Engineers) Types of Model Contracts - General Information

The International Federation of Consulting Engineers is a professional association established in 1913, known as the FIDIC (Fédération Internationale Des Ingénieurs-Counseils). Its members are duly elected from consultant-engineer associations of various countries, and membership to the association is limited with the inclusion of one professional association from every country. Today, the FIDIC is comprised of associations representing 97 different countries from all around the world, including Turkey. Turkey became a member of the FIDIC in 1987 via the Union of Chambers of Turkish Engineers and Architects. The FIDIC plays a significant role in determination and implementation of the strategic goals of the consultancy-engineering sector in the name of its member associations, and in providing resources and information to its members regarding the sector. Additionally, the FIDIC develops sector-related policies and professional principles, and is engaged in activities meeting the needs of each member country's associations.

The ultimate goal of the FIDIC is to preserve the benefits of its members, and to contribute to the professional development, both nationally and internationally. In order to pursue and expand the scope of its goals, the FIDIC publishes standard contracts, procedures, recommendations and informational documentation for its customers, consultants, sub-contractors, consortiums and their representatives to use. In addition to the mentioned publications, the FIDIC prepares model contracts, declarations of principles, and work-practice docu-

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* ***Article of November 2014***

ments, position papers, guidelines, training manuals of management systems (quality management, risk management, business integrity management, environment management and sustainability), and information regarding business steps, such as consultant selection, quality based selection, tender processes, supply, insurance, liability, technology transfer, and capacity development for its members[1]. The main purposes of the publication of these documents are to standardize the terminology, to make the documents more user-friendly and uniform, and to organize the relationship between the parties (the Employer – Contractor – Representative/Consultant/Engineers) of sector-related operations.

The most popular and frequently used documents among the FIDIC publications are the model contracts. Within this context, Conditions of Contract of Works of Civil Engineering Construction (the Red Book), Conditions of Contract for Plant & Design-Build Works for Electrical and Mechanical Works (the Yellow Book), Conditions of Contract for Design-Build and Turnkey Works (the Orange Book), Guide to the Joint Venture and Sub-Consultancy Agreements (the Blue Book), Client/Consultant Model Services Agreement (the White Book) and Conditions of Contracts for EPC Turnkey Projects (the Silver Book), are exemplified as some of the model contract publications of the FIDIC.

In order to meet the sectoral needs, the FIDIC revises the model contracts, and collects and creates new model contracts. In this context, “the Pink Book,” which was published in 2010, is mainly preferred by the banks, and places particular focus on project finance necessities. Again, by virtue of similar reasons, the Form of Contract for Dredging and Reclamation Works, in other words, “the Turquoise Book,” Conditions of Contract for Design, Build and Operate Projects, i.e. “the Gold Book,” and Conditions of Subcontracts for Construction, were published respectively in 2006, 2008, and 2011.

Summary information regarding the most popular of these aforementioned books is as follows:

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[1] For more information please see: http://fidic.org/about-fidic.

The Red Book

The Red Book, which is the FIDIC book with the broadest scope of application, mainly regulates the relationship between the employer and the contractor. The first edition of this book was published in 1957, and the fourth one in 1987. Minor changes on the latest edition were made in 1992. Consequently, the fifth edition, which is the current one, was published in 1999. Along with this edition, the book's name was changed to its present name, Conditions of Contract of Works of Civil Engineering Construction. The Red Book was envisaged for works where the employer handles the general design works, while the contractor designs and carries out the construction operations of some of the plants. In light of the regulations available in the fifth edition, it is acknowledged that the Red Book is more suitable for relatively simple works, which are mostly comprised of civil engineering works, such as water and sewerage systems, pipelines and building construction[2].

The Yellow Book

The Yellow Book that was formed by joining of the Conditions of Contract for Plant & Design-Build Works for Electrical and Mechanical Works (the Yellow Book) and the Conditions of Contract for Design-Build and Turnkey Works (the Orange Book) regulates the relationship between employers and the contractors, as with the Red Book. However, the Yellow Book is specifically used for construction and installation operations that are performed by the contractor. In construction works that are subjected to the Yellow Book, the contractor performs plant design, construction and engineering operations. The Yellow Book is recommended for works that are based upon the know-how and experience of contractors who are not bound by the designs and the standards created by the employer. Within this context, the Yellow Book is suggested for construction of pumping stations, water and waste purification, as well as industrial plants and waste gas filtration plants.

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2 FIDIC Kurallarının Karşılaştırmalı Hukuktaki Yeri, **Dr. Nazlı Töre**, p.12, Ankara 2011.

The Silver Book

The Silver Book entitled “Conditions of Contract for EPC Turnkey Projects” was published in 1999 by virtue of the insufficiency of the Orange Book in satisfying the needs of the sector. It was prepared with the purpose of providing rules that apply to all infrastructure works of projects in which the term, turnkey, is in question. With respect to construction projects to be considered within the scope of the Silver Book, the contractor carries out the engineering, procurement and construction works until the fully equipped facility is completed and commences operations. The employer does not usually concern itself with the designs of the works to be considered within the scope of this book. However, the employer will concern itself with the construction works. Within the framework of its regulations, the Silver Book is more suitable for the construction of the plants used for procurement and purification of drinking water, or the burning of solid wastes and power plants.

The Green Book

The Green Book is used for the design works of the construction project being performed by both by the employer and the contractor in accordance with the employer’s requests. This is referred to as the short contract, and is generally preferred in order to be used in accordance with short-term, recurring, and simple construction works. With respect to various of the works within the scope of the Green Book, the usage of sub-contractors or engineers may not be necessary in some cases. Moreover, the contractor usually carries out both the design and construction works. The Green Book is used for works that are planned to be concluded within a 6 month period, with a value of USD 500 000 or less[3]. Due to this fact, the Green Book it is rather short and concise.

In the light of the above-mentioned information, the general structure, including the content and regulations of the model contracts that are envisaged, are set forth below:

- *Clause 1*: “General Provisions” – matters that apply to the contract, in general, such as; general definitions, applicable lan-

3 FIDIC Kurallarının Karşılaştırmalı Hukuktaki Yeri, **Dr. Nazlı Töre,** p.12, Ankara 2011.

guage and law, priority of documentation, joint and several liability, interpretation of the clauses, confidentiality, and compliance with the law, are stipulated within this clause.

- *Clause 2-4*: The duties and obligations of "The Employer," "The Engineer" (Red and Yellow Book) and "The Contractor," administration and implementation of the Employer (Silver Book) and the duties and obligations of those that play a part in the execution of the works are determined in these clauses.
- *Clause 5*: Provisions regarding "Nominated Subcontractors" (Red Book) and the "Design" (Yellow and Silver Book) are be found in this clause.
- *Clause 6*: Provisions concerning the liability and necessities regarding "Personnel and Labor" concerning the project under both the Contractor and the Employer are found in this clause.
- *Clause 7*: The provisions regarding "Plant, Materials and Workmanship," governs the materials that the Contractor may bring to the site, as well as test processes to be performed, are found in this clause.
- *Clause 8-11*: Provisions of "Commencement, Delays, Suspension, Tests on Completion, Employer's Taking Over and Defects," and the consequences of these events, are found in these clauses.
- *Clause 12*: "Measurements and Evaluation" (Red Book) and "Tests After Completion," (Yellow and Silver Book) are the subjects envisaged within this clause.
- *Clause 13-14*: Provisions regarding the "Variations and Adjustments," "Contract Prices and Payments," and the relevant procedures thereto are found within these clauses.
- *Clause 15-16*: "Termination by Employer," and "Termination by Contractor," the procedure and consequences of the usage of these rights are found in these clauses.
- *Clause 17*: The "Risk and Responsibility" clause determines the risks that the parties have undertaken, the risk limitations, and the procedure to follow in the event of a situation considered to be a risk.

- *Clause 18*: The clause regarding the "Insurance" includes provisions under the Contractor or the Employer at or before the commencement of the work.
- *Clause 19*: The "Force Majeure" clause determines the scope of the force majeure and the procedure to follow upon such occurrence.
- *Clause 20*: The of "Claims/Demands, Disputes and Arbitration," includes the procedure to follow in the event one of the parties demands, and the procedures for, the appointment and functioning of the Dispute Adjudication Board, followed by the Arbitration Board.

Additionally, every single model contract contains an Appendix List and example forms in compliance with its content.

The amendments to these model contracts are made by the parties via negotiation, and the most suitable provisions for the specific project are adopted. However, due to the fact that the clauses and the structure of the model contracts are edited within a certain order, the effects of the amendments to the contract shall be scrutinized, and consequences to each of the amendments shall be approached with the utmost care.

Within the framework of the explanations, above, both in terms of the Employer and the Contractor, in order for the legal and commercial relationships to function properly, without any problems, the works must be built on solid legal grounds. Therefore, by using model contracts that are internationally accepted and recognized by the players of the markets, these works and relations can be performed most efficiently.

The New Environmental Impact Assessment Regulation in Force*

Att. Alper Uzun

Introduction

Establishments, institutions, and businesses that may cause environmental problems via their activities, are obliged to obtain Environmental Impact Assessment ("EIA") Reports, or prepare project description files. The regulation on the EIA ("Regulation") entered into force through its publication in the Official Gazette dated November 25, 2014. Along with the new Regulation, harmonization with the European Union EIA Directive is accomplished (excluding the trans-boundary EIA), and the new provisions that determine the activities requiring an EIA Report are introduced. The Regulation states that necessary amendments are made in order for it to become more comprehensive and practical.

Summary on the Amendments

In conjunction with the Regulation, shopping centers are no longer exempt from the EIA Regulation. The Regulation stipulates that a project description report for shopping centers must be prepared and submitted to the Environment and Urbanization Provincial Directorates. It also regulates that the mass housing projects, which are comprised of 500 and more houses, shall be subject to the EIA Regulation. A real threshold for golfing facilities are also removed.

The conditions regarding the installed capacity of hydroelectric power plant projects operating at 25 MWm is amended. Currently, the said amount is lowered to 10 MWm. While hospitals and dialysis cen-

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* ***Article of December 2014***

ters are excluded from the scope of the EIA Regulation, railways are included.

Lakes with a capacity of 10,000,000 m3, and barrages or lagoons with a capacity of 5,000,000 m3, are now subject to the EIA Regulation regardless of their intended purpose. Water transmission projects with a capacity of 100,000,000 m3 are also included within the scope of the Regulation. Due to the fact that they are conducted with the purpose of purification of lakes and seas, dredging projects are lowered to a 50,000 m3 range, and included within the scope of the EIA Regulation.

Ceramic facilities with a production activity of 300,000 ton/year and more are added to the scope of the Regulation. Additionally, according to the provision regarding home appliance dyeing, such activities are also included in the Regulation as it relates to increasing tank capacities.

On the other hand, the provision pertaining to the exploration projects of mineral, petroleum, natural gas and etc., is removed from the Regulation. Public investment projects commenced prior to 23.06.1997, and which initiated production or operations as of 29.05.2013, along with the construction and facilities that are required for the execution of these projects, are excluded from the scope of the EIA.

Explanations

The provision regarding definitions is amended, as follows:

Environmental Impact Assessment not Required Decision; means that the Council of Ministers' Decision declaring that realization of the Project is not harmful to the environment after potential negative effects of the project are determined, considering the Projects Subject to Selection and Elimination Criteria, is at an acceptable level in accordance with the legislation and scientific principles as a result of measures to be taken.

Environmental impact assessment process; means the process that starts with the application for the environmental impact

assessment, and which covers the construction, operation and post-operation works.

Supervision and control; means all of the works conducted in accordance with the conditions that form the basis of the decision regarding the period following the construction, operation and post-operation works after the "Environmental Impact Assessment not Required" or "Environmental Impact Assessment Positive" determinations have been obtained with respect to the project to be implemented.

Therefore, the new Regulation stipulates that negative effects of projects must be limited to a reasonable level, as a result of sufficient measures to be taken, even though the previous regulation required demonstration of the non-existence of any environmental effect. The expression, "the process that terminates with the decision of the Ministry," is replaced with the expression, "the process that covers the construction, operation and post-operation works." In addition, the term, "regarding the commencement and construction period," is replaced with the term, "regarding the period after construction, operation and post-operation works."

Art. 7 titled, "The Projects Subject to Environmental Impact Assessment," is also amended. Subparagraphs c and ç, stated in the previous form of the Regulation are removed, and in Subparagraph d, the phrase, "projects that fall within the scope of this Regulation, and which have a threshold value; however, those are considered to be out of scope since their values are below the threshold," is replaced with the phrase, "projects that are considered to be out of scope." Therefore, an EIA Report is obligatory for those projects that are listed in Annex-1 - the "EIA Required" projects. As well, if a capacity increase and/or expansion, in relation to the projects falling outside of the scope is planned, those projects, whose new capacities are indicated as the sum of the existing project capacity, and the total of the increased capacity, are equal to, or higher than, the threshold, as listed in Annex-1 – then, an EIA Report must be prepared for those projects.

Art. 9 sets forth the Public Participation Meeting, having a substantial role in the EIA process, is amended as follows: "*The Public Participation Meeting is held with the participation of the Ministry-*

authorized establishments/institutions and the project owner in order to inform the public and receive their opinions and suggestions on the project at a central place and time determined by the Governorate, over which the public who will be most affected by the project may easily attend." Therefore, the new Regulation states that the meeting shall be held in a place that has the most ease for the public to attend.

The first paragraph of Art. 10, titled "Scope and Special Format Determination by the Commission," which is established by the Ministry for the purposes of determining the Special Format for the project and examining the EIA Report to be drafted, stipulates that as regards the EIA Report Special Format prepared by the Ministry, opinions and suggestions of Commission member establishment and institutions, as well as the general public, shall be taken into consideration. If the EIA report is not paid for, nor presented by the institution to the Ministry within the prescribed time, the EIA process shall terminate, rather than the EIA application is being deemed null and void. Likewise, Art.12 stipulates that if the adjustments made to the EIA Report are considered unsatisfactory, instead of the EIA application being nullified, the EIA process shall be terminated. Art. 14 titled "Environmental Impact Assessment Positive or Environmental Impact Assessment Negative Decision," states that the EIA process shall be terminated instead of the EIA application being deemed null and void, unless the Final EIA Report, the undertaking letter indicating "the Final EIA Report and its annexes are undertaken," as well as the notarized signatory circular are presented to the Ministry within five working days. Similarly, the regulation concerning "Application and Examination" sets forth that rather than the EIA application being nullified, the EIA process shall be terminated if the information and documents within the scope of the file bear insufficiencies, and such insufficiencies are not fulfilled within the prescribed time period.

With respect to the new Regulation introduced by Art. 15 titled, "Projects Subject to Selection and Elimination Criteria," the projects as indicated in the Annex-2 list, in the event a capacity increase and/or expansion in relation to the projects falling out of the scope is planned, and whose new capacities are indicated as the sum of the existing project capacity, together with the total of the increased capacity as listed in Annex-2, are subject to the selection and elimination criteria.

Additionally, paragraphs (c) and (ç) are removed. In paragraph (b), the expression "the projects considered as out of scope" replaces the expression "the projects falling within the scope of the Regulation and having a threshold value, however considered out of scope since their values are below the threshold."

The New Regulation includes Art. 24 titled, "Extraordinary Situations and Special Provisions," which sets forth that the method to be applied to the EIA process concerning the planned capacity increase and/or expansion of the projects with "EIA Positive" or "EIA Not Required" decisions shall be determined by the Ministry.

Art. 19 titled, "Termination of Practices Incompatible with the Regulation," abolished the provision concerning the limitation of the non-recurring extension of time to be granted by the Ministry/ Governorate for a maximum of ninety-days for the fulfillment of the undertakings in the project description file if they are not fulfilled, the new Regulation does not prescribe such time limitation.

Conclusion

The new Regulation on the EIA, which entered into force through its publication in the Official Gazette dated November 25, 2014, regulates the principles and procedures regarding EIA Reports or project description files that will mandatorily be obtained by the establishments, institutions and businesses, which may give rise to environmental problems via their activities, a number of amendments are introduced by the new Regulation with the capacity of affecting the practice.

LABOR LAW

Amendments to the Labor Law by Law No. 6552[*]

Att. Ecem Susoy

Introduction

The Law on the Amendment to the Labor Law and Certain Statutory Decrees and Restructuring Certain Receivables ("Law No. 6552") was published in the Reiterated Official Gazette, dated 11.09.2014 and numbered 29116. Law No. 6552, which consists of 145 articles along with 3 temporary articles, is publicly known as "the omnibus law" since it comprises various regulations.

Significant amendments on subcontractors, collective labor law, underground workers and workplace safety and security are introduced under Law No. 6552. These amendments are examined in this newsletter article.

Regulations Regarding Subcontractors

Pursuant to Art. 3 of Labor Law No. 4857 ("Labor Law"), the subcontractors shall register their workplaces, along with the subcontractor agreement and relevant documents. The subcontractor agreement and other relevant documents shall be examined by labor inspectors to determine if there are any fictitious transactions. As per the former regulations, an objection could be made to the local courts by employers against the labor inspectors' report on the determination of a fictitious transaction within 6 business days beginning from the date of notification of such report. Then, the relevant decisions rendered by the local court regarding any objections were final. However, Law No. 6552 extends the objection period to 30 business days and allows appeals against local court decisions.

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* ***Article of September 2014***

Art. 36/5 of the Labor Law is amended by Law No. 6552. As per the amended article, where the employers appoint subcontractors, they shall be obliged to examine monthly, ex-officio or upon an employee's request, whether the salaries of subcontractor employees are paid or not. If the salaries of subcontractor employees are not paid, the employers shall deduct this unpaid amount from subcontractors' progress payment and deposit the amount into the bank accounts of the subcontractor's employees.

Additionally, the paid annual leaves of the subcontracted employees who continue to work in the same workplace shall be provided and controlled by the employers, even if the subcontractor has changed.

New regulations are introduced regarding the severance pay of subcontractor employees who work in public agencies within the framework of the Public Tender Act No. 4734.

Regulations Regarding Collective Labor Law

Pursuant to the paragraph added to Art. 26 of the Law on Trade Unions and Collective Bargaining Agreements No. 6356 ("Law on Trade Unions and Collective Bargaining Agreements"), employer unions may create a fund for solidarity and aid, provided that relevant provisions are stated in their by-laws and the conditions are determined with a general assembly resolution.

Another significant amendment made in the Law on Trade Unions and Collective Bargaining Agreements is that: in order to conclude a collective labor agreement, the condition of "having at least three percent of the members within the line of business to which it pertains" is diminished to "one percent".

Regulations Regarding the Underground Workers

The 6-month severance period shall not be required for underground workers when labor contracts are terminated based on valid grounds. Thus, underground workers are included in the scope of job security even though they have worked for less than 6 months.

Pursuant to the regulation added by Law No. 6552 to Art. 63 of the Labor Law, the maximum working hours of underground mining

employees shall not extend beyond 36 hours per week and 6 hours per day.

The underground mining employees shall not be asked to work overtime unless urgent conditions, as stated under Art. 42, and extra-ordinary conditions as stated under Art. 43 of the Labor Law, arise. Under the aforesaid urgent or extraordinary circumstances, the hourly payment for every hour exceeding 36 hours shall not be less than one hundred per cent of the normal hourly payment.

In accordance with the regulation added by Law No. 6552 to Art. 53 of the Labor Law, underground workers shall have four additional days added to their paid annual leave.

Moreover, the minimum wages of underground workers who work at workspaces where lignite and mineral coal are mined are increased. Pursuant to the regulation added by Law No. 6552 to Additional Art. 9 of the Mining Law No. 3213, at workplaces where lignite and mineral coal are mined, the minimum wage paid to the underground workers shall not be less than twice as much of the minimum wage determined under Art. 39 of the Labor Law.

Regulations Regarding Occupational Health and Safety

Regulations on the international navigation of vehicles operating in maritime transportation are taken out of the scope of the Occupational Health and Safety Law No. 6331 ("Occupational Health and Safety Law").

New regulations are introduced by Law No. 6552 to the articles on the occupational health and safety.

According to Art. 6/1.a of the Occupational Health and Safety Law, health personnel other than the doctor shall be recruited in the work places with more than ten employees and that are in the category of very dangerous. According to another insertion, in work places that employ less than ten employees and that are in the category of less dangerous, the employer and the representative of the employer may conduct occupational health and safety services, except the periodic examinations and examinations for recruitment, provided that they conclude the trainings given by the Ministry.

As per the regulation brought with the Law No. 6552 to Art. 6/4 of the Occupational Health and Safety Law, apprentices and trainees shall not be counted in the number of employees working in the workplace in compliance with the Occupational Health and Safety Law.

Finally, pursuant to the regulation added to Art. 30 of the Occupational Health and Safety Law, the training programs related to occupational health and safety services, the training period, qualifications of the trainers, matters on assignment and related principles and procedures shall be determined by the Ministry of Labor and Social Security in workplaces which employ less than 10 employees, and which are specified under a less dangerous class.

Conclusion

Significant amendments on subcontractors, collective labor law, underground workers and workplace safety and security are introduced under Law No. 6552. It is seen that, said amendments bring particular regulations in favor of subcontractor employees and underground workers and the responsibility of the employers and subcontractors is increased.

Fixed-Term Employment Contract*

Att. Ozen Odev

In accordance with the definition in Article 11 of Labor Code ("Labor Law") No. 4857, "*The contract is considered as indefinite when the dealings are not done in accordance with a specific time. The written employment contract that is held between the employer and the employee is called a 'fixed-term employment contract' when it is based on objective conditions, such as fixed-term work, or the completion of a certain job, or the emergence of a fact.*" As is seen from the definition, the main objective is to enter into indefinite-term employment relationship. However, due to various objective reasons, it can be also a fixed-term employment relationship.

The Notion of Fixed-Term Employment Contract

An employment contract can be definite or indefinite, and this is based upon whether the expiration time of the contract is determined by the parties or not. In other words, the parties, through determining the expiration date of the contract, can bind the validity of the contract to a certain duration, in order to ensure completion of the contract without the need for notice of termination. In short, fixed-term employment contracts are subject to a term prescribed by the parties, without any notice, and automatically end on the expiration date. This type of contract's expiration date is known by the parties from the outset.

Prohibition of Discrimination in Fixed-Term Employment Contracts

In employment relations, prohibition of discrimination primarily includes language, race, color, sex, disability, political opinion, philo-

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* ***Article of October 2014***

sophical belief, religion and sect based distinctions, but it is not limited to them. In 5/2 numbered Article of the Labor Law, '*The employer cannot make different agreements with full-time workers from part-time workers or indefinite-term workers as opposed to fixed-term workers unless there are employer-based reasons*.' Therefore, no distinctions can be made between those workers who are subjected to different labor contracts with this provision. With the regulation in question, the employer is obliged to exhibit equal treatment towards the workers who are subjected to different labor contracts.

After this general regulation that is related to the prohibition of discrimination, in the Article 12 of the Labor Law, '*Due to the duration of the contract, the employee who works with a fixed-term employment contract cannot be treated differently according to an equivalent employee who works with a permanent employment contract, unless there is a justifiable reason for discrimination. To an employee with a fixed-term employment contract, payment and pecuniary divisible benefits that are granted through a fixed time as a criterion are paid according to the working time of the employee. While seeking seniority in the same workplace or enterprise in order to benefit from a working condition, the same seniority conditions imposed upon the employee with an indefinite-term employment contract will be given to the employee with a fixed-term employment contract, unless there is a justifiable reason to implement different seniority. An equivalent employee is the employee who works in the same or similar job through an indefinite-term employment contract. If such an employee does not exist in that workplace, then an employee with an indefinite-term employment contract who works in the same or similar job in the same branch, in accordance with the conditions, will be taken into consideration*.'

This provision states that no distinctions can be made between employees with fixed or indefinite-term employment contracts. Two notions are remarkable in this provision. The first one is the principle of proportionality that relates to fees. This principle establishes equal treatment between the employees by proportioning benefits related to payment and pecuniary issues. Another remarkable issue in this article is the equivalent employee notion. While determining equivalent employees, if they exist, the Law primarily demands that an employee

with an indefinite-term employment contract from the same workplace be considered to be an equivalent employee. If there is no like employee, the Law states that an employee with an indefinite-term employment contract from the same or similar branch will be considered to be an equivalent employee.

Form of Fixed-Term Employment Contract

Article 8/2 of the Labor Law states that "*If the employment contract's validity is one year or more, it must be in written form*." After this general regulation for all of the employment contracts, Article 11 of the same Law includes the provision, "*The contract between an employee and employer in written form is called a fixed-term contract that is subject to objective conditions, such as fixed-term work or completion of specific work, or occurrence of a certain event*." While Article 11 stipulates that fixed-term contracts must be in written form, Article 8 stipulates that employment contracts must be in written form, if the term of validity is one year or more. These differences between the two Articles lead to different opinions in doctrine. According to one opinion, in doctrine, it is imperative that fixed-term employment contracts be written form, even if their validity periods are less than one year; another opinion is that fixed-term employment contracts are not required to be in writing if their validity is less than one year. In our opinion, regardless of the duration, as is provided in the Law, all fixed-term employment contracts are to be in written form.

Determination of Period in Fixed-Term Employment Contract

The presence of fixed-term employment contract arises when the parties determine a period for the contract. This is possible if objective conditions exist. Without objective conditions, fixed-term employment contracts cannot specifying only a period of time. The format of the contract period may be set forth as follows.

Determination of the Definite Duration

During the course of a project, if any technical personnel are to be employed, and if the termination of the project can be predicted, duration of the project can be determined between the parties, or the dura-

tion can be understood set out in the contract. In other words, determining the duration of fixed-term employment contracts is only possible through pre-definition. However, fixed-term employment contracts may be entered into when other conditions as stated in the Labor Law have occurred.

Determining the Duration Implicitly

In situations when the duration is not definite or identifiable, the duration may be determined based on the purpose of the work. But again, the objective conditions must be suitable for the specific contract. For instance, determining the duration based on the purpose of the contract is possible while recruiting during high summer season.

Termination of Fixed-Term Employment Contract

Mutual Rescission (Termination of the Contract with Convention of the Parties)

Regardless of whether the contract is definite or not, it can be terminated at any time when the parties mutually agree thereto. The parties may terminate the fixed-term employment contract through their common will, like indefinite-term employment contracts. The parties may terminate the contract immediately, or agree mutually to terminate, after a certain period of time. The mutual agreement of the parties to terminate the contract does not constitute termination. Therefore, a termination notice period will not be applied as no termination will result.

Expiration in Fixed-Term Employment Contracts

In fixed-term contracts, these shall be automatically terminated upon the agreement of the parties.

Termination

Each of the parties has the right to terminate the contract prior to the expiry date agreed in fixed-term employment contracts. Termination of employment contracts may be declared or immediately terminated upon justification. These two types of termination differ in expiration, and the results thereto. As a rule, the right of temporary ter-

mination is in question for indefinite-term employment contracts. However, temporary termination rights with respect to agreed decisions that one party is subject to throughout life of the contract, or more than ten years, constitutes an exception to this rule.

An immediate termination right is may be effected for both fixed-term and indefinite-term employment contracts. The rightful immediate termination may only be possible when the employee and the employer have separate justifications as regulated in the Labor Law. These justifications can be summarized as the reasons that have led the business relation to be impossible for one of the parties.

Conclusion

Indefinite-term employment contracts are provided for in the Labor Law, if there are objective criteria, and, as well, if there is an opportunity to make fixed-term employment contracts. However, even though there are objective conditions specified in the Labor Law, the parties can make indefinite-term employment contracts instead of fixed-term employment contracts. As well, even if there are objective conditions, fixed-term employment contracts cannot be made more than one successively (continuously) unless there is substantial reason Otherwise, an employment contract will be considered to be indefinite from the outset.

Collusion in Subcontracting Agreements[*]

Att. Ceyda Buyukoral

In General

Collusion in Subcontracting Agreements is defined by Article 3 of the Subcontracting Regulation ("Regulation No. 27010"). As per Article 3, collusion in an agreement is defined where:

- Part of a main job, related to the production of goods or services in the establishment, which does not require any expertise, is transferred to the subcontractor;
- A subcontracting relationship is established with an ex-employee;
- The employees of the principle employer are hired by the subcontractor and they work with limited rights;
- The operation's goal is to conceal the real will of the parties, such as avoiding public obligations or limiting/eliminating the rights of employees arising from the labor contract, the collective agreement or from labor legislation.

Examination of Collusion

Pursuant to Article 12 of Regulation No. 27010; if it is proven that the following documents, which are submitted to the district office, are illegal or that there is collusion, then they shall be submitted to the competent authorities: i) the trade registry gazette for legal persons submitted to the trade registry by the establishment, ii) signature samples of those with signature authority in the establishment, iii) the subcontracting agreement and its appendices.

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* *Article of May 2014*

While examining whether collusion exists, the following clauses shall be taken into consideration:

a) Whether the job undertaken by the subcontractor is a subsidiary job of the main job (production of goods or services in the establishment) conducted by the principle employer or not;

b) Whether the job undertaken by the subcontractor requires expertise as a matter of course, and for technological reasons or not;

c) Whether the subcontractor is an ex-employee or not;

d) Whether the subcontractor possess the appropriate equipment and experience or not;

e) Whether the qualifications of the employees (that will be hired by the subcontractor) are aligned with the job requirements or not;

f) Whether the employees of the principle employer (excluding the ones in charge of coordination and auditing on behalf of the principle employer) perform work related to the job undertaken by the subcontractor or not;

g) Whether the subcontracting agreement aims to avoid public obligations set forth by the Labor Law or not;

h) Whether the subcontracting agreement is executed for the purpose of limiting/eliminating the individual/collective rights of the employees arising from the labor contract, the collective agreement or from the legislation.

Procedures Required after the Examination

Pursuant to Article 13 of Regulation No. 27010, justified inspection reports containing proof of collusion as a result of the examination of the principle employer-subcontractor relationship by labor inspectors shall be notified to the employers by the district office. An objection can be made by employers to the authorized labor courts within 6 working days beginning from the date of notification. Decisions made regarding any objections are final.

If an objection is not made to the report within 6 working days or the court approves the proof of collusion, the registration of the establishment shall be cancelled by the district office and the subcontractor's employees shall be deemed to be the principle employer's employees.

Where the labor inspector determines the presence of a collusive transaction, if the objection period ends or the court approves the proof of collusion, administrative fines shall be applied to the principle employer and the subcontractor or their representatives.

Conclusion

Collusion in Subcontracting Agreements is defined by Article 3 of the Subcontracting Regulation ("Regulation No. 27010"). If proven that the documents submitted to the district office are deemed to be illegal or that there is collusion, then, these documents shall be submitted to the competent authorities.

The justified inspection report regarding the proof of collusion as a result of the examination shall be notified to the employers by the district office. An objection can be made by the employers to the authorized labor courts within 6 working days beginning from the date of notification.

Where the labor inspector determines the presence of a collusive transaction, if the objection period ends or the court approves the collusion, administrative fines shall be applied to the principle employer and the subcontractor, or their representatives.

Re-employment Lawsuits*

Att. Ozen Odev

Introduction

According to Labor Law No. 4857 ("Labor Law"), the termination of an employment contract without a valid reason does not automatically invalidate the termination. When an employee opens a re-employment lawsuit pursuant to conditions stipulated in the Labor Law, and if the case concludes in the employee's favor, the termination will be invalid and the employee may apply to return to work.

The Necessary Conditions to File a Re-employment Lawsuit

Working under the Labor Law

The employee should be working, as defined under the Labor Law, to file a re-employment lawsuit.

Working with an Indefinite-term Employment Contract

According to the Labor Law, the employment contract may be for a definite or indefinite term. This binary distinction is important when the contract is terminated. Other than that, as a rule, there is no difference between the two types of contract in terms of working conditions.

The basic rule is that the employment contract must be for an indefinite term. As per Article 11 of the Labor Law, an indefinite-term employment contract is defined as follows: '*The contract will be counted as indefinite where the employment relationship has no defined or definite duration*.' The same article defines the definite-term employment contract as '*The written contract between employer and employee, depending on the objective conditions, such as fixed-term*

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* ***Article of July 2014***

work or completion of a specific task or the occurrence of a certain event.'

As a rule, in the definite-term employment contract determined by the parties, at the end of the period, the employment contract will terminate automatically; so in Labor Law, definite-term workers are not entitled to open a re-employment lawsuit.

However, in Labor Law, signing a definite-term contract more than once, consecutively, is prohibited unless there is a valid, sustainable reason. In such a case, it is stated that the contract will be considered as an indefinite-term contract from the beginning.

Termination of the Employment Contract by the Employer

A re-employment lawsuit is brought as a protection for the employee against termination by the employer. The employee has no right to open a re-employment lawsuit when the termination is not made by the employer.

At least 30 Employees Should be Working in the Workplace

To open a re-employment lawsuit, there must be at least 30 employees in the workplace. While accounting the employee number, if the employer has more than one establishment in the same business line, the employees of all establishments will be taken into account.

Accrual of at Least 6 Months' Severance

In order to open a re-employment lawsuit, another condition is to have accrued at least 6 months' severance. An employee who has worked less than this period cannot file a lawsuit. While calculating accrual of 6 months' severance, Article 66 of the Labor Law stipulates that "situations deemed as working time" will be taken into consideration. Six months' severance must be calculated by combining the time worked in one or more different establishments of the same employer.

Termination Based on an Invalid Reason

Employees may open a re-employment lawsuit in the case of termination based on an invalid reason. In the 18th article of the Labor

Law, the situations sited below are deemed as invalid termination reasons:

- Participating in union activities after working hours or during working hours with the consent of the employer or being a member of a union.
- Being a union representative.
- Applying to administrative or judicial authorities against the employer to claim regulatory or contractual rights or to fulfill the obligations or participating in the process initiated in this regard.
- Race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion and similar reasons.
- Not coming to work during maternity leave.
- Due to illness or accident, temporary absence from work during the waiting period prescribed in Article 25 of the Labor Law (ı) numbered clause and (b) sub- clause.

Not being a Representative of the Employer

In the 2nd Article of the Labor Law, it is stated that '*Anyone who acts on behalf of the employer and is involved in the management of the enterprise, workplace and business, is called vice principal. The employer is directly responsible for the vice principal's operations and liabilities against workers. All obligations and responsibilities of the employer also bind the vice principal. Being a vice principal does not eliminate the rights and obligations given to the employees*.' As it is seen from the definition, vice principal is an authorized person in management.

In accordance with the last paragraph of Article 18 of the Labor Law, the representatives and assistants of the employer who conduct the management and administration of a whole business and the representatives of the employer who have the authority for recruitment and dismissal, and conduct the management and administration of the whole workplace are not eligible to open a re-employment lawsuit.

Time-frame to Commence Litigation

According to Article 20/1 of the Labor Law, the employee whose contract is terminated, must file a claim within one month from the receipt of notification of the termination alleged to be invalid. If the employee does not open a lawsuit during this period, they cannot defend their right to be re-employed before the courts of law. Where the employer terminates the contract with a dismissal notice, the employee must file a claim within one month from the declaration of notification, not from the end of the dismissal notice.

The prescription period to open a lawsuit should be taken into consideration ex officio by the judge.

According to accelerated trial procedure, the case must be concluded within two months. In *case of an appealed decision, the Supreme Court gives a final decision within a month*.

Burden of Proof in a Re-employment Lawsuit

According to Turkish Civil Law, "everybody is obliged to prove their claim." However, according to Article 20/2 of the Labor Law, the employer is obliged to prove that the termination is based on a valid reason. If the employee claims that the termination is based on a reason different from the reason given by the employer for termination, then the employee has the burden of proof.

Form and Content of the Notice of Termination

Whether or not the reason is justified, the employer who terminates the contract is obliged to give an explanation to the employee. According to Article 19 of the Labor Law, notice of termination made by the employer should be in written form and must state the reason for termination clearly and precisely.

Plea of the Employee

According to Article 19 of the Labor Law, where the employee files a claim in their defense, the indefinite-term contract of the employee shall not be terminated for reasons related to behavior or efficiency. Written defense by the employee is recommended.

The Petition

The employee may request the termination to be invalidated and return to work. The employee may also request at most four months' salary to be paid for time missed at work until the finalization of the case. Eight months job security compensation may also be requested if the employer does re-integrate the employee into the workplace within the given time.

The Results of a Re-employment Lawsuit

As a result of the re-employment lawsuit; acceptance and dismissal of the case or abatement of an action can occur.

Acceptance of the Case. Where it is accepted that the termination is invalid and re-employment occurs, the employee should apply to the employer within 10 working days from receipt of notification of the decision. The employee, who applies on time, should start to work within one month. If the employer does not want the employee start to work, the employer will be obliged to pay four months wages and other than this, the employee's other rights as well as a compensation fee. Under these circumstances, the employer will have to pay compensation amounting to at least four months to at most eight months wages.

Dismissal of the Case. If the court rejects the re-employment lawsuit, then it accepts the termination as it is, based on a legal, valid and justifiable reason. If the case is dismissed, the employee is liable for the legal expenses and proxy costs of the opposing party. Even though the re-employment lawsuit is dismissed, the employee's unpaid severance, notice pay and other legal fees may be requested from the employer with a separate lawsuit.

Abatement of an Action. While the case is ongoing, if the employee is re-employed or waives the lawsuit, the consequence will be the abatement of an action. In the first case, there is no need to order a peremptory nonsuit. If the employee returns to work it means the termination is not valid. In such a case, the employee may request at most four months wages and other rights to compensate his idle time. In the event the employee waives the lawsuit, litigation costs will be paid by each party.

Conclusion

By sheltering the occupational safety system, Labor Law removes the freedom of termination from the employer and the validity of termination is attributed to reasons determined by law. Further, in the event of termination with invalid reason, the Labor Law enables employees to be re-employed and to be paid up to four months' salary for time missed at work.

Practices of the Court of Cassation with regard to Invalid Termination of the Labor Contract*

Att. Ezgi Babur

Article 21 of Labor Law numbered 4857 ("Labor Law") regulates terminations without valid reasons of labor contracts by employers and the consequences of such terminations. Practices concerning this article are shaped by the precedents of the Court of Cassation. These precedents, which are of great importance in legal practice, shall be analyzed in this article.

In General

Pursuant to Art.18/1 of the Labor Law, the employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers, and who meets a minimum working period of six months, must use a valid reason for such termination that is connected with the capacity or conduct of the employee, or be based on the operational requirements of the establishment or service. A recent amendment of the Labor Law has regulated that the minimum working period, as stated in the relevant article, would not be sought for those employees working in underground works[1].

Pursuant to the first paragraph of Article 21 of the Labor Law, if the court or the arbitrator concludes that the termination of the labor contract is unjustified because no valid reason has been given, or the alleged reason is invalid, the employer must re-employ the worker within one month. If, upon the application of the employee, the

* ***Article of December 2014***

1 This amendment is made by Art.2 of Law no. 6552 published in the Official Gazette dated 11.09.2014 and numbered 29116 (Reiterated).

employer does not re-employ the worker, compensation at not less than four months' wages of the employee, and not more than eight months' wages, shall be paid to the employee by the employer.

Pursuant to Art. 21/5 of the Labor Law, in order for the worker to be re-employed, the worker must apply to the employer within ten working days of the date upon which the finalized court decision was communicated to the employee. If the employee does not apply within the said period of time, his/her termination shall be deemed valid, in which case the employer shall be held liable only for legal consequences of a valid termination.

The qualification of the court decision determining the termination is invalid

Pursuant to Art. 21 of the Labor Law, the employee claiming that his/her termination is invalid initiates a re-employment lawsuit. The decision of the court to be given at the end of such lawsuit is, in line with the clear wording of Art. 21/1, a declaratory decision. When the wording of the law stating that "the court or the arbitrator declares that the termination is unjustified since no valid reason has been given" is taken into consideration, it is clear that this is a declaratory decision. One of the direct consequences of such qualification is that the relevant decision cannot be subject to enforcement proceedings based on a court decision[2].

At this point, the Labor Courts sometimes render decisions declaring that a termination is invalid, but also calculates the compensation to be granted in favor of the employee, and decides on the collection of any compensation amounts. However, the Court of Cassation reverses decisions that pertain to collection of job security compensation, and the calculation of four months' wages of the employee. For instance, the decision dated 11.09.2003 numbered 2003/14994 E. and 2003/14267 K. of the 9th Civil Chamber of the Court of Cassation emphasizes this point:

"However, the fact that the courts decide on claims pertaining to compensation and receivables in addition to re-employment

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2 **Sarper Süzek**, İş Hukuku, Yenilenmiş 9.Baskı, İstanbul 2013, p. 630 ("**Süzek**").

claims is an obstacle for re-employment claims to be decided upon and finalized in accordance with timely hearing procedures within the time limits regulated by the legislator. The rights and receivables other than re-employment claims are subject to oral hearing procedures. Consequently, if claims pertaining to the rights of the employee, other than re-employment, are brought within the same lawsuit, these claims must be separated, and the proceedings will move forward, accordingly.

Principally, the fact that the employee brings forward claims of payment in lieu of notice and severance payment in a re-employment lawsuit is a contradiction. As a claim for re-employment is made due to invalid termination, compensation related to the consequences of termination cannot be claimed at the same time.

In the case at hand, the court erred in its ruling on payment in lieu of notice in addition to the re-employment of the employee."

Pursuant to the decision, above, in practice, an employee who is not re-employed upon determination of invalid termination is required to claim his/her receivables by initiating a new lawsuit. On the other hand, in practice, whether the employee requests his/her re-employment within the statutory limits, and whether said worker is re-employed by the employer or not are not definite at the time when the decision of the court is pronounced[3]. Consequently, a decision pertaining to collection of compensation at that stage cannot be rendered.

The refusal of the employee to start to work

Pursuant to Art. 21/5 of the Labor Law, for the worker to be re-employed, the employee must make an application to the employer within ten working days of the date upon which the finalized court decision is communicated. If the employee does not apply within the said period of time, the termination shall be deemed valid, in which case the employer shall be held liable only for the legal consequences of such termination.

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[3] **Süzek**, p. 631.

As clearly stated in the relevant provision, the application to the employer must be made within ten working days upon the notification of the finalized court decision.

If the employee does not commence work despite the re-employment invitation of the employer, then in that case, the manner in which the rights that are laid down under Art. 21 of the Labor Law would be affected is of great importance.

If the employee does not commence work despite a re-employment invitation that was duly made, the Court of Cassation considers this to be an act that upholds the termination. The 9th Civil Chamber of the Court of Cassation and the Assembly of Civil Chambers of the Court of Cassation have rendered various decisions in this respect[4].

The aforementioned Court of Cassation practice is criticized by the doctrine. In accordance with this opinion, there is no legal provision that obliges an employee to accept the invitation of the employer to work with an employer who has terminated the labor contract without any valid reason. Additionally, even if the employee does not accept the re-employment invitation, a legal interest exists to request determination of the invalidity of the termination[5].

In addition to this practice, the Court of Cassation seeks certain conditions concerning the intention of the employer to re-employ the worker. In one of its recent decisions, the Court of Cassation decided that the intention of re-employment of the employer should be realistic. In the relevant case, the fact that the employer required the employee to attend various educational programs, and declared that it would re-employ the worker on the condition that the employer was successful on his/her examination, the Court did not consider this to be an invitation to re-employ the employee[6].

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[4] Please see the decision dated 11.06.2007 and numbered 2007/15603 E., 2007/18639 K. of the 9th Civil Chamber of the Court of Cassation, decision dated 16.04.2014 and numbered 2013/22-1106 E., 2014/538 K. of the Assembly of Civil Chambers of the Court of Cassation. Source: www.kazanci.com.tr.

[5] **Süzek**, p. 634.

[6] Please see the decision dated 01.10.2014 and numbered 2013/22-1158 E., 2014/743 K. of the Assembly of Civil Chambers of the Court of Cassation. Source: www.kazanci.com.tr.

Additionally, again within the requirement for the intention to be realistic, the Court of Cassation stated that the presence of work conditions, and the date upon which to commence work according to the re-employment invitation, should also be considered in determining whether the intention of the employer in its invitation is realistic[7]:

> *"Not only the intention of the employee to commence work should be realistic, but also the declaration of the employer to re-employ the worker, should be serious and realistic. To this end, the employer should, while inviting the employee to re-employment, state where and how, and under which conditions the employee is to be re-employed. If the invitation does not contain information on the job to be given to the employee, the work place and the work conditions, the date to commence work, and the time period until the said date, it would be controversial whether the invitation of the employer is serious and realistic. The employer should firstly fulfill these conditions"*

Conclusion

There are several issues to be taken into consideration in the application of Art. 21 of the Labor Law. Firstly, the decision to be pronounced at the end of the lawsuit pertaining to whether the determination of the termination is based on valid grounds is a declaratory decision. This implies that the employee should initiate another lawsuit in order to enforce the receivables arising from the fact that termination is invalid. Another interesting issue concerning this provision is that the Court of Cassation considers a refusal of the employee to commence work to be a factor which validates the termination. On the other hand, it should be emphasized that the invitation of the employer must be realistic.

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7 Please see the decision dated 17.06.2013 and numbered 2012/31511 E., 2013/18700 K. of the 9th Civil Chamber of the Court of Cassation. Source: www.kazanci.com.tr.

CONSUMER LAW

Unfair Terms in Consumer Contracts*

Att. Leyla Orak Celikboya

Introduction

The Law on Consumer Protection No. 6502 ("LCP") was published in the Official Gazette dated 28 November 2013 and numbered 28835. Pursuant to Art. 87 regulating entry into force, the LCP became effective six months after its publication, on 28 May 2014 and abrogated the former Law on Consumer Protection No. 4077 ("fLCP"). This amendment is aimed at ensuring coherence with European Union legislation, enacting provisions by also taking into account the consumer protection legislation of Switzerland, and establishing a framework which provides for efficient protection of the consumer, including market audits and the right to legal remedies[1].

The novelties introduced under the LCP, defective goods and services under the LCP have been assessed in various Newsletter articles[2]. This article focuses on the unfair terms in consumer contracts.

General Transaction Terms in Turkish Law

In practice, enterprises providing numerous goods and services usually prepare various contract types and form agreements, which in

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* ***Article of May 2014***

1 Draft Law on Consumer Protection, General Legislative Justification ("Justification"), http://www2.tbmm.gov.tr/d24/1/1-0787.pdf (accessed on 20 May 2014).

2 See **Alper Uzun**, The New Consumer Law Has Entered Into Force, http://www.erdem-erdem.av.tr/en/articles/the-new-consumer-law-has-entered-into-force/ (accessed on 30 May 2014); **Ceyda Büyükoral**, Provisions Regarding Defective Goods In The Law On Consumer Protection No. 6502, http://www.erdem-erdem.av.tr/en/articles/provisions-regarding-defective-goods-in-the-law-on-consumer-protection-no-6502-2/ (accessed on 30 May 2014); **Pelin Baydar**, Provisions Regarding Defective Services In The Law On Consumer Protection No. 6502, http://www.erdem-erdem.av.tr/en/articles/provisions-regarding-defective-services-in-the-law-on-consumer-protection-no-6502/ (accessed on 30 May 2014).

most cases are very long, written in incomprehensible wording, usually limiting the responsibilities of the party drafting such contract, and which are not submitted for review nor negotiation by the counterparty. This resulted in the increased need to provide protection, especially for consumers who become party to goods and services contracts, as these contracts usually include illegible and incomprehensible general terms.

This need resulted in an amendment to the fLCP by Law No. 4822, introducing a new Art. 6 governing unfair terms in consumer transactions, which regulated general transaction terms for the first time under Turkish law. Art. 6 fLCP defines general transaction terms and refers to unfair terms as "… contract terms which have been unilaterally included in the contract without negotiating with the consumer, which cause imbalance between the rights and obligations of the parties arising from the contract to the detriment of the consumer in violation of the bona fide principle". The law regulates that such conditions will not be binding upon consumers.

Agreements between two merchants, which are not considered consumer contracts, were not subject to the provisions of the LCP, and Articles 19 and 20 of the abrogated Code of Obligations No. 818, governing invalidity, were applied in cases of unfair general terms. However, said provisions regulated the invalidity of agreements due to violation of the public order or morale, or whose subject matter was impossible; and did not enable any intervention in the content of the agreement. Nevertheless, unilaterally prepared contracts resulted in major problems, not just for consumers, but also for merchants.

In order to mitigate these problems, the Turkish Code of Obligations No. 6098 ("TCO") regulated general transaction terms, to govern all types of agreements[3]. The TCO initially provides a definition of general transaction terms, and regulates the inspection of whether these terms became contractual terms (validity assessment), how these terms will be construed (interpretation assessment), and which terms will be deemed null and void (content assessment).

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[3] For detailed information on general transaction terms, see **Berna Aşık Zibel**, The Concept Of "General Transaction Terms" And Its Implications Under New Code Of Obligations, http://www.erdem-erdem.av.tr/en/articles/the-concept-of-general-transaction-terms-and-its-implications-under-new-code-of-obligations/ (accessed on 30 May 2014).

Art. 5 LCP readopted the provision of the fLCP governing unfair terms with a broader scope. This provision aims to provide more specific and comprehensive protection of consumers than the protection foreseen under the TCO. The underlying reason for this specific protection is that, a consumer is usually more vulnerable when faced with general terms, being in a position where he cannot exercise his freedom of contract, avoid general transaction terms, and is obliged to accept the terms and conditions set forth by the counter party. Thus ultimately, the consumer has to make a choice between accepting the transaction terms or renouncing the contract as a whole.

LCP Provisions

Definition and Consequences of the Unfair Terms

Art. 5 LCP defines unfair terms. Accordingly, a contract term will be deemed as an unfair term if two conditions are met.

First, said term should be included in the contract without being negotiated with the consumer. The wording of Art. 6 fLCP expressly stated that terms unilaterally included by the seller or the provider could be deemed unfair. Nonetheless, the LCP does not expressly specify the person who prepared or drafted a contract, but only requires that the term not be negotiated by the consumer in order to be considered an unfair term.

The law also specifies cases where a relevant contract term will be deemed non-negotiated. Accordingly, previously drafted clauses in standard form contracts whose content cannot be altered by the consumer are deemed to be non-negotiated. Moreover, if the party having drafted the contract alleges that a term had been negotiated with the consumer, he is under the burden of proof of such allegation.

Second, this term should result in an unfair imbalance between the rights and obligations of the parties arising from the contract, which is incompatible with the good faith principle.

Moreover, pursuant to the final paragraph of Art. 5 LCP, the Ministry of Customs and Trade ("Ministry") shall define the terms which are deemed unfair terms with a regulation. The terms specified in the regulation shall be considered unfair terms, regardless of whether the above conditions are met or not.

After defining the unfair terms, the LCP regulates the consequences thereof. Accordingly, unfair terms are null and void. Further, it is worth emphasizing that the contract as a whole will continue to be effective, and solely the relevant unfair provision will become null and void. The counterparty of the contract cannot argue that it wouldn't have concluded the contract in the absence of the nullified term. If there is a gap due to the unenforceability of the invalid term, in the event of a dispute, the judge shall fill the gap by applying ancillary provisions of law or a norm which it shall define, depending on the circumstances of a given case. The fLCP did not state as clearly and explicitly as the LCP that the invalidity related solely to the unfair term. Thus, the express provision of the LCP is important for clarity.

Interpretation

Pursuant to Art. 5/4 LCP, the written contract terms must be clear and comprehensible. The language should be easily comprehensible to the consumer. As emphasized in the legislative justification of the law[4], the biggest obstacle in practice before consumers is that the contract terms have very complicated wordings, as if incomprehensibility is the goal. The LCP aims to prevent this practice.

The same paragraph also regulates how unclear terms will be interpreted. Accordingly, if a contract term is not clear or may have various interpretations, it shall be interpreted to the benefit of the consumer. The interpretation of an average consumer shall be taken as a basis[5].

This provision introducing rules of wording and interpretation is not new in consumer law, as a similar provision was included in Art. 6 of the abrogated Regulation regarding Unfair Terms in Consumer Contracts[6] ("Abrogated Regulation") which entered into force under the fLCP. We believe that the codification of this principle under law is positive.

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4 Justification, art. 5.

5 **Prof. Dr. İ Yılmaz Aslan**, Tüketici Hukuku Dersleri, 2006, p. 180.

6 Published on the Official Gazette dated 13.06.2003 and no. 25137.

Scope

The LCP governs consumer transactions and practices addressing consumers. Accordingly, it is understood that Art. 5 regulates consumer contracts and the unfair terms therein.

An important innovation under the LCP is defining the scope of applicability of Art. 5 based on the counterparty of consumer contracts. Pursuant to Art. 5/5 LCP, the fact that the drafting counter party of the consumer contract operates under permission granted by law or by relevant authorities shall not prevent the applicability of the LCP provisions. Thus, in the event there are unfair terms in adhesion contracts, contracts executed with persons providing water, communication, electricity, gas or similar goods and services, such terms shall also be subject to the provisions of the LCP[7].

Evaluation of the Unfairness of a Term

Art. 5 LCP regulates the method of evaluating whether a contract term is unfair or not. Accordingly, the unfairness of a contract term shall be determined based on the time of execution of the contract. The characteristics of the relevant good or service, the conditions present at the time of execution, and the provisions of the contract as well as other relevant contracts shall be taken into consideration in determining the unfairness. As explained above, there is an unfair term in the presence of an imbalance between the parties which is not coherent with the good faith principle; thus the LCP enumerates certain criteria which need to be taken into consideration when assessing such imbalance. As it is stated in the legislative justification, a contract term may be individually regarded as unfair, but when taking the contract as a whole, it may be accepted as fair.

In short, all these data should be taken into consideration in determining whether there is an imbalance between the parties as of the date of execution of the contract. In the event of an imbalance occurring after the date of execution, such imbalance shall not be regarded within the scope of Art. 5 LCP, but, if the conditions are met, within scope of the rebus sic stantibus principle instead.

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[7] Justification, m. 5/5.

Furthermore, the freedom of contract principle shall not be neglected. For this reason, Art. 5/7 explicitly states that the balance between the main obligations of the parties, or the balance between the actual price and the contractual price of the relevant good or service, should be disregarded in assessing whether a contract term is unfair or not. As long as the contract is clear and comprehensible, no intervention shall be made as to the balance of obligations of the parties, and the "actual price" should not be determined.

Secondary Legislation and Sanction

The LCP authorized the Ministry to issue secondary legislation in order to determine the procedures and principles for avoiding the inclusion in contracts and application of unfair terms, and the inspection thereof. As of the date of this article, the Ministry has not yet issued the secondary legislation. Pursuant to provisional Art. 1/3 LCP, until the entry into force of the regulations foreseen under the LCP, the provisions of the secondary legislation enacted under the fLCP not in contradiction with the LCP shall continue to apply. The Abrogated Regulation was replaced with the Regulation regarding Unfair Terms in Consumer Contracts enacted in compliance with the LCP[8] ("Regulation").

Articles 5 to 7 of the Regulation repeat the general principles laid out in art. 5 LCP governing the definition, assessment and invalidity of unfair terms.

In addition to the LCP provisions, Schedule-1 of the Regulation non-restrictively provides certain examples of terms which are deemed unfair[9]. These terms referred to in the schedule are unfair terms. Nevertheless, other contractual terms may also be deemed unfair in the presence of conditions specified under the LCP and the Regulation.

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[8] Published on the Official Gazette dated 17.06.2014 and no. 29033. The Regulation entered into force on its publication date.

[9] These examples include contract terms which relieve the contractor of liability in case of death, corporal or material damages of the consumer; which foresee disproportionally high compensation or liquidated damages to be paid by the consumer who does not fulfill its contractual obligations; which grant only the contractor, and not the consumer, the right to abstain from fulfilling its duties unless certain conditions are met, or to request the full contract price even if it renounces from the contract or from its performance; or which grant the contractor the right to unilaterally amend contract provisions.

Art. 8 Regulation regulates the inspection of unfair terms. The Ministry will grant thirty days, which may be extended to ninety days if necessary, in order for the removal of unfair terms in contracts drafted for systematic use. The party drafting the contract must notify the consumers explicitly, in writing or via electronic means, that the unfair terms are invalid and inapplicable. Upon this notification, unfair terms in consumer contracts will be deemed removed. In case of failure to remove unfair terms from the contract within the time period specified by the Ministry, an administrative monetary fine of two hundred Turkish Lira shall apply for each contract pursuant to art. 77/2 LCP.

Conclusion

The fLCP provided the initial legal framework for general transaction terms by regulating unfair terms in consumer contracts. However, as general transaction terms cause material problems, not just for consumers but also for merchants, the TCO regulated general transaction terms governing all types of contracts. In order to establish an efficient method of consumer protection, the LCP provides for a more detailed provision governing unfair terms in consumer contracts. Thus, the LCP aims to enforce the rights of the consumer, who usually has to choose between accepting the unilaterally prepared terms and renouncing the contract as a whole. Unfair terms resulting in an imbalance between the parties to the detriment of the consumer and in violation of the good faith principle are invalid, however the remainder of the contract shall continue to be effective. The counterparty may not request to not be bound by the contract in the absence of the unfair term.

Provisions regarding Defective Goods in the Law on Consumer Protection No. 6502*

Att. Ceyda Buyukoral

The defective good is regulated between Articles 8 and 12 in the Law on Consumer Protection No. 6502 ("Law No. 6502") which was published in the Official Gazette dated 28.11.2013 and numbered 28835, and which will enter into force six months later as of its date of publication.

The Definition of a Defected Good

Article 8 of Law No. 6502 defines the defective good. Pursuant to this Article, a defective good is a good that is not in accordance with the contract due to incompliance with the sample or model that the parties agreed on, or non-possession of the characteristics that the good must objectively possess.

Pursuant to said Article, goods; (i) which do not have one or more of the characteristics showed on its packaging, its tag, its presentation or instruction book, its internet portal or in its commercials and publicities, (ii) which are not appropriate to the qualifications stated by its seller and to its technical organization, (iii) which contain material, legal or economic deficiencies and thus do not meet the intended purpose expected from an equivalent good, reduce the normal benefits expected by the consumer or destroy them, are also deemed to be defective.

Regarding the delivery and the installation, the article states the following:

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* ***Article of January 2014***

"The fact that the good subject to the contract is not delivered within the time determined by the parties or that the installation is not properly realized, where the installation is conducted by the seller or under his responsibility, is evaluated as an inappropriate fulfillment of contract. In cases where it is agreed that the consumer shall make the installation of the good, if the installation is made wrongly because of wrong or deficient information in the installation instructions, it is an inappropriate fulfillment of contract."

Liability for a Defective Good

Article 9 of Law No. 6502 governs liability for defective goods. The first paragraph sets forth that the seller shall deliver the good to the consumer in accordance with the sale contract. The second paragraph of the article outlines the possibility for the seller to avoid such liability. In accordance with this, the seller is not bound with the content of the statement if he proves (i) that he is not and cannot be expected to be knowledgeable of statements made through publications which he did not produce, (ii) that the content of the statement was corrected at the moment of the conclusion of the contract, (iii) or that the decision to conclude the sale contract does not have any causal link with statement made through publications.

Burden of Proof

Pursuant to Article 10, entitled "Burden of Proof", defects which appear within 6 months of the date of delivery are deemed to have existed on the date of delivery. Therefore, the burden of proof that the good is not defective remains on the seller.

Where the consumer is aware or is expected to be aware of any defects at the conclusion of the contract, it is stipulated that the consumer is considered to be accepting the good as it is and there is no contradiction to the contract. The optional rights of the consumer are reserved for other unknown defects.

Article 10/3 further sets forth that a tag, which can be easily read by the consumer and which contains explanatory information related to the defective good, shall be put on the good or on its packaging by the

producer, the importer or the seller. It is obligatory that such tag be given to the consumer or that the explanatory information related to the defect is explicitly exposed on the receipt, sales slip or sale document given to the consumer. However, pursuant to said Article, goods which are not in accordance with their technical provisions cannot be introduced to the market. The Law on the Preparation and Application of Technical Legislation related to Goods and other related provisions shall apply to such goods.

Optional Rights of the Consumer

The optional rights of the consumer are stipulated under Art. 11. Pursuant to said article, the consumer has 4 optional rights in case the defect of the good is revealed. The rights of the consumer are as follows:

- To terminate the contract by stating that he is ready to return the sold good,
- To request a discount on the sale price proportional to the defect and keep the defective good,
- To request the sold good to be repaired at the seller's expense by bringing all repair costs to the seller if such costs are not excessive,
- If possible, to request the purchased good to be exchanged for a non-defective good.
- The seller is obliged to perform the request as per the consumer's preference.
- Pursuant to the 2nd Paragraph of Article 11, the right of free repair and the right of exchange with a non-defective good can also be directed to the producer or to the importer. The seller, the producer, and the importer are jointly liable with regards to the performance of these requests. However, there is a possibility of avoiding such liability for the producer and the importer. It is explicitly provided in Article 11 that the producer or the importer shall not be held liable where they can prove that the defect occurred after they released the good onto the market.

Where the request for free repair or exchanging the good with a non-defective one constitutes unbalanced difficulties for the seller, the consumer may use his right to terminate the contract or demand a discount on the sale price proportional to the extent of the defect. While determining if the request for free repair or exchanging the good with a non-defective good constitutes unbalanced difficulties for the seller or not, the value of the good without any defect, the importance of the defect and whether or not the exercise of other rights would constitute a problem for the consumer shall be taken into account.

Article 11 sets the term within which the request shall be performed where the consumer opts for free repair or to exchange the good with a non-defective good. Accordingly, the request shall be performed within 30 business days at most following the date on which the request is made of the seller, the producer or the importer, and if the good itself is a residential or vacation real estate, then the request shall be performed within 60 business days. However, the free repair request of the consumer concerning the goods to be specified in the attached list of the regulation that will be issued basing on Article 58 of Law No. 6502, shall be performed within the term prescribed in said regulation. Otherwise, the consumer is free to use his other optional rights.

Where the consumer opts to exercise his right to terminate the contract or to request a discount on the price of the good sold proportional to the defect, the full amount of price paid or the amount of the discount made shall be refunded to him.

The party who fulfills the request made by the consumer shall cover all costs incurred as a result of the consumer's exercise of his optional rights. The right to claim compensation in accordance with the provisions of the Turkish Code of Obligations No. 6098 together with one of these optional rights is reserved.

The Period of Limitation

The period of limitation is stipulated under Article 12. Pursuant to said Article, unless a longer term is determined in other laws or in the contract between parties, the limitation period for the liability for defects, even if the defect appears later, is two years as of the delivery of the good to the consumer. For residential and vacation real estate,

this term is five years as of the delivery of the residential or vacation property.

The seller's liability for defective goods sold second hand cannot be shorter than one year and cannot be shorter than three years for residential and vacation real estate. Art.10/ 3 of the Law numbered No. 6502 is reserved.

However, if the defect is hidden with gross fault or fraud, the provisions of prescription shall not apply.

Conclusion

The Law on Consumer Protection No. 6502, published on the Official Gazette dated 28.11.2013 and numbered 28835 and which will enter into force six months as of its date of publication, defines defective goods, and sets forth provisions regarding liability for defective goods, the burden of proof, the optional rights of the consumer and the periods of limitation.

It is accepted that defects occurring within 6 months as of the date of delivery are deemed to have existed at the date of delivery. The burden of proof that the good is not defective rests with the seller. However, it is stipulated that this presumption is not valid where it does not comply with the characteristics of the defect or the good.

The consumer has optional rights where it is revealed that the good has defects. These rights are as follows: (i) to terminate the contract by stating that he is ready to return the sold good, (ii) to request a discount on the sale price proportional to the defect and keep the sold good, (iii) to request the sold good to be repaired at the seller's expense by bringing all repair costs to the seller, if such costs are not excessive and (iv) if possible, to request that the sold good be exchanged with a non-defective one.

Unless a longer term is determined in other laws or in the contract between the parties, the period of limitation for the liability for defects, even if the defect appears later, is two years as of the delivery of the good to the consumer. For residential and vacation real estate, this term is five years as of the delivery of said residential and vacation property. The seller's liability for defective goods sold second hand is one year at least, while it is three years for residential and vacation real estate.

Provisions regarding Defective Services in the Law on Consumer Protection No. 6502*

Att. Pelin Baydar

Defective service is regulated between Articles 13 and 16 in the Law on Consumer Protection No. 6502 ("Law No. 6502"), which was published in the Official Gazette dated 28.11.2013 and numbered 28835, and which will enter into force six months after its date of publication.

The Definition of a Defective Service

Article 13 of Law No. 6502 defines defective service. Pursuant to this Article, a defective service is the provision of a service that is not in accordance with the contract due to incompliance with the inception of the service, or non-possession of the characteristics the parties agreed that the service must objectively possess.

Pursuant to said article, services which do not possess the characteristics described on their internet portal, or in its commercials and advertisements provided by the service supplier or services which contain material, legal or economic deficiencies reducing or destroying its value or the reasonable benefits expected by the consumer with respect to the purpose of utilization are also deemed to be defective.

Liability for Defective Service

Article 14 of Law No. 6502 governs liability for defective service. The first paragraph sets forth that the supplier shall execute the service in accordance with the contract. The second paragraph of the article outlines the possibility for the supplier to avoid such liability. In accor-

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* ***Article of February 2014***

dance with this, the supplier is not bound with the content of the statement if he proves (i) that he is not and cannot be expected to be knowledgeable of statements made through publications which he did not produce, (ii) that the content of the statement was corrected at the moment of the conclusion of the contract, (iii) or that the decision to conclude the contract does not have any causal link with statements made through publications.

Optional Rights of the Consumer

The optional rights of the consumer are delineated under Art. 15. Pursuant to said Article, the consumer has 4 optional rights in case the service is revealed to be defective. The rights of the consumer that can be demanded from the supplier are as follows:

- To request the re-performance of the service;
- To request the performed work to be repaired free of charge;
- To request a discount in proportion to the defect; or
- To terminate the contract

The supplier is obliged to perform the request as per the consumer's preference and is responsible for all costs stemming from the use of the exercise of a consumer's optional rights.

The right of the consumer to claim compensation in accordance with the provisions of the Turkish Code of Obligations No. 6098, in addition to one of these optional rights, is reserved.

Pursuant to the aforementioned Article, the right of free repair and the right of re-performance of the service shall not be demanded where these requests constitute unbalanced difficulties for the supplier. While determining if the request for free repair or re-performance of the service constitutes unbalanced difficulties for the supplier or not, the value of the service without any defect, the importance of the defect and whether or not the exercise of other rights would constitute a problem for the consumer shall be taken into account.

With regard to said Article, where the consumer opts to exercise his right to terminate the contract or to request a discount on the service price proportional to the extent of the defect, the full amount of

the price paid or the amount of the discount made shall be refunded to him.

Where the consumer opts for free repair or re-performance of the service, the statement regarding the duration of complying with such requests is regulated in the Article. According to this, the supplier shall perform the request within a reasonable period so as not to cause serious difficulties for the consumer with respect to the quality of the service and utilization purposes. However, in any case the request shall be performed within 30 business days at most following the date on which the request is submitted to the supplier. Otherwise, the consumer is free to use his other optional rights.

The Period of Limitation

The period of limitation is stipulated under Article 16. Pursuant to said Article, unless a longer term is determined in other laws or in the contract between the parties, the limitation of liability period for defective service, even if the defect appears later, is two years as of the date of execution of the service.

However, the second paragraph of the Article sets forth that if the defect is hidden with gross fault or fraud, the provisions of prescription shall not apply.

Conclusion

The Law on Consumer Protection No. 6502, published in the Official Gazette dated 28.11.2013 and numbered 28835, and which will enter into force six months after its date of publication, defines defective service, sets forth provisions regarding liability for defective service, the optional rights of the consumer and the limitation of liability periods.

The consumer has 4 optional rights where it is revealed that the service has defects. These rights are as follows: (i) to request the re-performance of the service, (ii) to request the performed work to be repaired free of charge, (iii) to request a discount in proportion to the defect or (iv) to terminate the contract.

Unless a longer term is determined in other laws or in the contract between the parties, the limitation of liability period for defective service, even if the defect appears later, is two years as of the date of execution of the service; except where the defect is hidden with gross fault or fraud.

INTELLECTUAL PROPERTY LAW

Rights of Owners in Their Intellectual and Artistic Works*

Att. Ecem Susoy

The rights of authors of intellectual and artistic works are regulated under the Law on Intellectual and Artistic Works No. 5846 ("Law No. 5846"). The purpose of Law No. 5846 is to establish and protect the moral and financial rights on the products of authors who create intellectual and artistic works in the fields of science and literature, music, fine arts or cinema; to regulate the conditions of exploitation of such products and to determine the sanctions for exploitation in breach of the related rules and procedures.

Work

A work is an intellectual and artistic work that bears the traits of its author and which can be considered a work of science and literature, music, fine arts or cinema.

The principle of numerus clausus is valid for the types of works covered in Law No. 5846. This means that the produced product must be included in one of the types of works enumerated under Law No. 5846.

On the other hand, there is a dispute among academics with respect to some intellectual products which cannot be directly included within the types of works under the provisions of Law No. 5846. For example, competition TV shows or any developed method[1].

Owner of a Work

The owner of a work is defined in the Law No. 5846. The owner of a work is the real person who creates the work. Therefore, publishers, producers and legal persons are not acknowledged as owners[2].

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* ***Article of May 2014***

1 Please see. **TEKİNALP, Ünal**, Fikri Mülkiyet Hukuku, 5th Ed., 2012, p. 110.

2 Please see. **TEKİNALP, Ünal**, Fikri Mülkiyet Hukuku, 5th Ed., 2012, p. 143.

The owner of an adaptation and collection is the person who has made the adaptation, provided that the rights of the original owner are reserved. For cinematographic works; the director, the composer of the original music and the scriptwriter are joint authors of the work. For cinematographic works which are produced with the animation technique, the animator is also regarded as the joint author of the work.

Pursuant to Article 18 of the Law No. 5846, the authority to exercise economic rights belongs exclusively to the author. Any producer or publisher of a work may only exercise financial rights on the condition that he has concluded an agreement with the author of the work.

Also, more than one person can be the author of a work. When a work which is created by more than one person can be divided into parts, each person shall be deemed the owner of the part which he has created. However, when a work which is created by the participation of more than one person constitutes an indivisible whole, the union of the persons who has created it shall be deemed the author of the work. The provisions of ordinary partnership prevails in the union of authors, therefore the authors have joint ownership on the work.

Rights of the Owner of a Work

An owner has economic and moral rights that cover the whole and parts of the work.

Moral Rights

The moral rights are stated as per numerus clausus principle from Articles 14 to 17 in section II under the Law No. 5846. The first of them is the author's right to disclose his work to the public. The author shall exclusively determine whether or not his work shall be disclosed to the public and the time and manner of its publishing. However, the author may prohibit, even if the author has given written approval to others, the promotion to the public or the publishing of both the work and its adaptation, where the manner of disclosure to the public or publishing of the work is of such a nature as would damage the honor and reputation of the author.

Second, the author has the authority to designate the name. The author shall have the exclusive authority to decide whether the work

shall be disclosed to the public or published with or without the name of the author or under a pseudonym. However, when the creator of the work is under dispute or any person claims to be the real author of the work, the real author of a work may request to establish his right from the Civil Courts for Intellectual and Industrial Property Rights.

Third, no modifications may be made to a work or to the name of its owner without the owner's consent.

Fourth, the original author has rights against persons who own or possess a work. Where the work is in a single original form, the original author may request to use the work in retrospectives and exhibitions covering all of his working periods, subject to conditions of protection, and provided that it will be returned to the owner.

Financial Rights

The owner of a work has financial rights and authorities on the work and shall exclusively use them. The rights in works created by civil servants, employees and workers during the execution of their duties shall be exercised by the persons who employ or appoint them. This rule is valid for the organs of the legal persons. The producer or publisher of a work may exercise the economic rights in accordance with a contract to be concluded with the author.

The types of financial rights the author may exercise are disclosed in section III under the Law No. 5846. The first financial right of an author is the right to exploit a work by adapting it. Second, the author may exclusively reproduce the original or copies of a work in any form or by any method, in whole or in part, directly or indirectly, temporarily or permanently.

Third, the author may exclusively rent, lend, put up for sale or distribute in any other way, the original or copies of a work. Also, the author has the exclusive right to import copies of a work that have been reproduced abroad with his permission and to exploit such works by distribution.

Fourthly, the right to exploit a work by performing it in such ways as reciting, playing, acting or displaying it on public premises either directly or by means of devices enabling the transmission of signs,

sounds or images belongs exclusively to the author. Also, the right to transmit the performance, from the premises where the performance to the public took place to any other location by means of a technical device also belongs to the author.

Fifth, the author shall have the exclusive right to communicate the original of a work or its copies to the public by way of broadcasting through organizations that broadcast by wire or wireless means such as radio and television, satellite or cable, or by devices enabling the transmission of signs, sounds and/or images, including digital transmission, or by way of re-broadcasting via other broadcasting organizations that obtain the work from such broadcast.

Duration of Rights of the Owner of a Work

The economic rights of the author have a limited duration. Excluding the circumstances disclosed under Articles 46 and 47 of the Law No. 5846 (states' authority to benefit and expropriation) everyone may benefit from the economic rights of the owner after the expiry of the protection period.

Except to the extent stated in the law, the protection period shall last the entirety of the real person owner's life-time and continues for 70 years after their death. In the event there is more than one author, this period shall end upon the expiry of 70 years after the death of the last remaining author.

The moral rights of the author have no limitation. Therefore, the 70-year protection period after the author's death applied to financial rights is not applied to moral rights.

Conclusion

The rights of the authors or owners of intellectual and artistic works are regulated under the Law No. 5846. An intellectual and artistic work bears the characteristics of its owner who is deemed to be a real person, yet legal persons are not regarded as the author of a work under the Turkish legal system. An author has economic and moral rights consisting of the whole and parts of their created work. While the economic rights of the author have an expiration date, their moral rights do not.

Trademark's Acquired Distinctiveness through Use*

Att. Pelin Baydar

Acquired Distinctiveness through Use

The absolute grounds required to refuse the registration of a trademark are defined by Article 7/1 of the Decree Law on Protection of Trademarks ("Decree Law No. 556"). Pursuant to the aforementioned grounds, an exception exists for the refusal of a trademark registration under these circumstances:

- Lack of distinctiveness (7/1(a))
- Descriptiveness (7/1(c))
- Common use in trade (7/1(d))

In accordance with Article 7/2 of Decree Law No. 556, registration of a trademark cannot be refused if it has been used before the registry date and has acquired distinctiveness through such use regarding the goods and services subject to registry as per clauses 7/1(a), 7/1(c) and 7/1(d).

The case of acquired distinctiveness through use is an exception only for refusal conditions stipulated in clauses 7/1(a), 7/1(c) and 7/1(d). Therefore, marks that are unable to be registered on the basis of other absolute grounds not mentioned above cannot benefit from registration based on acquired distinctiveness through use.

Submission of Acquired Distinctiveness through Use

In the Trademark Examination Guidelines prepared by the Turkish Patent Institute (TPI), it is stated that acquired distinctiveness claims can be submitted in two ways. Accordingly, acquired distinctiveness

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* ***Article of April 2014***

claims can be submitted only if evidence is provided during the application phase. Claims can also be submitted during the objection phase if the application is refused.

Demonstration of Acquired Distinctiveness through Use

Some of the criteria to be considered when determining whether a mark has acquired distinctiveness or not through use are listed in the Trademark Examination Guidelines. However, the criteria listed in said Guidelines is not exhaustive and does not prevent claimants from presenting other criteria to prove acquired distinctiveness.

Principally, it must be proven that the mark indicated in the application is presently in use and has acquired distinctiveness related to the same goods and/or services indicated in the application. It must also be proven that the mark is perceived as a trademark in Turkey. Proof of acquired distinctiveness abroad is not sufficient for registration in Turkey.

The relevant public for the goods and/or services covered by the mark should be taken into consideration in evaluating the evidence submitted regarding the proof of distinctiveness. If these goods and/or services in question are, by their very nature, addressed to specialists or a limited public, the evidence regarding the relevant public is essential and sufficient. On the other hand, food and beverage products are available to all consumers. In that case, the evidence must further demonstrate that the mark is perceived as a trademark by a sufficiently large portion of the public.

Opinion polls, surveys, statements from trade and consumer organizations, articles, brochures, samples, turnover and advertising/promotion figures, successful infringement prosecutions, and previous trade mark registrations can be served as proof for acquisition of distinctiveness through use.

Well-conducted opinion polls are particularly persuasive if the questions are relevant and not leading. This applies in particular to polls or surveys carried out by independent and well-recognized organizations or institutions. Evidence from independent trade associations, consumer organizations and competitors should also be given weight. Evidence from the people related with the applicant, such as suppliers or distributors, should generally be given less weight.

Figures for turnover or advertising should only relate to the goods and/or services with respect to which registration is sought. Market share figures must relate to the mark claiming acquired distinctiveness through use. It is significant that sales figures provided as evidence should indicate the sales regarding the mark in relation to total market sales figures. A sequence table demonstrating the sales figures of other trademarks within the same market segment would be attributed with high probative value.

Evidence should provide information on how the mark is used, its exposure time, consistency and permanency.

Conclusion

Lack of distinctiveness (7/1(a)), descriptiveness (7/1(c)) and common use in trade (7/1(d)) are defined as absolute refusal grounds for trademark registry in the Decree Law on Protection of Trademarks No. 556. However, there is an exception regarding these absolute refusal grounds. If a trademark is presently in use and has acquired distinctiveness and relates to the same goods and/or services indicated in the application, it cannot be refused according to clauses 7/1(a), 7/1(c) and 7/1(d). Nevertheless, acquired distinctiveness claims shall be submitted during the application phase or during objection phase if the application is refused, such claims must be proved.

International Protection of Intellectual Property and Confiscation by Customs[*]

Att. Yesim Tokgoz

In today's world where distances are no longer far away, and international relations are conducted as smoothly as with nationals, to limit the scope of intellectual property ("IP") matters within countries' borders is impossible. However, to create a unique system that protects IP, internationally, seems equally impossible, as there are mental, cultural, and jurisdictional differences to take into consideration. Therefore, reference points that aim to determine necessary qualifications for the protection of IPs are established. These reference points are established by international conventions.

This article sheds light on the international conventions regarding the protection of IP rights being ratified by Turkey, and the precaution of confiscation by customs, which is one of the protection proceedings.

International Conventions

The Convention Establishing the World Intellectual Property Organization ("WIPO"), The Convention Establishing the World Trade Organization ("WTO") - Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS"), The Bern and The Rome Conventions regarding copyrights; the Paris Convention, The European Patent Convention ("EPC"), The International Patent System ("PCT") regarding industrial rights; the Madrid Protocol, the Trademark Law Treaty ("TLT") regarding trademarks, the Hague Agreement regarding designs may be counted as examples to the above-mentioned references points (herein after the "Conventions").

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* *Article of December 2014*

The contracting parties of these conventions create a connection that protects IPs internationally by adapting their own legislation to the necessary qualifications counted in the Conventions. Turkey has ratified all of the above-mentioned Conventions and, despite being a slower-developing country, she is surrounded by a wire as thick as developed countries. In addition, pursuant to Turkish Constitutional Law Art. 90, the provisions of international conventions entered into force, legally, have priority over the national law.

One of the points that can be deemed as a guarantee for investors is the "National Treatment Principle" counted in the Conventions (Paris Convention Art 2 and 3, Bern Convention Art 3 and 5, TRIPS Art 3). According to this principle, the same rights concerning material law issues of IPs granted to Turkish citizens must be granted to foreigners, as well. Procedural matters are not included in this principle since the Conventions grant exceptions regarding civil and administrative procedures.

Nevertheless, foreigners shall register their rights with the Turkish Patent Institute to be able to benefit from the provisions of Turkish legislation.

Infringements regarding intellectual property and related sanctions are counted in the relevant legislation[1]. In this article, we emphasize the confiscation of pirated goods by administration of customs.

Confiscation by Customs

Confiscation by customs is regulated under the Law on Customs ("LC"), Art. 57, and the Regulation on Customs ("RC"), Art. 101, and the articles that follow. This is a precaution that covers all kinds of IPs (Paris Convention Art. 9, TRIPS Art. 69).

Pursuant to RC Art. 101, the precautions include goods that are subject to an approved transaction or use by customs, which are considered to breach, or in fact breach, IP rights. This precaution is

[1] For more information: http://www.erdem-erdem.com/en/articles/rights-of-owners-in-their-intellectual-and-artistic-works-2/ (accessed on 22.12.2014) , http://www.erdem-erdem.com/en/articles/infringement-of-trademark-rights// (accessed on 22.12.2014).

applicable not only during the export and import of goods, but also during transit. Various Court of Cassation decisions establish that this precaution shall be enforced upon goods that are subject to transit[2]. Actually, confiscation by customs may prevent the entire trade of pirated goods.

The customs administration, without the necessity of any kind of court decision or jurisdictional process, and, most importantly, without losing time, may confiscate goods that are considered to breach, or in fact breach, IP rights, and will notify the right holder to realize the necessary below-stated process.

There are two methods used under which goods that breach the rights of the right holder may be confiscated. The first method is through an application by the right holder or its representative, the license holder or its representative. The protection time requested in this application may be a maximum of one year. The right holder applies to the customs administration with the technical and detailed definition of the goods, all kinds of information that may shed light on the piracy, the contact details, and the documents proving the rights of the applicant, and its Turkish registration, and demands that the goods, which pass through customs without the knowledge of the right holder, be confiscated.

The customs administration controls the goods according to the accepted applications, confiscates the goods that are in breach, notifies the right holder the following work day, and keeps the goods for 3 work days, if the goods are subject to fast deterioration; otherwise, for 10 work days.

The second method is that the customs administration, in the absence of an application, by its own initiative, may confiscate goods if there is clear evidence that shows that the goods are pirated, and that they breach IP rights. The administration keeps the goods for 3 work days to grant the necessary time to the right holder to be able to make the below-stated applications.

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[2] Decisions of the 11th Civil Chamber of the Court of Cassation, dated 13.6.2013 and numbered 2011/9321 E. 2013/12394 K.; dated 13.2.2004 and numbered 2003/13968 E. 2004/1201 K.; dated 1.4.2004 and numbered 2003/8321E. 2004/3406 K. may be given as example in the relevant matter.

The Following Process

The right holder, within 10 work days (if the goods are subject to fast deterioration, within 3 work days) after the custom's notification, shall initiate a lawsuit with the competent court, and obtain an injunction, or apply to a non-competent court to obtain an injunction, and initiate a lawsuit within 10 days after obtaining the injunction, and provide to the customs a document which shows that the lawsuit has been initiated. If the customs administration has not been informed that legal proceedings leading to a decision on the merits of the case have been initiated, customs procedures shall be carried out in accordance with the request of the owner of the goods. For goods that have been confiscated in the absence of an application, the time period begins to run from the application of the right holder to the customs administration. The periods may be extended upon the existence of just cause, except the periods for fast deteriorating goods.

After the confiscation by customs, the right holder should act immediately; otherwise, the precaution taken by customs expires. The right holder who is domiciled abroad should note that these necessary actions can be taken only by their agents who are domiciled in Turkey.

Conclusion

WTO completed the necessary examinations related to Turkey in the term of 2000-2001. With this examination, it has been determined that performances intending to achieve the compliance of our legislation with TRIPS are sufficient[3]. Besides the protection wire created within this scope, in the event that the application of the precaution of the confiscation by customs applies adequately, the infringements of the IP rights of local and foreign right holders will be prevented during the export, import and transit of the pirated goods.

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[3] http://www.mfa.gov.tr/fikri-mulkiyet-haklarinin-uluslararasi-duzeyde-korunmasi—-dunya-fikri-mulkiyet-orgutu-_wipo_.tr.mfaaa (accessed on 22.12.2014).

MISCELLANEOUS

Amendments to the Law on Public Private Partnership*

Att. Ozgur Kocabasoglu

Introduction

The goal of the public private partnership ("PPP") model is the procurement of public infrastructure investments, and the provision of long-term maintenance, operation and construction services, through a contractual relationship, which establishes a partnership between the private and public sectors. As stated in the legislative justification[1] of the draft Law on the Amendment to Certain Laws and Decrees, submitted to the Turkish Grand National Assembly and later promulgated as Law No. 6527 ("Law No. 6527"), the structure of PPP model is ever-changing. In order to efficiently realize and implement the projects in the current evolving market conditions, and to provide flexibility for the contractual basis of projects, an amendment of the law was necessary.

Accordingly, Law No. 6428 on the Construction and Renovation of Facilities and Procurement of Services by the Ministry of Health under the Public Private Partnership Model and Amendment of Certain Laws and Decrees ("Law No. 6428") is amended by the Law No. 6527, which was published in the Official Gazette dated 01.03.2014 and numbered 28928. This newsletter article will examine the amendments introduced to Law No. 6428.

Amending the Agreement and its Annexes

Law No. 6527 amended paragraph 9 of article 4 of Law No. 6428, entitled 'Contract'. Prior to the amendment, the article stipulated that the contract would regulate matters governing the termination of the

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* ***Article of March 2014***

1 Please see. http://www.ttb.org.tr/images/stories/file/2014/ss561.pdf (Access date: 24.03.2014).

contract where force majeure events arise or through agreement between the contractor and the administration. However, the scope of this article is expanded with the amendment.

Pursuant to this provision, as amended, in cases where force majeure events, extraordinary circumstances or other events affecting the implementation of agreements and its annexes arise, or the provisions of the contract and its annexes contradict one another, the contract or its annexes may be amended by the parties to ensure applicability and comprehensibility of the agreement, provided that the contract price is not amended and upon approval by the Minister of Health.

However, in the event it is understood that the project may not be completed under the existing terms and conditions due to force majeure, extraordinary circumstances or any other circumstances not attributable to contractor, the amount will be adjusted by taking the date of the final bid into consideration, and the required amendments will be made in the contract with the approval of the Minister of Health.

It is explicitly regulated through the amendment introduced by Law No. 6527 that amendments made in contracts after the tender period may have retroactive effect. The legislative justification explains the purpose of this amendment as the prevention of the termination of long-term projects worth significant amounts, of material damages and of the rupture of services.

On the other hand, exactly what constitutes force majeure and circumstances that affect the implementation of the contract and its annexes are not clearly specified under Law No. 6527. Therefore, it would be beneficial for the scope of these terms to be clarified in the secondary legislation governing the application.

Reauthorization of the High Planning Council

Paragraph 9 of Article 4 of Law No. 6428, reads as follows: "*... After the High Planning Council's ("HPC") authorization decision, where the pre-feasibility report or projects with respect to construction works are changed and will exceed the limits of the investment cost envisaged in tender documents, then the amended feasibility report or projects and other related documents will be re-submitted to*

the HPC. Upon the HPC's reauthorization, the draft contract and its annexes will be amended accordingly. …"

The last sentence of paragraph 9 of Article 4 of Law No. 6428 is exactly preserved in the amending law; pursuant to which, termination of the contract by mutual agreement of the parties and amendments to the contract shall be governed by the provisions of the contact, and in case the contract is terminated, the performance letter of guarantee shall be returned.

Other Amendments

Another amendment is introduced by Law No. 6527 to provisional Article 1 of Law No. 6428. This new amendment relates to provisions on the establishment of a superficies right, on the application of paragraph 7 of Article 3 (entitled 'Principles and procedures of tender') and paragraph 9 of Article 4 on ongoing tenders and works, for which the contract has been executed.

Moreover, another amendment to provisional Article 1 of Law No. 6428 reads as follows: "*Decisions given by administrative jurisdictions regarding lawsuits filed against tenders realized within the framework of Additional Article 7 of Law No. 3359 prior to the entry into force of this paragraph shall be complied with by making the necessary modifications in the existing tender documents and contracts, and projects will be conducted accordingly*".

As an example, the 13th Chamber of the Council of State issued a stay of execution decisions related to tenders for the health campuses to be established in Ankara-Etlik, Ankara-Bilkent and Elazığ, and decided to apply to the Constitutional Court to challenge the compliance of paragraph 8 of Additional Article 7 of Law No. 3359, which forms the basis of the PPP tenders, with the Constitution[2]. Within this framework, considering the amendment made to provisional Article 1 of Law No. 6428, it could be argued that through the modification of tender documents and contracts to comply with the decisions of administrative courts, the goal is to prevent the cancellation of tenders.

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[2] Please see. http://www.ttb.org.tr/index.php/Haberler/kampus-3268.html (Access date: 24.03.2014).

Conclusion

The PPP model has an ever-changing and evolving structure. In this respect, Law No. 6428, as amended by Law No. 6527, introduces provisions changing the tender process, aims to prevent the termination of long-term projects worth significant amounts, the occurrence of material damages and the rupture of services.

Residence Permits for Foreigners in Turkey*

Att. Naciye Yilmaz

The Law on Foreigners and International Protection No. 6458 ("Law No. 6458"), published in the Official Gazette dated 11.04.2013 and numbered 28615, abrogated the Law on Residence and Travels of Foreigners in Turkey No. 5683 by entering into force on 11.04.2014. Law No. 6458 regulates the entry of foreigners into Turkey, visa requirements, principles and procedures of the scope and application of international protection, regulations and novelties on establishment, duties and the mandate of General Directorate of Immigration Management ("General Directorate") affiliated to the Ministry of Internal Affairs ("Ministry"). The subject of this Newsletter Article shall be limited to residence permits for foreigners.

Obligation of Obtaining Residence Permit and Exemptions

Pursuant to Article 19 of Law No. 6458, foreigners who stay in Turkey beyond the du-ration of a visa or a visa exemption or, in any case longer than ninety days, are obliged to obtain a residence permit.

Article 20 of Law No. 6458 regulates exemptions from the residence permit. Foreigners listed under Article 20 are not required to obtain a residence permit. For example, foreigners who have arrived with a valid visa or by virtue of visa exemption for a stay of up to ninety days, are exempt from a residence permit with-in the period of the visa or the visa exemption; holders of a stateless person identity card; members of the diplomatic and consular mis-sions in Turkey; family members of diplomatic and consular of-ficers, provided they are notified to the Ministry of Foreign Affairs are also not required to obtain a residence permit; moreover members of the representations of interna-

* ***Article of June 2014***

tional organizations in Turkey whose status has been determined by virtue of agreements; who are exempt from a residence permit by virtue of international agreements to which Turkey is a signatory, are listed as exempt from the residence permit requirement.

Type of Residence Permit

There are several types of residence permits, depending on the purpose of the visit of the foreign person. The types of residence permit are listed as short-term residence permit, family residence permit, student residence permit, long-term residence permit, humanitarian residence permit and victim of human trafficking residence permit under Article 30 of Law No. 6458. It should be mentioned that each type of residence of permit requires detailed documentation[1] depending on the status and legal purpose of applicant.

A short-term residence permit is regulated under Articles 31 to 33 of the Law No. 6458. As per these articles, a short-term residence permit may be granted to foreigners who arrive to conduct scientific research in Turkey; own immovable property in Turkey; establish business or commercial connections; participate in job training programs; who arrive to attend educational or similar programs as part of student exchange programs or agreements to which Turkey is a party; who wish to stay for tourism purposes; who intend to receive medical treatment, provided that they do not have a disease posing a public health threat; who are required to stay in Turkey pursuant to a request or a decision of judicial or administrative authorities; who attend a Turkish language course; who attend an education program, research, in-ternship or, a course by way of a public agency; who apply to a higher education program in Turkey within six months upon their graduation. Short-term residence permits shall be issued with maximum one year duration at a time.

A family residence permit is regulated under Articles 34 to 37 of Law No. 6458. Within this framework, a family residence permit may be granted to a foreign spouse; foreign children or foreign minor children of their spouse; dependent foreign children or dependent foreign

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[1] For list of documentation, please see. http://yabancilar.iem.gov.tr/ikamet.html.

children of the spouse of Turkish citizens or of foreigners holding one of the residence permits for a maximum duration of two years at a time. The duration of the family residence permit cannot exceed the duration of the sponsor's residence permit under any circumstances. With regard to family residence permit applications, certain conditions such as monthly income and appropriate accommodation and safety standards are also required for the sponsor.

A student residence permit is regulated under Articles 38 to 41 of the Law No. 6458. As per these articles, a student residence permit shall be granted to for-eigners who shall attend an associate degree, undergradu-ate, graduate or postgraduate program in a higher education institution in Turkey. A student residence permit shall not entitle the parents as well as other family members of the foreigner to obtain a residence permit. In cases where the period of study is less than one year, duration of the residence permit shall not exceed the period of study. Foreign students attending an associate degree, under-graduate, graduate or postgraduate program in Turkey may work, provided that they obtain a work permit. However the right for work for associate degree or undergraduate students starts after the first year of their study and weekly working hours shall not exceed twenty-four hours at maximum.

A long-term residence permit is regulated under Articles 42 to 45 of Law No. 6458. Pursuant to Article 42 of Law No. 6458, long-term residence permits shall be issued by the governorates, upon approval of the Ministry, to foreigners who have continuously resided in Turkey for at least eight years with a permit or, foreigners who meet the conditions set out by the Migration Policies Board. Pursuant to Article 43 of Law No. 6458, having a long-term residence per-mit depends on certain conditions such as having continuous residence in Turkey for at least eight years; not having received social assistance in the past three years; having sufficient and stable income to maintain themselves or, if any, support their family; be covered with a valid medical insurance; not being a threat for public order or public security.

A humanitarian residence permit may be issued under the conditions regulated under Article 46 of Law No. 6458, upon approval of the Min-istry, with a maxi-mum duration of one year at a time. A human-

itarian residence permit may be granted and renewed by the governorates without seeking the conditions required for other types of residence permits. A related permit is generally issued in cases of extraordinary circumstances. Subject to the approval of the Ministry, the humanitarian residence permit shall be cancelled and shall not be renewed by the governorates in cas-es where the compelling conditions no longer apply.

A residence permit for victims of human trafficking is, as per Article 48 of Law No. 6458, a residence permit valid for thirty days which shall be granted to foreigners who are victims of human trafficking or where there is strong evidence that they might be victims of human trafficking in order to allow them to mitigate the impact of their negative experience and decide on whether they would like to cooperate with the competent authorities or not. The conditions required for issuing other types of residence per-mits shall not be required for the issuance of such permit. Such a residence permit is granted to allow for the recovery of the victims and may be renewed for periods of six months for reasons of safety, health or special circumstances of the victim. However, the total duration shall not exceed three years under any circumstances.

Application for Residence Permit

Applications for residence permit may be made to the consulates of Turkey in the foreigner's home country or, in certain cases, the application may be filed in Turkey.

In principle, applications for residence permits shall be filed to the consulates of Turkey in the foreigner's country of citi-zenship, or legal residence, as per Article 21 of Law No. 6458. Consulates shall convey the residence permit applications, together with their remarks, to the General Di-rectorate. The General Directorate shall, after finalizing the assessment of the applications, inform the consulate to issue a residence permit or to refuse the application, seeking the opinion of the relevant institutions when and if necessary. The assessment of the applications shall be finalized within ninety days at the latest.

Applications for residence permits may be filed to the governorates in Turkey in certain exceptional cases. Where the related appli-

cation is pertaining to a long-term residence permit, a student residence permit, a humanitarian residence permit and a residence permit for victims of human trafficking, it is possible to apply to the governorates in Turkey to obtain a residence permit. Moreover, in cases where there is an administrative or judicial decision, or when leaving Turkey is not reasonable and possible for the foreigner, an application may be made to the governorates in Turkey for obtaining the residence permit. The possibility to apply to the governorates in Turkey may also be used for a residence permit which conforms to the new reason for staying, in cases where the reason for which the valid residence permit was issued no longer apply or has been changed.

Renewal of Residence Permits

Pursuant to Article 24 of Law No. 6458, the duration of a residence permit may be extended by the governorates. Applications for renewal shall be made to the gov-ernorates within sixty days prior to the expiration of the residence permit and, in any case, before the ex-piration of the residence permit. Foreigners who apply for the extension of the duration of a residence permit shall be provided with a document; and even if their residence permits have expired, such foreigners may reside in Turkey by virtue of this doc-ument until the decision regarding their application has been taken.

Work Permit as Residence Permit

As a result of an increasing amount of foreign investment in Turkey, foreign citizens who come to Turkey for work has correspondingly increased. These foreigners are required to obtain a work permit as per Law No. 4817 on Work Permits of Foreigners[2].

Within this framework, Article 27 of Law No. 6458 brings an important novelty; a valid work permit shall be considered as a residence permit. However, pursuant to Law No. 492 on Fees[3], a residence permit fee equivalent to the duration of the work permit of such foreigners shall be collected.

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[2] Published on the Official Gazette dated 6 March 2003 and numbered 25040.

[3] Published on the Official Gazette dated 17 July 1964 and numbered 11756.

Conclusion

Provisions pertaining to residence permits in Law No. 6458 are assessed in general under this Newsletter article where the obligation to obtain a residence permit, exemptions, application and renewal for such a permit have been detailed. One of the most important novelties of Law No. 6458 is that the work permit is a residence permit as of its entry into force, 11.04.2014.

Amendments Introduced to the Law on Regulation of Internet Publications*

Att. Ecem Susoy

Introduction

The Law on Regulation of Internet Publications and Combating Crimes Committed by Means of Such Publications No. 5651 ("Law No. 5651") was amended by the Law No. 6518, which was published in the Official Gazette dated 19.02.2014 and numbered 28918, and the Law on the Amendment to Certain Laws No. 6527, which was published in the Official Gazette dated 01.03.2014 and numbered 28928.

The amendments introduced to Law No. 5651 contain wide regulations on the removal of content from the Internet and new terms. This newsletter Article will examine the amendments introduced to Law No. 5651.

Law No. 5651

Law No. 5651 regulates the principles and procedures on the liabilities and responsibilities of content providers[1], hosting providers[2], access providers or Internet Service Providers (ISPs)[3] and multi-threading providers[4], as well as to combat certain crimes committed on the internet through content, hosting and access providers.

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* *Article of March 2014*

1 Real and legal persons producing, modifying and providing all kinds of information or data to Internet users.

2 Real and legal persons who operate or provide space on a server and Internet connectivity.

3 Real and legal persons that provides services for accessing or using the Internet.

4 This term refers to real and legal persons providing Internet access in certain places and for a certain period, as in cafes and hotels that provide internet access to their customers.

Blocking Access to the Publications on Internet

Pursuant to Article 8 of Law No. 5651, internet content shall be blocked where it raises substantial suspicions for constituting one of the following crimes as provided for under the Turkish Criminal Code No. 5237: encouragement and incitement of suicide, sexual abuse of children, facilitating the use of drugs or stimulants, supplying hazardous substances for health, obscenity, prostitution, providing a place and possibility for gambling and also the crimes disclosed under the Law on Crimes Committed Against Atatürk No. 5816.

Prior to the amendment of Article 9 of Law No. 5651, which regulates the removal of content, anyone who feels their rights have been violated due to content should request the removal of such content from the content provider. If the content provider cannot be reached, then they should make their request to the hosting provider. In the old implementation, if the request to remove content was rejected, the person could apply to the criminal court of peace and request a court decision for removal of the content. Then, the criminal court of peace would render a decision within three days without conducting a hearing.

However, due to the amendments introduced to Article 9 of Law No. 5651, the above-stated regulation is completely amended. In the following, the amended Article 9 and additional Article 9/A will be examined.

Removal of Content that Violates Personal Rights

As per Article 9, the real/legal persons, agencies and institutions may apply to the content provider where they have a claim that Internet content violates their personal rights. Where the content provider cannot be reached, they may apply to the hosting provider to remove the violating content.

Nevertheless, an application to block access to certain content that violates personal rights may be filed directly with the criminal court of peace. The court that receives the request shall render a decision within twenty-four hours, without conducting a hearing. The decision rendered by the court on blocking access shall be sent to the Access Providers Association ("APA"); then, such access provider shall fulfill the court decision sent to them by the APA instantly within four hours.

The court may only render a decision on blocking access to the related publication, part or chapter (in the form of a URL[5], etc.), which violates personal rights. However, in the event the judge is convinced that the violation will not be prevented through blocking access then he may render a decision to block access to the whole publication on the related web site, provided that the jurisdiction of the decision is stated.

Blocking Access to Content that Violates Privacy

Following Article 9, an additional Article 9/A, entitled 'Access blocking due to the violation of privacy', is added to Law No. 5651. Pursuant to this Article, the persons claiming that the content of a publication violates their privacy may request that access to said content be blocked, by applying to the Telecommunications Communication Presidency ("TCP") as a precaution. In order to implement the received request, the TCP shall immediately inform the APA and access providers shall fulfill this precautionary request instantly, within four hours.

The types of content that may be blocked due to the violation of privacy are stated as follows: the related publication, part, chapter, picture or video (in the form of a URL).

Persons requesting that Internet content be blocked due to a violation of privacy shall submit their claim to the criminal court of peace within twenty-four hours after applying to the TCP. The court shall render a decision within forty-eight hours and send it directly to the TCP. The court decision may be appealed.

However, where it is determined that the delay of the removal of content violating privacy is unfavorable, the Telecommunication Communications President may issue a direct order to block access to such content. This decision shall be submitted to the criminal court of peace for approval within twenty-four hours by the TCP and the court shall render its decision within forty-eight hours. Nevertheless, the unfavorable circumstances due to delay of removal are not clearly defined in the law.

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[5] Full address/location of the related content on Internet.

Access Providers Association

The APA was established to conduct the implementation of decisions to block access to content, which are out of the scope of Article 8 of Law No. 5651. It is comprised of all authorized Internet service providers and other operators providing access services and its goal is maintaining coordination. The APA earns income from fees paid by its members. Also, membership to the APA is stipulated as an obligatory condition for all Internet providers who wish to provide services.

Conclusion

Pursuant to the amendments to Law No. 5651, new procedures on the removal of Internet content that violates personal rights and privacy, as well as new terms, are introduced. Also, the litigation process for removing content from the Internet is shorter compared to previous legislation.

Reinforcement of Risky Buildings under Law No. 6306*

Att. Suleyman Sevinc

The Law on the Transformation of Areas at Risk of Natural Disaster ("the Law"), which has recently been in the realm of public debate, regulates the demolition and transformation of buildings within risky areas and reserve areas, as well as risky buildings themselves. Since the entry into force of the Law, the main method adopted by the Law and the Regulation on the Application of Law No. 6306 ("the Regulation") to transform these buildings was demolition. However, this method may give rise to violations of individual rights, notably property rights. With the amendment of the Regulation made on 25.07.2014[1], the owners are now entitled to adopt a decision concerning the renovation and reinforcement of the building, as an alternative to demolition.

The Determination of a Risky Building

Risky buildings are defined under Article 1 of the Law as follows: "*Buildings whose economical life has expired, within or outside of a risky area, whose risk of demolition or heavy damage is determined by scientific and technical proofs*". The authority to consider a building as a risky building is granted to certain organizations by the Ministry of Environment and Urbanization ("Ministry"). These organizations are specified and detailed under the Regulation, as well as the conditions to be considered for engineers and academics who are allowed to work

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* ***Article of August 2014***

1 For the Regulation Regarding the Amendment of Regulation on Application of the Law on the Transformation of Areas at Risk of Natural Disaster:

http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2014/07/20140725.htm&main=http://www.resmigazete.gov.tr/eskiler/2014/07/20140725.htm.

in such organizations. Risky buildings may also be designated by the Ministry or relevant administrative authority.

The owners of the building, initially covering all the expenses, shall request the detection of the risk from the organizations authorized by the Ministry. The Ministry may also require that the owners make such request. The result of the determination shall be notified to the Ministry or the relevant administrative authority, as well as the land registry directorate. The report determining the building as a risky building shall be notified to the beneficiaries of the real and contractual rights according to the Notification Act No. 7201.

Legal Framework Prior to the Amendment of the Regulation

In terms of Law No. 6306, the qualification of the building as a building under risk may be considered as a milestone; since it limits the rights of the owners, and has certain crucial consequences. Only a single risky building determination report may be issued for each building. Therefore, if the owners wish to avoid that the report becomes definitive, they should make an objection to the report within 15 days. Said objection shall be examined and decided upon by a technical committee formed by the officers of the Ministry as well as academics.

If the objection is rejected, or if no objection is made against the report, the report shall become conclusive and the demolition process shall be initiated. The solution privileged by the Law for this process is the unanimous agreement of the owners. Following the conclusive report, the administration notifies the owners requesting the demolition of the risky building, granting a time period not less than 60 days. If the buildings are not demolished within this period, another notice will be sent by the administration, stating that where the owners fail to demolish the building within a time period not less than 30 days, the building will be demolished by the administration. In case of failure to comply with the demolition requirement at the end of the additional period, the risky building shall be demolished by the Ministry or relevant directorate. As is seen, the legislation does not provide the owners of the building with a possibility other than the demolition of the building, following the conclusive report.

Following the demolition, as the property is turned into land, condominium ownership rights or construction servitude on the property terminates; and shared ownership shall be registered by title deed to the owners in proportion to their share quantities. The future use of the land shall be determined by the affirmative votes of the owners making up two-thirds of the shares. The shares representing the dissident votes shall be sold to the other owners by auction. As is seen, the authority to determine the future use of the building, which may be considered as an important decision, does not require an unanimous decision by the owners; two-thirds of the shares is sufficient to adopt such a decision. However, this may be deemed a threat to property rights, since only two thirds is sufficient to take this important decision; although the purpose of the legislation is to eliminate risky buildings.

Possibility of Reinforcement for Risky Buildings

General Information

With the amendment of Article 8 of the Regulation by Article 4 of the Regulation on the Amendment of the Regulation on Application of the Law on the Transformation of Areas under Risk of Natural Disaster, published in the Official Gazette dated 25.07.2014, the possibility for owners to reinforce a risky building was adopted. The article provides that the owners may decide to reinforce the building within the period determined under Article 8/2 for demolition of the building. Primarily, the owners shall receive a technical report which states that the reinforcement is possible. Following the report, a decision concerning the reinforcement shall be adopted, a project of reinforcement shall be prepared and a building permit in accordance with the legislation shall be obtained.

Procedure for the Reinforcement Decision

Reference is made to Article 19/2 of the Law on Condominium Property Ownership, concerning the procedure to be followed for the adoption of the reinforcement decision. The relevant provision sets forth that decisions concerning construction, renovation and additions on the common areas of the main immovable shall be adopted by the written consent of 4/5 of the owners. Therefore, the reinforcement of

the building requires the relevant percentage to be fulfilled.

The abovementioned article also stipulates that the consent of the owners shall not be required for the renovation project if the damage in question may affect other parts of the building, if it is necessary that the building be fixed as soon as possible, or where the necessity of reinforcement is handed down by court order. As the renovation of a building declared risky is of an urgent nature, it may be stated that priority is given to renovation in order to prevent the risk that the building poses to its surroundings. However, at least one of the owners should prove that the reinforcement is technically possible, in order for this option to be applied. Unless one of the owners proves that the renovation of the building is possible, the building shall be demolished in the period stated in the relevant provision. Therefore, demolition is still deemed as the main solution; however, it is possible for the owners to adopt a decision in favor of reinforcement if they prefer this option to be applied. Said amendment in the Regulation is more adequate in terms of protecting the property rights of the condominium owners. It not only prevents the unnecessary expense of demolishing and rebuilding a building, which can be reinforced, but also provides the owners with an alternative to demolition.

Conclusion

As is seen, the initial version of the Regulation sets forth a strict regulation for the condominium owner and legitimizes nothing but demolition, following the finalization of the report determining the building as a risky building. Considering that the decisions on the future use of the land are taken by two-thirds vote, it is inevitable for disputes to arise between the owners who are within the majority, and the other owners who do not take part in the decision for demolition. However, the new regulation may somewhat prevent conflicts arising from the demolition of the condominium; since the condominium owners against demolishment may determine that the reinforcement of the building is possible. By presenting an alternative project, they may enable a renovation decision to be adopted. It is probable that this legal development will prevent a considerable amount of lawsuits. On the other hand, it should be emphasized that the jurisprudence will be determinative in this matter.

Payment and Security Settlement Systems*

Att. Ozgur Kocabasoglu

The worldwide attraction gain of Bitcoin, which is an encrypted post-modern online payment instrument that is transferred by not depending on any central authority and that does not disclose the identity of its users, has raised the importance of alternative payment and monetary systems. However, it should be underlined that Bitcoin is not a legally regulated[1] instrument, and that therefore it poses several risks for consumers.

Some steps have been taken in order to create the necessary legal base in Turkey since the usage of alternative payment and monetary systems has risen. Within this regard, the Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions No.6493 ("Law") entered into force through publication in the Official Gazette dated 27.06.2013 and numbered 28690, for the purposes of regulating and inspecting new trends in payment services and monetary systems.

For the application of said Law, the Regulation on Payment Services and Electronic Money Issuance ("Regulation") and the Communiqué on the Management and Inspection of Information Systems of Payment and Electronic Money Institutions ("Communiqué") were published in the Official Gazette dated 27.06.2014 and numbered 29043.

This article aims to provide a general overview of the legal basis of some postmodern payment systems that are supposed to play an

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* *Article of July 2014*

1 Banking Regulation and Supervision Agency ("BRSA"), in its announcement dated 25.11.2013, stated that the technology of Bitcoin does not enter within the scope of the Law on the Payment and Security Consensus Systems, Payment Services and Electronic Money Institutions numbered 6493.

important role in our future lives, by examining the legal justification and important articles of said Law.

Legal Justification of the Law

The legal justifications of the Law show its extent, purpose and scope. These are as follows:

- Usage of non-cash payment methods for several commercial and financial transactions in daily life, as a result of technological developments and new emerging applications for making payments;
- Extension of the usage of electronic money as a payment instrument and as a consequence, the need for a legal basis;
- Establishing the integrity of the legislation by defining, legally, the relationship between the parties as related to payment and security settlement systems and services, and the terms used in such relationships;
- Regulating the non-bank institutions which can engage in the activities of payment services, the increase of the competition within this sector and the benefits of consumers obtained as a consequence.
- Authorizing the Turkish Republic Central Bank ("Central Bank") to inspect the secure and effective working of the systems; and
- Harmonization with European Union legislation, especially with the Payment Services Directive 2007/64/EC, Directive 2009/44/EC amending Directive 1998/26/EC On Settlement Finality in Payment and Securities Settlement Systems and the Directive 2009/110/EC on the Taking Up, Pursuit and Prudential Supervision of the Business of Electronic Money Institutions.

Payment and Security Settlement Systems

Payment and security settlement systems shall mean the structure that has common rules and provides the necessary infrastructure for the

clearing and settlement of transactions for the realization of fund and security transfers based on transfer orders between three or more participants. Stipulations relevant to the systems are provided within Articles 4 to 9 of the Law.

Institutions that aim at being a system operator shall obtain an activity permit from the Central Bank. In this regard, the conditions stipulated in Art.5 of the Law shall be fulfilled. These conditions relate to some financial and structural issues. For example, the system operator shall be established as a joint stock company and its paid in capital shall be free of all encumbrances and shall amount to at least five million Turkish liras. On the other hand, other conditions relate to the technical, organizational and personnel capacity of the system operator, and to whether they have taken the necessary measures for risk management and business continuity.

The Central Bank is authorized to inspect in order to assure the permanent functioning of the systems established or to be established. The cases that require measures to be taken and the measures to be taken are provided in the Art. 9 of the Law.

Payment Services

The transactions that shall be deemed as payment services and vice versa are provided in detail in Art. 12 of the Law. These payment services can only be provided by the banks regulated under Banking Law No. 5411[2] ("Law No. 5411") on electronic money institutions, payment institutions and the Central Bank.

The payment institution shall mean the legal entity authorized to provide and realize payment services within the scope of the Law. The conditions to be fulfilled by payment institutions are stipulated in Art. 14 of the Law. Pursuant to this, payment institutions shall be established as joint stock companies and have capital of minimum one or two million Turkish liras depending on the type of payment service. In addition to these financial and structural conditions, there exist other conditions relevant to personnel and management capacities. As per Art. 8 of the Regulation, detailed documentation is required when fil-

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2 Official Gazette dated 01.11.2005 and numbered 25983.

ing activity permit applications. The activity permit shall be issued by the Banking Regulation and Supervision Agency ("BRSA").

The operations that payment institutions cannot engage in and other prohibitions are provided in Art. 14 of the Law, and Articles 10 and 11 of the Regulation. Pursuant to these, a payment institution cannot collect deposit or participation funds, cannot use the name of a bank in any document, announcement and advertisement or publication, cannot give the impression that it acts and conclude transactions on behalf of a bank. In addition, a payment institution cannot grant loans. Activities of foreign exchange purchase and sale are limited to those related to the procurement of a payment service. Commercial activities other than operating as a payment service are not authorized.

Electronic Money Institutions and Electronic Money Issuance

Pursuant to Art. 18 of the Law, only banks operating within the scope of Law No. 5411 and authorized electronic money institutions can issue electronic money.

Institutions seeking to issue electronic money shall obtain an activity permit from the BRSA. Within this respect, some financial and structural conditions, such as the condition of minimum capital shall be fulfilled. Electronic money institutions are also subject to the operational limitations and prohibitions explained above. It should be underlined that the pre-payment instruments that are solely used in the own enterprises net of a company, or solely for the purchase of a specific product or service, are not within the scope of the Law.

The electronic money issuing institution shall immediately convert the funds deposited by the electronic money user to electronic money and prepare it for the disposition. This transaction shall be realized through the banks operating within the scope of Law No. 5411. Yet, the funds collected for issuance shall be kept in separate accounts opened in these banks during the usage term and shall be blocked by these banks. It is prohibited to provide any benefit, such as interest, to the electronic money owner.

Control Provision

Pursuant to Art. 25 of the Law, any acquisition of shares that result in the acquisition by one person directly or indirectly of shares repre-

senting ten percent or more of the capital, or if shares held directly or indirectly by one shareholder exceed ten percent, twenty percent, thirty-three percent or fifty percent of the capital as a result thereof, and assignments of shares that result in shares held by one shareholder falling below these percentages, shall require the permission of the Central Bank for a system operator, and the permission of the BRSA for an electronic money institution.

Sanctions

The sanctions and prosecution-investigation procedure are provided in between Articles 27 and 41 of the Law.

Pursuant to these, the offences of not following the regulations and decisions, operating without the relevant permits, blocking inspection and supervision activities and not submitting the documents required, providing false statements, hiding documents and failure to comply with the obligation of information security, disclosing information that shall not be disclosed, bringing a company into disrepute, not recording transactions, false accounting and embezzlement are subject to special sanctions.

Conclusion

Technological developments essentially influence commercial relationships and therefore provoke radical changes in payment methods and monetary systems. In order to establish a legal basis to monitor these changes and new trends, regulations in harmony with the European legislations have been adopted in Turkey. It can be stated that through the adoption of the Law, the Regulation and the Communiqué explained above, it is possible for non-bank institutions and electronic money institutions to engage in payment services if the required conditions are fulfilled. The authorities authorized to grant permits are the Central Bank for payment and security settlement systems and the BRSA for electronic money institutions.

LEGAL DEVELOPMENTS

Important International Agreements

- The Resolution of the Council of Ministers dated 09.12.2013 and numbered 5735, on the ratification of the Memorandum of Understanding signed on 05.03.2013, between the Turkish Government and the Organization for Economic Co-operation and Development (OECD) on the Implementation of the Multilateral Tax Program at the OECD-Ankara Multilateral Tax Center and the ratification of its entering into force effective from 01.01.2013 was published in the Official Gazette dated 28.01.2014 and 28896.
- The Law approving the ratification of the Memorandum of Understanding on Natural Resources and Water Basin Management between the Government of the Republic of Turkey and the Government of the Islamic Republic of Iran was published in the Official Gazette dated 15.02.2014 and numbered 28914.
- The Law approving the ratification of the Agreement to Establish the United Nations Development Programme for Europe and the Common Wealth of Independent States Regional Service Center in Istanbul, signed between the Government of the Republic of Turkey and the United Nations Development Programme in New York on 27.09.2013 was published in the Official Gazette dated 15.02.2014 and numbered 28914.
- The Resolution of the Council of Ministers dated 13.02.2014 and numbered 5979, regarding the ratification of the Agreement on the Establishment of the United Nations Development Programme, Europe and the Common Wealth of Independent States Regional Service Center in Istanbul, signed between the Government of the Republic of Turkey and the United Nations Development Programme, in New York on 23.09.2013 was published in the Official Gazette dated 27.02.2014 and numbered 28926.

- The Resolution of the Council of Ministers dated 12.02.2014 and numbered 5990, regarding the ratification of the Agreement concerning the Cross-Border Electricity Trade via Borcka-Akhaltsikhe Interconnection Line, signed between the Republic of Turkey and Georgia, in Tbilisi on 20.01.2012 and approved by the Law dated 29.05.2013 and numbered 6490 was published in the Official Gazette dated 05.03.2014 and numbered 28932.
- The Resolution of the Council of Ministers dated 27.01.2014 and numbered 5893 on the participation to the Protocol Amending the Agreement on Trade-Related Aspects of Intellectual Property Rights, which was approved by the Law dated 30.04.2013 and numbered 6471 was published in the Official Gazette dated 15.03.2014 and numbered 28942.
- The Resolution of the Council of Ministers dated 11.03.2014 and numbered 6074, regarding the determination of the effective date as 01.03.2014 of the Agreement on the Establishment of the United Nations Development Programme, Europe and the Common Wealth of Independent States Regional Service Center in Istanbul, signed between the Government of the Republic of Turkey and the United Nations Development Programme in New York on 27.09.2013 was published in the Official Gazette dated 25.03.2014 and numbered 28952.
- The Law on the Ratification of our Participation in the Convention on Facilitation of International Maritime Traffic entered into force through publication in the Official Gazette dated 16.04.2014 and numbered 28974.
- The Resolution of the Council of Ministers dated 17.02.2014 and numbered 6025, regarding the ratification of the Memorandum of Understanding between the Government of the Republic of Turkey and the Government of the Republic of Macedonia on Agricultural Cooperation, signed in Ankara on 27.06.2013 was published in the Official Gazette dated 19.04.2014 and dated 28977.
- The Law on the Ratification of the Protocol on Hospital Operation and Transfer between the Government of the

Republic of Turkey and the Government of the Federal Republic of Somalia entered into force through publication in the Official Gazette dated 02.05.2014 and numbered 28988.

- The Law on the Ratification of the Protocol on Collaboration in Areas of Health and Medical Sciences between the Government of the Republic of Turkey and the Government of the Federal Republic of Somalia entered into force through publication in the Official Gazette dated 17.05.2014 and numbered 29003.
- The Law on the Ratification of the Memorandum of Understanding on Collaboration in Forestry between the Government of the Republic of Turkey and the Government of the Republic of Azerbaijan entered into force through publication in the Official Gazette dated 17.05.2014 and numbered 29003.
- The Resolution of the Council of Ministers dated 05.05.2014 and numbered 6336 on Turkey's participation at the International Convention on Salvage of 1989 with reserve was published in the Official Gazette dated 24.05.2014 and numbered 29009.
- The Resolution of the Council of Ministers dated 18.04.2014 and numbered 6300 on the Ratification of the Memorandum of Understanding on Cooperation in the Fields of Hydrocarbon and Minerals Between the Government of the Republic of Turkey and the Government of the Republic of Yemen was published in the Official Gazette dated 28.05.2014 and numbered 29013.
- The Resolution of the Council of Ministers dated 16.06.2014 and numbered 2014/6515, on the Approval of the Memorandum of Understanding on Cooperation in the Field of Forestry between the Government of the Republic of Turkey and the Government of the Republic of Azerbaijan was published in the Official Gazette dated 03.07.2014 and numbered 29049.
- The Resolution of the Council of Ministers dated 16.06.2014 and numbered 2014/6511, on the Approval of the Agreement on Cooperation in the Field of Healthcare and Medicine between

the Government of the Republic of Turkey and the Government of the Republic of Gambia was published in the Official Gazette dated 06.07.2014 and numbered 29052.

- The Resolution of the Council of Ministers dated 16.06.2014 and numbered 2014/6501, regarding the ratification of the amendments made to the Annex Rules of International Regulations For Preventing Collisions At Sea dated 1972 through the resolutions A.464 (12), A.626 (15), A.678(16), A.736(18), A.910(22) and A.1004(25) of the Inter-Governmental Maritime Consultative Organization was published in the Official Gazette dated 09.07.2014 and numbered 29055.
- The Resolution of the Council of Ministers dated 23.06.2014 and numbered 2014/6533, on the Approval of the Memorandum of Understanding on Cooperation in the Field of Tourism between the Government of the Republic of Turkey and the Government of the Islamic Republic of Iran was published in the Official Gazette dated 09.07.2014 and numbered 29055.
- The Resolution of the Council of Ministers dated 30.06.2014 and numbered 2014/6539 regarding the ratification of the Agreement signed between the Republic of Turkey and the European Union on the participation of the Republic of Turkey in the Union Framework Program of European Union - Horizon 2020 For Research and Innovation (2014-2020) was published in the Official Gazette dated 12.07.2014 and numbered 29058.
- The Resolution of the Council of Ministers dated 23.06.2014 and numbered 2014/6545, on the Approval of the Protocol of the Road Transport Joint Committee Meeting, which was signed between the Republic of Turkey and the Republic of Hungary on 05.03.2014 in İzmir was published in the Official Gazette dated 25.07.2014 and numbered 29071.
- The Resolution of the Council of Ministers dated 30.06.2014 and numbered 2014/6562, on the Approval of the Agreement of mutual Exemption of the Visas for holders of Diplomatic, Service and Special Passports, signed between the Government of the Republic of Turkey and the Government of the Republic

of Croatia on 16.05.2014 in Zagreb was published in the Official Gazette dated 25.07.2014 and numbered 29071.

- The Resolution of the Council of Ministers dated 21.07.2014 and numbered 2014/6664, regarding the ratification of the Grant Agreement (Energy Sector Program- Phase 1 Project) dated 30.05.2014, signed between the Republic of Turkey and International Bank for Reconstruction and Development acting as administrator of the European Union Instrument for pre-accession Trust Fund was published in the Official Gazette dated 07.08.2014 and numbered 29081.
- The Resolution of the Council of Ministers dated 09.07.2014 and numbered 2014/6604, regarding the ratification of the Amendments to the International Convention on Load Lines dated 1966 and the Protocol of 1988 Related to the Said Convention, due to the resolutions of the International Maritime Organization was published in the Official Gazette dated 08.08.2014 and numbered 29082.
- The Resolution of the Council of Ministers dated 08.07.2014 and numbered 2014/6656, regarding the Approval of the Convention on Cybercrime With Relevant Reservations and Declarations which was signed on 10.10.2010 in Strasbourg was published in the Official Gazette dated 09.08.2014 and numbered 29083.
- The Resolutions of the Council of Ministers dated 21.07.2014 and numbered 2014/6690 regarding the ratification of the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments with reservation was published in the Official Gazette dated 28.08.2014 and numbered 29102.
- The Resolution of the Council of Ministers dated 05.05.2014 and numbered 2014/6333, regarding the Approval of the Cultural Cooperation Program from 2013 to 2015 between the Government of the Republic of Turkey and the Government of the Republic of Macedonia was published in the Official Gazette dated 29.08.2014 and numbered 29103.

- The Law No. 6554 on the Endorsement of the Approval of the Memorandum of Understanding pertaining to the Trans Anatolia Natural Gas Pipeline System between the Government of Republic of Turkey and the Government of the Republic of Azerbaijan entered into force through publication in the Official Gazette dated 18.09.2014 and numbered 29123.
- The Law No. 6555 on the Endorsement of the Approval of the Optional Commercial Agreement signed between the Republic of Turkey and the Islamic Republic of Iran entered into force through publication in the Official Gazette dated 18.09.2014 and numbered 29123.
- The Resolution of the Council of Ministers dated 22.09.2014 and numbered 2014/6807 on the Approval of the Agreement between the Republic of Turkey and the European Union with regard to Participation of the Republic of Turkey into the 2020 Customs Union Program was published in the Official Gazette dated 30.09.2014 and numbered 29135.
- The Resolution of the Council of Ministers dated 22.09.2014 and numbered 2014/6809 on the Approval of the Agreement between the Republic of Turkey and the European Union with regard to Participation of the Republic of Turkey into the Fiscalis 2020 Program of the Union was published in the Official Gazette dated 02.10.2014 and numbered 29137.
- The Resolution of the Council of Ministers dated 13.10.2014 regarding the Amendment to the Host Government Agreement between the Government of the Republic of Turkey and the Trans Anatolian Gas Pipeline Company B.V. concerning the Trans Anatolian Natural Gas Pipeline System between the Government of the Republic of Turkey and TANAP Doğal Gaz İletim Anonim Şirketi was published in the Official Gazette dated 21.10.2014 and numbered 29152.
- The Resolution of the Council of Ministers dated 13.10.2014, regarding the ratification of the Memorandum of Understanding Concerning the Trans Anatolian Natural Pipeline System between the Government of the Republic of Turkey and the Government of Republic of Azerbaijan signed on 26.05.2014,

in Ankara was published in the Official Gazette dated 21.10.2014 and numbered 29152.

- The Resolution of the Council of Ministers dated 20.10.2014, regarding the ratification of Preferential Trade Agreement between the Republic of Turkey and the Islamic Republic of Iran that was signed in Tehran on 29.01.2014 was published in the Official Gazette dated 04.11.2014 and numbered 29165.
- The Resolution of the Council of Ministers dated 30.09.2014, regarding the ratification of the Addendum to the Financing Agreement Concerning the National Program for Turkey under the Instrument for Pre-accession Assistance – Transition Assistance and Institution Building Component for the Year 2011 – Part 2 between the Government of the Republic of Turkey and the European Commission that was signed on 25.07.2014 was published in the Official Gazette dated 25.11.2014 and numbered 29156.
- The Resolution of the Council of Ministers dated 03.11.2014, regarding the ratification of Protocol of the Road Transport Joint Committee Meeting between The Czech Republic and Republic of Turkey that was signed in Istanbul on 14.05.2014, and approved as per Articles 3 and 5 of the Law dated 31.05.1963 and numbered 244, was published in the Official Gazette dated 29.11.2014 and numbered 29190.
- The Agreement on the Participation of the Republic of Turkey to the "Competitiveness of Enterprises and Small and Medium-sized Enterprises" Programme (COSME) (2014-2020) between the European Union and the Republic of Turkey that was signed in Brussels on 16.10.2014 was approved as per the resolution of the Council of Ministers dated 10.11.2014, and was published in the Official Gazette dated 18.12.2014 and numbered 29209.

Important Resolutions of the Council of Ministers

- The Resolution of the Council of Ministers dated 02.01.2014 and numbered 5776 on the Abolition of the Council of Ministers Resolutions dated 10.09.2001 and numbered 2001/3025 regarding the establishment of a derivatives exchange, entitled Derivatives Exchange Joint Stock Company was published in the Official Gazette dated 06.02.2014 and numbered 28905.

- The Resolution of the Council of Ministers dated 05.02.2014 and numbered 5932, regarding the Transfer of Funds to Upper Funds was published in the Official Gazette dated 14.03.2014 and 28941.

- The Resolution of the Council of Ministers dated 10.02.2014 and numbered 5973, on the Amendment to the Resolution Pertaining to the Determination of Companies subject to Independent Audit was published in the Official Gazette dated 14.03.2014 and numbered 28941.

- The Resolution of the Council of Ministers dated 27.01.2014 and numbered 2014/5870, regarding our Participation in Decision No. 1/2013 of The EU-EFTA Joint Committee on Common Transit amending the annex of the Convention on Common Transit Procedure, concluded to transfer goods between the European Economic Community and EFTA Countries and within the EFTA Countries themselves was published in the Official Gazette dated 15.03.2014 and numbered 28942.

- The Resolution of the Council of Ministers dated 10.02.2014 and numbered 5917, regarding the entry into force of The Resolution On the Extension Of The Power Of The Commission, which was Established Pursuant to Law No. 6384 on the Resolution of Certain Applications Submitted to the European Court of Human Rights through Payment of Compensation was published in the Official Gazette dated 16.03.2014 and numbered 28943.

- The Resolution of the Council of Ministers dated 05.02.2014 and numbered 5933 on the entry into force of the Status of the Expert Appraisers Association of Turkey was published in the Official Gazette dated 02.04.2014 and numbered 28960.
- The Resolution of the Council of Ministers, dated 05.02.2014 and numbered 5934, on the entry into force of the Status of the Turkish Capital Markets Association was published in the Official Gazette dated 02.04.2014 and numbered 28960.
- The Resolution of the Council of Ministers dated 05.02.2014 and numbered 5939, regarding the entry into force of the Resolution on the Determination of Certain Areas as Technological Development Regions and Changing the Boundaries of Certain Technological Development Regions was published in the Official Gazette, dated 04.04.2014 and numbered 28962.
- The Resolution of the Council of Ministers dated 27.01.2014 and numbered 6058 on the entry into force of the Resolution on the Amendment to the Resolution concerning State Support of Investments was published in the Official Gazette dated 09.05.2014 and numbered 28995.
- The Resolution of the Council of Ministers dated 19.03.2014 and numbered 6359 on the entry into force of the Resolution on Supporting the Investments of Stockbreeding in Cities within the scope of the Projects of East Anatolia, Southeast Anatolia, Konya Low and East Black Sea Regions was published in the Official Gazette dated 04.06.2014 and numbered 29020.
- The Resolution of the Council of Ministers dated 25.06.2014 and numbered 2014/6534on the entering into force of the Resolution on the amendment to the Resolution Pertaining to the Transportation of Coil Oil and Jet Fuel through Highways and Railways of Turkey was published in the Official Gazette dated 04.07.2014 and numbered 29050.
- The Resolution of the Council of Ministers dated 21.07.2014 and numbered 2014/6692 on the Supplementary Resolution of Import Regimes was published in the Official Gazette dated

02.08.2014 and numbered 29076. The Resolution entered into force on 10.08.2014

- The Resolution of the Council of Ministers dated 06.08.2014 and numbered 2014/6588 on the Amendments regarding Public Assistance for Investments entered into force through its publication on the Official Gazette dated 06.08.2014 and numbered 29080, valid from 19.06.2012.
- The Resolution of the Council of Ministers dated 21.07.2014 and numbered 2014/6706, regarding the Amendments to Certain Articles in the Enforcement of Customs Law No. 4458 entered into force through publication in the Official Gazette dated 18.08.2014 and numbered 29092.
- The Resolution of the Council of Ministers dated 09.07.2014 and numbered 2014/6716, regarding the Foundation of 43 Branch Offices Related to Certain Provincial Directorates of the Ministry of Food, Agriculture and Livestock's Field Service was published in the Official Gazette dated 26.08.2014 and numbered 29100.
- The Resolution of the Council of Ministers dated 14.08.2014 and numbered 2014/6722, regarding the Amendment on the Supplementary Resolution of Import Regime Resolution was published in the Official Gazette dated 26.08.2014 and numbered 29100.
- The Resolution of the Council of Ministers dated 12.08.2014 and numbered 2014/6724, regarding the Opening of a Diplomatic Mission in Antalya and İzmir related to the Ministry of the European Union's Central Directorate was published in the Official Gazette dated 26.08.2014 and numbered 29100.
- The Resolution of the Council of Ministers dated 01.09.2014 and numbered 2014/6733, regarding the Resolution on the Import Regime was published in the Official Gazette dated 03.09.2014 and numbered 29108.
- The Resolution of the Council of Ministers dated 08.09.2014 and numbered 2014/6782 concerning the Expedited Expropriation of Certain Immovable by the Ministry of Finance

for the Construction of the Kavaklı Windpower Plant in Balıkesir Province was published in the Official Gazette dated 01.10.2014 and numbered 29136.

- The Resolution of the Council of Ministers dated 08.09.2014 and numbered 2014/6786 concerning the Expedited Expropriation of Certain Immovable by the Ministry of Finance for the Construction of the Hydroelectric, Wind-power and Natural Gas Combined Cycle Plants in Certain Provinces was published in the Official Gazette dated 01.10.2014 and numbered 29136.
- The Resolution of the Council of Ministers dated 15.09.2014 and numbered 2014/6798 concerning the Acceptance of the Turkish National Marine Research Strategy Certificate was published in the Official Gazette dated 02.10.2014 and numbered 29137.
- The Resolution of the Council of Ministers dated 15.09.2014 and numbered 2014/6792 concerning the Amendment to the Articles of Association of the Central Bank of the Republic of Turkey was published in the Official Gazette dated 11.10.2014 and numbered 29142.
- The Resolution of the Council of Ministers dated 22.09.2014 and numbered 2014/6820 concerning the Expedited Expropriation of Certain Immovable by the Ministry of Finance for the Construction of the Hydroelectric and Wind-power Plants and Energy Transmission Lines in Certain Provinces was published in the Official Gazette dated 16.10.2014 and numbered 29147.
- The Resolution of the Council of Ministers dated 30.09.2014 and numbered 2014/6841 concerning the acceptance of the Program of Year 2015 and “Decision regarding the Implementation, Coordination and Supervision of the Program of Year 2015,” which was submitted to the Council of Ministers with the Higher Planning Council’s Report dated 26.09.2014 and numbered 2014/26 was published in the Official Gazette dated 17.10.2014 and numbered 29148.

- The Resolution of the Council of Ministers dated 13.10.2014 and numbered 2014/6889 on the Amendment to the Decree on the Implementation of Certain Articles of the Customs Law No. 4458 was published in the Official Gazette dated 18.10.2014 and numbered 29149.
- The Resolution of the Council of Ministers dated 01.09.2014 and numbered 2014/6747 on the execution of the Resolution on Public Offering Concerning the Shares of Borsa İstanbul A.Ş. owned by the Treasury was published in the Official Gazette dated 14.11.2014 and numbered 20175.
- The Resolution of the Council of Ministers dated 24.11.2014 and numbered 2014/7016 on the extension of certain applications and initial installment payment periods in the Law on the Amendment to the Labor Law and Certain Laws, Statutory Decrees and Law on Restructuring Certain Receivables No. 6552, was published in the Official Gazette dated 30.11.2014 and numbered 29191.

Important Changes and Developments in Laws

- The Law No. 6512 on the Central Administration Budget of 2014 was published on the Reiterated Official Gazette dated 27.12.2013 and numbered 28864. This Law entered into force on 01.01.2014.
- Law No. 6527 on the Amendment to Certain Laws was entered into force through publication in the Official Gazette dated 01.03.2014 and numbered 28928. This Law amended the Law on the Construction and Renovation of Healthcare Facilities and Procurement of Services by the Ministry of Health under the Public Private Partnership Model and Amendment of Certain Laws and Decrees No. 6428.
- The Law on the Amendment to the Law of Soil Preservation and Use of Land entered into force through publication in the Official Gazette dated 15.05.2014 and numbered 29001.
- The Law No. 6552 on the Amendment of the Labor Law and Certain Law and Statutory Decrees and on the Restructuring of the Receivables was published in the repeated Official Gazette dated 11.09.2014 and numbered 29116.
- The Law on the Regulation of Electronic Commerce was published in the Official Gazette dated 05.11.2014 and numbered 29166. The Law will enter into force on 01.05.2015.
- The Law on the Endorsement of the Approval of Agreement No. 167 on Health and Safety in Construction Works entered into force through publication in the Official Gazette dated 29.11.2014 and numbered 29190.
- The Law on Istanbul Arbitration Center was published in the Official Gazette dated 29.11.2014 and numbered 29190. This Law enters into force on 01.01.2015.

Important Changes and Developments in Regulations

- The Regulation on the Accounting Practices and Financial Statements of Financial Leasing, Factoring and Financing Companies entered into force through publication in the Official Gazette dated 24.12.2013 and numbered 28861.
- The Regulation on the Amendment to the Regulation on the Implementation of Service Purchase Tenders entered into force through publication in the Official Gazette dated 25.12.2013 and numbered 28862.
- The Regulation on the Amendment to the Regulation on Measurement and Evaluation of the Liquidity Sufficiency of Banks was published in the Official Gazette dated 31.12.2013 and numbered 28868. This Regulation entered into force through publication effective from 01.01.2014.
- Electricity Market Distribution Regulation entered into force through publication in the Official Gazette dated 02.01.2014 and numbered 28870.
- The Regulation on the Amendment to the Regulation on the Procedures and Principles Relating to the Determination of the Qualification of Credits and Other Claims by Banks, and the Reserves to be Allocated for these entered into force through publication in the Official Gazette dated 12.01.2014 and numbered 28880.
- The Regulation on the Application of the Turkish Petroleum Act entered into force through publication in the Official Gazette dated 22.01.2014 and numbered 28890, to be applied as of 11.12.2013.
- The Regulation on the Amendment to the General Regulation of Lighting entered into force through publication in the Official Gazette dated 28.01.2014 and numbered 28896. This Regulation entered into force through publication effective from 01.01.2014.
- The Regulation on the Amendment to the Regulation on Banking Information Systems and the Audit of Banking

Processes Conducted by Independent Audit Institutions entered into force through publication in the Official Gazette dated 28.01.2014 and numbered 28896.

- The Regulation on the Abolition of the Regulation on the Establishment and Working Principals of the Derivatives Exchange entered into force through publication in the Official Gazette dated 06.02.2014 and numbered 28905.
- The Regulation on the Amendment to the Regulation on Financial Leasing, Factoring and Accounting Applications of Financial Companies and their Financial Statements was published in the Official Gazette dated 07.02.2014 and numbered 28906. This Regulation entered into force through publication effective from 24.12.2013.
- The Regulation on the Amendment to the Regulation on the Risk Center of the Banks Association of Turkey entered into force through publication in the Official Gazette dated 11.02.2014 and numbered 28910.
- The Regulation on the Amendment to the Implementation Regulation on Organized Industrial Zones entered into force through publication in the Official Gazette dated 06.03.2014 and numbered 28933.
- The Regulation on the Amendment to the Regulation regarding the Election of the Legal Persons Applying for License in order to be Engaged in Storage of Natural Gas Activities in the Same Place entered into force by publication in the Official Gazette dated 11.03.2014 and numbered 28938.
- The Implementation Regulation on Technology Development Areas was published in the Official Gazette dated 12.03.2014 and numbered 28939. This Regulation entered into force on 01.04.2014.
- The Regulation on the Amendment to the Regulation on the Establishment and Duties of Turkish Exporters Assembly and Exporters Associations entered into force through publication in the Official Gazette dated 12.03.2014 and numbered 28939.

- The Regulation on the Electricity Market Activities of Industrial Organized Zones entered into force through publication in the Official Gazette dated 14.03.2014 and numbered 28941.
- The Regulation on the Amendment to the Private Hospitals Regulation entered into force through publication in the Official Gazette dated 21.03.2014 and numbered 28948.
- The Regulation on the Calculation of the Liquidity Coverage Ratio of Banks was published in the Official Gazette dated 21.03.2014 and numbered 28948. Different dates of entry into force have been determined for the articles of this Regulation.
- The Regulation on the Amendment to the Regulation on Financial Structures of Insurance and Reinsurance Companies and Retirement Companies entered into force through publication in the Official Gazette dated 29.03.2014 and numbered 28956.
- The Regulation on the Amendment to the Quotation Regulation of Istanbul Stock Exchange entered into force through publication in the Official Gazette dated 29.03.2014 and numbered 28956.
- The Regulation on Procedures and Principles regarding the Indemnification of Investors and Gradual Liquidation entered into force through publication in the Official Gazette dated 29.03.2014 and numbered 28956.
- The Regulation on the Amendment to the Regulation on Limitation, Determination and Control Issues of Immovable Properties entered into force through publication in the Official Gazette dated 15.04.2014 and numbered 28973.
- The Insurance Agencies Regulation was published in the Official Gazette dated 22.04.2014 and numbered 28980. The third paragraph of Article 18 of this Regulation entered into force on 01.01.2015, while the other articles entered into force on the date of publication.

- The Regulation Pertaining to the Activities Considered within the Scope of Insurance Business, Insurance Contracts in Favor of Consumers and Distance Insurance entered into force through publication in the Official Gazette dated 25.04.2014 and numbered 28982.
- The Regulation on the Amendment to the Regulation on Social Security Transactions entered into force through publication in the Official Gazette dated 03.05.2014 and numbered 28989.
- The Regulation on the Construction and Renovation of Facilities and the Procurement of Services via the Public-Private Partnership Model by the Ministry of Health entered into force through publication in the Official Gazette dated 09.05.2014 and numbered 28995.
- The Regulation on the Amendment to the Regulation on Bank Cards and Credit Cards entered into force through publication in the Official Gazette dated 13.05.2014 and numbered 28999.
- The Regulation on the Sale, Advertisement and Promotion of Medical Devices was published in the Official Gazette dated 15.05.2014 and numbered 29001. Article 21 of this Regulation enters into force one year after its date of publication and the other Articles on the date of its publication.
- The Regulation on the Procedures and Principles to be Applied for the Review of the Claims regarding Human Rights Violations entered into force through publication in the Official Gazette dated 17.05.2014 and numbered 29003.
- The Regulation on the Simplification of Customs Transactions was published in the Official Gazette dated 21.05.2014 and numbered 29006.
- The Regulation on the Amendment to the Customs Regulation entered into force through publication in the Official Gazette dated 21.05.2014 and numbered 29006.
- The Regulation on the Amendment to the Regulation concerning the Implementation of Framework Agreement Tenders was published in the Official Gazette dated 07.06.2014 and numbered 29023.

- The Regulation on the Amendment to the Regulation on the Implementation of Tenders relating to the Procurement of Consultancy Services was published in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Regulation on the Amendment to the Regulation on the Implementation of Electronic Tenders was published in the Official Gazette dated 07.06.2014 and numbered 29023. This Regulation entered into force on 01.01.2015.
- The Regulation on the Amendment to the Regulation on the Implementation of Tenders relating to the Procurement of Services was published in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Regulation on the Amendment to the Regulation on the Applications for Tenders was published in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Regulation on the Amendment to the Regulation on the Implementation of Tenders relating to the Purchase of Goods was published in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Regulation on the Amendment to the Regulation on the Implementation of Tenders relating to Construction was published in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Regulation on the Market Surveillance and Inspection by the Ministry of Customs and Trade entered into force through publication in the Official Gazette dated 12.06.2014 and numbered 29028.
- The Regulation on the Amendment to the Regulation Pertaining to the Statistics of Maritime Commerce entered into force through publication in the Official Gazette dated 12.06.2014 and numbered 29028.
- The Regulation on Certificates of Warranty entered into force through publication in the Official Gazette dated 13.06.2014 and numbered 29029.

- The After Sales Services Regulation entered into force through publication in the Official Gazette dated 13.06.2014 and numbered 29029.
- The Regulation on Production of Spatial Plans entered into force through publication in the Official Gazette dated 14.06.2014 and numbered 29030.
- The Regulation on Unfair Clauses in Consumer Contracts entered into force through publication in the Official Gazette dated 17.06.2014 and numbered 29033.
- The Regulation on the Amendment to the Regulation on Technical Conditions Relevant to Alcohol and Alcoholic Beverage Facilities, their Operations and Inspections entered into force through publication in the Official Gazette dated 17.06.2014 and numbered 29033.
- The Regulation on the Amendment to the Regulation pertaining to Clinical Researches entered into force through publication in the Official Gazette dated 25.06.2014 and numbered 29041.
- The Regulation on Consumer Awards entered into force through publication in the Official Gazette dated 27.06.2014 and numbered 29043.
- The Regulation on Payment Services, Electronic Money Issuance, Payment and Electronic Money Institutions entered into force through publication in the Official Gazette dated 27.06.2014 and numbered 29043.
- The Regulation on the Activities of Payment and Security Settlement Systems entered into force through publication in the Official Gazette dated 28.06.2014 and numbered 29044.
- The Regulation on the Amendment to the Private Hospitals Regulation entered into force through publication in the Official Gazette dated 01.07.2014 and numbered 29047.
- The Regulation on the Advertisement Board entered into force through publication in the Official Gazette dated 03.07.2014 and numbered 29049.

- The Regulation on the Abolition of the Regulation pertaining to the Ambulatory Diagnosis and Treatment in Private Health Establishments entered into force through publication in the Official Gazette dated 03.07.2014 and numbered 29049.
- The Regulation on the amendment to the Regulation pertaining to the Healthiness Declaration of the Products Sold with a Healthiness Declaration entered into force through publication in the Official Gazette dated 04.07.2014 and numbered 29050.
- The Regulation on the Consumers' Council entered into force through publication in the Official Gazette dated 05.07.2014 and numbered 29051.
- The Regulation on the Research and Investigation of Marine Accidents and Incidents entered into force through publication in the Official Gazette dated 10.07.2014 and numbered 29056.
- The Regulation on the amendment to the Private Hospitals Regulation was published in the Official Gazette dated 19.07.2014 and numbered 29065.
- The Regulation on the Amendment of the Enforcement Regulation of the Law regarding the Conversion of the Areas under Disaster Risk entered into force through the Official Gazette dated 25.07.2014 and numbered 29071.
- The Regulation on the Amendment of the Road Transport Regulation entered into force through the Official Gazette dated 25.07.2014 and numbered 29071.
- The Regulation on the Obligatory Insurance Pursuit was published in the Official Gazette dated 09.08.2014 and numbered 29083. The Regulation entered into force on 01.01.2015.
- The Regulation on the Amendments of the Principles of the Tariffs' Enforcement of the Obligatory Financial Liability Insurance for Highway Motor Vehicles entered into force through the Official Gazette dated 10.08.2014 and numbered 29084.
- The Regulation on the Type Approval of the Agriculture Vehicles and the Market Supervision and Audition

(AB/167/2013) entered into force through the publication in the Official Gazette dated 14.08.2014 and numbered 29088.

- The Regulation on the Amendments of the Regulation regarding the Type Approval of the Actions to be taken against the Gas Emission and Contaminant Particles of the Agriculture Vehicles' Motors (2000/25/AT) was published in the Official Gazette dated 14.08.2014 and numbered 29088. The Regulation entered into force on 01.01.2015 except the 8th article, which is valid from the publication date.
- The Regulation on the Amendments of the Regulation concerning the Implementation of the Framework Agreement Tenders was published in the Official Gazette dated 16.08.2014 and numbered 29090. This Regulation entered into force on 19.08.2014.
- The Regulation on the Amendments regarding the Implementation of the Service Procurement Tenders was published in the Official Gazette dated 16.08.2014 and numbered 29090. The Regulation entered into force on 19.08.2014.
- The Regulation on the Amendments regarding the Implementation of Tenders relating to the Purchase of Goods was published in the Official Gazette dated 16.08.2014 and numbered 29090. The Regulation entered into force on 19.08.2014.
- The Regulation on the Amendments to the Regulation regarding the Private Education Institution of the Ministry of Education entered into force through the publication in the Official Gazette dated 21.08.2014 and numbered 29095.
- The Regulation on the Amendment of the Regulation regarding the Regular Maritime Circuit entered into force through publication in the Official Gazette dated 23.08.2014 and numbered 29097.
- The Regulation on the Investment Support Offices of Development Agencies entered into force through publication in the Official Gazette dated 27.08.2014 and numbered 29101.

- The Regulation on the Amendment of the Regulation regarding the Organization, Mission and Work of the Governorate and Prefecture Units entered into force through publication in the Official Gazette dated 30.08.2014 and numbered 29104.
- The Regulation on the Amendment of the Regulation regarding the Principles and Procedures of the Auditions, Preliminary Surveys and Investigations which will be made in the Natural Gas Market entered into force through publication in the Official Gazette dated 30.08.2014 and numbered 29104
- The Regulation on the Amendment of the Regulation regarding the Principles and Procedures of the Auditions, Preliminary Surveys and Investigations which will be made in the Electricity Market entered into force through publication in the Official Gazette dated 30.08.2014 and numbered 29104
- The Regulation on the Amendment of the Regulation regarding the Principles and Procedures of the Auditions, Preliminary Surveys and Investigations which will be made in the Oil Market entered into force through publication in the Official Gazette dated 30.08.2014 and numbered 29104
- The Regulation on the Amendment of the Regulation regarding the Principles and Procedures of the Auditions, Preliminary Surveys and Investigations which will be made in the Liquid Petrol Gas (LPG) Market entered into force through publication in the Official Gazette dated 30.08.2014 and numbered 29104
- The Regulation on the Amendment of the Regulation regarding the Increase Efficiency in Using Energy Sources and Energy entered into force through the publication in the Official Gazette dated 03.09.2014 and numbered 29108.
- The Regulation on the Amendment of the Regulation pertaining to the Principles and Procedures of the Contractual Manufacturing entered into force through the publication in the Official Gazette dated 05.09.2014 and numbered 29110.
- The Regulation on the Environment Permission and License was published in the Official Gazette dated 10.09.2014 and numbered 29115. This Regulation entered into force on 01.11.2014.

- The Regulation on the Amendment to the Regulation on Implementation of Service Procurement Tenders was published in the Official Gazette dated 25.10.2014 and numbered 29156, effective as of 11.09.2014.
- The Correction of the Environment Permission and License Regulation was published in the Official Gazette dated 12.09.2014 and numbered 29117.
- The Regulation on the Abolishment of the Regulation pertaining to the Fulfillment of the Obligatory Needs of Pickets entered into force through publication in the Official Gazette dated 12.09.2014 and numbered 29117.
- The Regulation on the Amendment of the Regulation regarding the Principles and Procedures of the Small and Medium Enterprises Development Organization entered into force through publication in the Official Gazette, dated 19.09.2014 and numbered 29124.
- The Regulation on the Amendments to the Regulation of Occupational Health and Safety in Mining Workplaces was published in the Official Gazette dated 24.09.2014 and numbered 29129. This Regulation will enter into force one year after its publication.
- The Regulation on the Amendment to the Insurance Agencies Regulation entered into force by publication in the Official Gazette dated 11.10.2014 and numbered 29142.
- The Regulation on the Amendment to the Regulation on the Principles of Incorporation, Operation, Working and Supervision of Stock Markets and Market Operators entered into force by publication in the Official Gazette dated 19.10.2014 and numbered 29150.The Regulation on the Principles of Exchange Market Operations of Borsa Istanbul A.Ş. entered into force through its publication in the Official Gazette dated 19.10.2014 and numbered 29150.
- The Regulation Concerning the Principles of Exchange Market Operations of Borsa İstanbul A.Ş. related to Precious Metals and Precious Stones entered into force by its publication in the Official Gazette dated 19.10.2014 and numbered 29150.

- The Regulation on the Amendment to the Regulation on the Council of Customs and Trade entered into force through publication in the Official Gazette dated 21.10.2014 and numbered 29152.
- The Regulation on the Amendment to the Regulation on Independent Auditing entered into force through publication in the Official Gazette dated 21.10.2014 and numbered 29152.
- The Regulation on the Amendment to the Regulation on Bank Cards and Credit Cards entered into force through publication in the Official Gazette dated 22.10.2014 and numbered 29153.
- The Regulation on the Principles and Procedures of Domestic and Foreign Trade of Alcohol and Alcoholic Beverages entered into force through publication in the Official Gazette dated 25.10.2014 and numbered 29156.
- The Regulation on the Amendment to the Regulation on Active Employment Services entered into force through publication in the Official Gazette dated 06.11.2014 and numbered 29167.
- The Regulation on the Amendment to the Regulation on Site Selection for Organized Industrial Zones entered into force through publication in the Official Gazette dated 08.11.2014 and numbered 29169.
- The Regulation on the Amendment to the Regulation on the Restrictions Regarding the Production, Marketing, and Use of Certain Hazardous Substances, Preparations and Goods was published in the Official Gazette dated 21.11.2014 and numbered 29182. Different dates of entry into force have been determined for the articles of this Regulation.
- The Regulation on Environmental Impact Assessment entered into force through publication in the Official Gazette dated 25.11.2014 and numbered 29186.
- The Regulation on the Amendment to the Regulation pertaining to Opening a Workplace and Work Permits entered into force through publication in the Official Gazette dated 26.11.2014 and numbered 29187.

- The Regulation on Distance Selling Contracts was published in the Official Gazette dated 27.11.2014 and numbered 29188. The Regulation enters into force three months after its date of publication.
- The Regulation on the Amendment to the Petroleum Market License Regulation entered into force through publication in the Official Gazette dated 28.11.2014 and numbered 29189.
- The Regulation on the Amendment to the Regulation on Evaluation and Sale of Goods and Services of Turkish Petroleum Corporation entered into force through publication in the Official Gazette dated 05.12.2014 and numbered 29196.
- The Regulation on the Amendment to the Regulation on the Construction Principles and Supervision of the Protected Immovable Cultural Heritage entered into force through publication in the Official Gazette dated 07.12.2014 and numbered 29198.
- The Regulation on the Amendment to the Regulation on the Duties, Authority, Responsibilities and Education of Workplace Doctors and Other Health Personnel was published in the Official Gazette dated 18.12.2014 and numbered 29209. Different dates of entry into force have been determined for the articles of the Regulation.
- The Regulation on the Amendment to the Regulation on the Workplace Safety and Security Services was published in the Official Gazette dated 18.12.2014 and numbered 29209. Different dates of entry into force have been determined for the Articles of this Regulation.

Important Changes and Developments in Communiqués

- The Communiqué on the Common Fundamentals Regarding the Material Transactions and the Right to Dissociate (II-23.1) entered into force through publication in the Official Gazette dated 24.12.2013 and numbered 28861.
- The Communiqué on Voting by Proxy and Proxy Solicitation (II-30.1) entered into force through publication in the Official Gazette dated 24.12.2013 and numbered 28861.
- The Communiqué on the Required Reserves (Serial 2013/15) was published in the Official Gazette dated 25.12.2013 and numbered 28862. This Communiqué entered into force on 17.01.2014.
- The Communiqué on the Registered Capital System (II-18.1) entered into force through publication in the Official Gazette dated 25.12.2013 and numbered 28862.
- The Communiqué on the Public Disclosure Platform (VII-128.6) was published in the Official Gazette dated 27.12.2013 and numbered 28864. This Communiqué entered into force on 01.01.2014.
- The Communiqué on the Planning of Independent Auditing of Financial Statements (IAS 300), Communiqué on Turkey Auditing Standards No. 10 was published in the Official Gazette dated 30.12.2013 and numbered 28867. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on Principles and Procedures which are Required to be Obeyed regarding Claims of Notification and Rogatory Abroad was published in the Official Gazette dated 31.12.2013 and numbered 28868.
- The Communiqué on the Auditing of Compliance with the Standards in Exportation (Auditing and Security of Product: 2014/1) was published in the Reiterated Official Gazette dated 31.12.2013 and numbered 28868. This Communiqué entered

into force on 01.01.2014.

- The Communiqué on the Classification of Firms in order to Make the Commercial Quality Auditing in Exportation in accordance with Risk Principles (Auditing and Security of Product: 2014/22) was published in the Reiterated Official Gazette dated 31.12.2013 and numbered 28868. This Communiqué entered into force on 01.01.2014.
- The Communiqué on Importation of Bank Bills and Similar Negotiable Instruments (Importation: 2014/10) was published in the 2nd Reiterated Official Gazette dated 31.12.2013 and numbered 28868. This Communiqué entered into force on 01.01.2014.
- The Communiqué on the Amendment to the Communiqué on the Price Equalizing Mechanism in the Electricity Market was published in the 3rd Reiterated Official Gazette dated 31.12.2013 and numbered 28868. This Communiqué entered into force on 01.01.2014.
- The Communiqué on the Principles relating to Venture Investment Funds (III-52.4) was published in the Official Gazette dated 02.01.2014 and numbered 28870. This Communiqué entered into force on 01.07.2014.
- The Communiqué on Corporate Governance (II-17.1) entered into force through publication in the Official Gazette dated 03.01.2014 and numbered 28871.
- The Communiqué on the Retrieved Shares (II-22.1) entered into force through publication in the Official Gazette dated 03.01.2014 and numbered 28871.
- The Communiqué on Principles relating to Real Estate Investment Funds (III-52.3) was published in the Official Gazette dated 03.01.2014 and numbered 28871. This Communiqué entered into force on 01.07.2014.
- The Communiqué on Securities based upon Asset or Mortgage (III-58.1) entered into force through its publication in the Official Gazette dated 09.01.2014 and numbered 28877.

- The Communiqués on the Prevention of Unfair Competition in Importation (Communiqué No 2014/1, Communiqué No 2014/3) entered into force through publication in the Official Gazette dated 10.01.2014 and numbered 28878.
- The Communiqué on the Special Matters required to be considered for Independent Auditing Proofs (IAS 501), Turkey Auditing Standards Communiqué No: 17 was published in the Official Gazette dated 10.01.2014 and numbered 28878. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Amendment to the Communiqué regarding the Warning Messages Inserted on the Packaging of Alcoholic Beverages entered into force through publication in the Official Gazette dated 17.01.2014 and numbered 28885.
- The Communiqué on the Prevention of Unfair Competition in Importation (No: 2014/4) entered into force through publication in the Official Gazette dated 23.01.2014 and numbered 28891.
- The Communiqué on Special Circumstances (II-15.1) was published in the Official Gazette dated 23.01.2014 and numbered 28891. This Communiqué entered into force one month as of its date of publication.
- The Communiqué on Special Circumstances Relating to the Corporations Whose Shares Are Not Traded at the Stock Exchange (II-15.2) was published in the Official Gazette dated 23.01.2014 and numbered 28891.
- The Communiqué on Dividends (II-19.1) was published in the Official Gazette dated 23.01.2014 and numbered 28891. The Communiqué entered into force on 01.02.2014.
- The Communiqué on the Share Purchase Offer (II-26.1) was published in the Official Gazette dated 23.01.2014 and numbered 28891. This Communiqué entered into force through publication, in order to be applied to the obligations of compulsory offers of share purchase or voluntary offers of share purchase having occurred as of its date of publication.

- The Communiqué on the Independent Audit of Accounting Forecasts Including Measurement of Fair Values and Related Statements (IAS 540) as published in the Official Gazette dated 24.01.2014 and numbered 28892. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Determination of the Default Interest Rates for Late Payments to Creditors in the Procurement of Goods and Services was published in the Official Gazette dated 25.01.2014 and numbered 28893. This Communiqué entered into force through its publication effective from 01.01.2014.
- The Communiqué (Communiqué No: 2014/1) on the Amendment to the Communiqué Pertaining to the Encouragement of Economic Investments on Agriculture within the Scope of the Program of Encouragement of Rural Development Investments (Communiqué No: 2013/59) entered into force through publication in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Communiqué on the Amendment of the Communiqué on the Report relating to Banking Information Systems and the Audit of Banking Processes Conducted by Independent Audit Institutions entered into force through publication in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Communiqué on the Amendment to the Communiqué Pertaining to the Principals of Information Systems Governance of Banks entered into force through publication in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Communiqué on the First Independent Audits - Opening Balances (IAS 510), the Communiqué of Auditing Standards of Turkey (Communiqué No: 19) was published in the Official Gazette dated 29.01.2014 and numbered 28897. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.

- The Communiqué on the Related Parties (IAS 550), the Communiqué on Auditing Standards of Turkey (Communiqué No: 23) was published in the Official Gazette dated 29.01.2014 and numbered 28897. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Written Statements (IAS 580), the Communiqué of Auditing Standards of Turkey (Communiqué No: 26) was published in the Official Gazette dated 29.01.2014 and numbered 28897. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Usage of Expert Works (IAS 620), the Communiqué on Auditing Standards of Turkey (Communiqué No: 29) was published in the Official Gazette dated 31.01.2014 and numbered 28899. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Amendment to the Communiqué on the Danger Classification in Occupational Health and Safety entered into force through publication in the Official Gazette dated 04.02.2014 and numbered 28903.
- The Communiqué on Accreditation Usage Fees/Shares to be Applied by the Turkish Accreditation Agency (TÜRKAK: 2014/1) entered into force through publication in the Official Gazette dated 05.02.2014 and numbered 28904.
- The Communiqué on the Amendment to the Communiqué on Financial Leasing, Factoring and a Uniform Accounting Plan and Prospectus for Financial Companies entered into force through publication in the Official Gazette dated 07.02.2014 and numbered 28906.
- The Communiqué on Interpretation of the Financial Reporting Standard of Turkey relating to Tax Obligations and Tax-like Obligations (TFRS) (Serial No: 14) was published in the Official Gazette dated 11.02.2014 and numbered 28910. This

Communiqué entered into force on its date of publication to be applied as of the accounting periods starting after 31.12.2013.

- The Communiqué (Serial No: 15) on the Amendment to the Communiqué (Serial No: 28) Pertaining to Accounting Standards in Turkey (TAS 36) Relating to Low Asset Values was published in the Official Gazette dated 11.02.2014 and numbered 28910. This Communiqué entered into force on its publication date to be applied as of the accounting periods starting after 31.12.2013.
- Financial Instruments: The Communiqué (Serial No: 16) on the Amendment to the Communiqué (Serial No: 41) Pertaining to Recognition and Measurement of Accounting Standards in Turkey (TAS 39) was published in the Official Gazette dated 11.02.2014 and numbered 28910. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting after 31.12.2013.
- The Communiqué on Trade Names entered into force through publication in the Official Gazette dated 14.02.2014 and numbered 28913.
- The Communiqué on the Amendment to the Communiqué on Employer Applications was published in the Official Gazette dated 14.02.2014 and numbered 28913. This Communiqué entered into force as of the first day of the month following its publication.
- The Communiqué on the Usage of Internal Auditor's Works (IAS 610), the Communiqué on Auditing Standards in Turkey (No: 28) was published in the Official Gazette dated 14.02.2014 and numbered 28913. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on Protection Measures in Importation (Communiqué No: 2014/1) was published in the Official Gazette dated 18.02.2014 and numbered 28917.
- The Communiqué on the Special Facts-Independent Audit of Financial Statements of the Community (IAS 600), the

Communiqué on Auditing Standards in Turkey (Communiqué No: 27) was published in the Official Gazette dated 20.02.2014 and numbered 28919. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.

- The Communiqué (Communiqué Serial: 13) on the Amendment to the Communiqué Pertaining to Accounting Standards in Turkey was published in the Official Gazette dated 05.03.2014 and numbered 28932. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting after 31.12.2013.
- The Communiqué on the Update of the Monetary Limits under Cultural Heritage Tender Regulation (Communiqué No: 2014/1) was published in the Official Gazette dated 12.03.2014 and numbered 28939. This Communiqué entered into force on its date of publication to be valid as of 01.02.2014.
- The Communiqué on the Paragraphs Relating to Underlined Subjects or Other Subjects in the Report of Independent Audit (IAS 706) the Communiqué on Auditing Standards in Turkey (No: 32) was published in the Official Gazette dated 14.03.2014 and numbered 28941. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Liabilities of Independent Auditors with respect to Other Information in the Documents Comprising Audited Financial Statements (IAS 720), the Communiqué on Auditing Standards in Turkey (No: 34) was published in the Official Gazette dated 14.03.2014 and numbered 28941. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on International Arbitration Fee Tariffs entered into force through publication in the Official Gazette dated 15.03.2014 and numbered 28942.

- The Communiqué on the Forming of Opinions and Reporting related to the Financial Statements (IAS 700) - the Communiqué on Auditing Standards in Turkey (No: 30) - was published in the Official Gazette dated 18.03.2014 and numbered 28945. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on Giving An Opinion other than a Positive Opinion in Independent Audit Reports (IAS 705), the Communiqué on Auditing Standards in Turkey (No: 31) was published in the Official Gazette dated 18.03.2014 and numbered 28945. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on Information Matching to Former Periods and Comparative Financial Statements (IAS 710), the Communiqué on Auditing Standards in Turkey (No: 33) was published in the Official Gazette dated 18.03.2014 and numbered 28945. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Prevention of Unfair Competition in Imports (Communiqué No: 2014/6) entered into force through publication in the Official Gazette dated 21.03.2014 and numbered 28948.
- The Communiqué on the Amendment to the Communiqué (Communiqué No: 2009/1) on the Prevention of Unfair Competition in Imports entered into force through publication in the Official Gazette dated 22.03.2014 and numbered 28949.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/7) entered into force through publication in the Official Gazette dated 26.03.2014 and numbered 28953.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/10) entered into force

through publication in the Official Gazette dated 26.03.2014 and numbered 28953.

- The Communiqué (Communiqué No: 2014/3) on the Amendment to the Communiqué (Communiqué No: 2013/15) Pertaining to Required Reserves entered into force through publication in the Official Gazette dated 26.03.2014 and numbered 28953.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/11) entered into force through publication in the Official Gazette dated 01.04.2014 and numbered 28959.
- The Communiqué on Prevention Measures in Importation (Communiqué No: 2014/3) entered into force through publication in the Official Gazette dated 04.04.2014 and numbered 28962.
- The Communiqué on Surveillance in Importation (Communiqué No: 2014/1) was published in the Official Gazette dated 05.04.2014 and numbered 28963. This Communiqué entered into force on the thirtieth day following the date of its publication.
- The Communiqué on Prevention Measures in Importation (Communiqué No: 2014/2) entered into force through publication in the Official Gazette dated 05.04.2014 and numbered 28963.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/2) entered into force through publication in the Official Gazette dated 08.04.2014 and numbered 28966.
- The Communiqué on Turkish Auditing Standards for the Independent Audit of Financial Statements Prepared Based on the Special Issues and Special Purpose Frameworks (IAS 800) (Communiqué No: 35) entered into force through publication in the Official Gazette dated 09.04.2014 and numbered 28967.

- The Communiqué on Prevention Measures in Importation (Communiqué No: 2014/4) entered into force through publication in the Official Gazette dated 11.04.2014 and numbered 28969.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/12) entered into force through publication in the Official Gazette dated 18.04.2014 and numbered 28976.
- The Communiqué on Audits to be Conducted in order to Give Reports on Special Financial Statements (IAS 810) (The Communiqué on Turkish Auditing Standards Communiqué No: 37) was published in the Official Gazette dated 22.04.2014 and numbered 28980. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Auditing Standards of Turkey (Communiqué No:36) on Independent Auditing of One Financial Statement and Special Components, Accounts and Factors in Financial Statements (IAS 805) was published in the Official Gazette dated 24.04.2014 and numbered 28981. This Communiqué entered into force on its date of publication, to be applied as of the accounting periods starting on 01.01.2013 and afterwards.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/13) entered into force through publication in the Official Gazette dated 25.04.2014 and numbered 28982.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/8) entered into force through publication in the Official Gazette dated 26.04.2014 and numbered 28983.
- The Communiqué on the Amendment to the Communiqué Pertaining to the Financial Statements to be Disclosed by Banks and Explanations and Footnotes Relevant to these entered into force through publication in the Official Gazette dated 26.04.2014 and numbered 28983.

- The Communiqué on the Management of Quotas and Tariffs in Exportation (Communiqué No: 2014/2) was published in the Official Gazette dated 02.05.2014 and numbered 28988. This Communiqué entered into force on its date of publication to be valid as of 08.04.2014.
- The Communiqué on the Amendment to the Communiqué Pertaining to the Resolution numbered 32 Relevant to the Protection of the Value of the Turkish Currency (Communiqué No: 2014-32/42) was published in the Official Gazette dated 03.05.2014 and numbered 28989.
- The Communiqué on the Reinforcement of the Occupational Health and Safety Services was published in the Official Gazette dated 03.05.2014 and numbered 28989. This Communiqué entered into force on its date of publication to be valid as of 01.01.2014.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/14) entered into force through publication in the Official Gazette dated 03.05.2014 and numbered 28989.
- The Communiqué (No: 2014/2) on the Amendment to the Communiqué Pertaining to the Implementation of the Resolution concerning State Support in Investments (Communiqué No: 2012/1) was published in the Official Gazette dated 08.05.2014 and numbered 28994.
- The Communiqué (Communiqué of Importation No: 2014/2) on the Amendment to the Communiqué Pertaining to the Establishment and Activities of the Sectorial Presentation Groups (Communiqué of Importation No: 2010/6) entered into force through publication in the Official Gazette dated 14.05.2014 and numbered 29000.
- The Communiqué on the Amendment to the Communiqué Pertaining to Surveillance in Importation (No: 2012/3) entered into force through publication in the Official Gazette dated 03.06.2014 and numbered 29019.

- The Communiqué on the Abolition of the Communiqué No: 1 pertaining to the Usage of the Electronic Public Purchase Platform entered into force through publication in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Communiqué on the Amendment to the Communiqué pertaining to the Application of Tenders was published in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Communiqué on the Prevention Measures in Importation (Communiqué No: 2014/5) was published in the Official Gazette dated 17.06.2014 and numbered 29033. This Communiqué entered into force on its date of publication, to be valid as of 14.06.2014 and afterwards.
- Communiqués on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/17, Communiqué No: 2014/18, Communiqué No: 2014/19) entered into force through publication in the Official Gazette dated 17.06.2014 and numbered 29033.
- The Communique on the Abolition of the Communiqué pertaining to the Materials Requiring Certificates of Warranty for Importation was published in the Official Gazette dated 18.06.2014 and numbered 29034. This Communiqué entered into force on its date of publication, to be valid as of 28.05.2014 and afterwards.
- Communiqués on the Prevention Measures in Importation (Communiqué No: 2014/7, Communiqué No: 2014/8) entered into force through publication in the Official Gazette dated 18.06.2014 and numbered 29034.
- The Communiqué (III-55.1.A) on the Abolition of the Communiqué pertaining to Portfolio Management Companies and Principles of These Companies' Operations was published in the Official Gazette dated 22.06.2014 and numbered 29038. This Communiqué entered into force on 01.07.2014.
- The Communiqué (III-55.2) on the Abolition of the Communiqué (Serial: V, No:130) pertaining to the Usage Principles of Guarantees Deposited by Portfolio Management

Companies was published in the Official Gazette dated 22.06.2014 and numbered 29038. This Communiqué entered into force on 01.07.2014.

- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/15) entered into force through publication in the Official Gazette dated 26.06.2014 and numbered 29042.
- The Communiqué on the Management and Inspection of Information Systems of Payment and Electronic Money Institutions entered into force through publication in the Official Gazette dated 27.06.2014 and numbered 29043.
- The Communiqué on the Amendment to the Communiqué pertaining to Supervision in Exportation (Communiqué No: 2006/1) entered into force through publication in the Official Gazette dated 05.07.2014 and numbered 29051.
- The Communiqué on the Safeguard Measures in Exportation (Communiqué No: 2014/6) entered into force through publication in the Official Gazette dated 08.07.2014 and numbered 29054.
- The Communiqué on the Amendment to the Communiqué pertaining to the Prevention of Unfair Competition in Importation (Communiqué No: 2009/1) entered into force through publication in the Official Gazette dated 10.07.2014 and numbered 29056.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/20) entered into force through publication in the Official Gazette dated 10.07.2014 and numbered 29056.
- The Communiqué on the Limited Independent Auditing (LIAS 2410) of Interim Period Financial Information by the Auditor who Conducts the Independent Auditing of the Yearly Financial Statements of the Company (No: 38) published in the Official Gazette dated 10.07.2014 and numbered 29056. This Communiqué entered into force on its date of publication to be applied as of the accounting periods starting on 01.01.2014 and thereafter.

- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/16) entered into force through publication in the Official Gazette dated 11.07.2014 and numbered 29057.
- The Communiqué on the Management of Quotas and Tariffs in Importation (Communiqué No: 2014/3) entered into force through publication in the Official Gazette dated 15.07.2014 and numbered 29061.
- The Communiqué on the Amendment to the Communiqué pertaining to the Uniform Accounting Plan and Prospectus was published in the Official Gazette dated 17.07.2014 and numbered 29063. This Communiqué entered into force on 01.01.2015.
- The Communiqué on the Mortgage Finance Institution (III-60.1) entered into force through publication in the Official Gazette dated 17.07.2014 and numbered 29063.
- The Communiqué on the Tariffs and Instructions of Obligatory Financial Liability Insurance for Sea Vehicles entered into force through publication in the Official Gazette dated 19.07.2014 and numbered 29065.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/21) entered into force through publication in the Official Gazette dated 19.07.2014 and numbered 29065.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/26) entered into force through publication in the Official Gazette dated 22.07.2014 and numbered 29068.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/28) entered into force through publication in the Official Gazette dated 22.07.2014 and numbered 29068.
- The Communiqué on the Issues of Application of Settled Procedures Relevant to Financial Information (Communiqué of Turkish Auditing Standards No: 39) entered into force through

publication in the Official Gazette dated 22.07.2014 and numbered 29068.

- Communiqués on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/22, No: 2014/23, No: 2014/27) entered into force through publication in the Official Gazette dated 25.07.2014 and numbered 29071.
- The Communiqué (2013/15) on the Amendments of the Required Reserves Communiqué Serial No. 2014/4 was published in the Official Gazette dated 25.07.2014 and numbered 29071. This Communiqué entered into force on 01.08.2014.
- The Communiqué on the Abolishment of the Monitoring Application in Importation Communiqué numbered 2007/2 and 2010/1 entered into force through the Official Gazette dated 26.07.2014 and numbered 29072.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/25) entered into force through publication in the Official Gazette dated 26.07.2014 and numbered 29072.
- The Communiqué on the Abolishment of the TS ISO/IEC 27001 Standard's Enforcement Communiqué within the scope of Electronic Communication Security entered into force through the Official Gazette dated 06.08.2014 and numbered 29080.
- The Communiqué on the Organic Livestock Farming Support Payment (No: 2014/35) entered into force through the Official Gazette dated 08.08.2014 and numbered 29082.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/24) entered into force through publication in the Official Gazette dated 09.09.2014 and numbered 29083.
- Communiqués on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/29 and No: 2014/30) entered into force through publication in the Official Gazette dated 11.08.2014 and numbered 29085.

- The Communiqué (Communiqué No: VII-128.7) on the Principles of the Licensure and Registration for Operators of Capital Markets entered into force through the publication in the Official Gazette dated 14.08.2014 and numbered 29088.
- The Communiqué on the Amendments regarding the Calculation of the Risky Amounts related to Securitization entered into force through the publication in the Official Gazette dated 16.08.2014 and numbered 29090.
- Communiqués on the Management of Quotas and Tariffs in Importation (No: 2014/4 and No: 2014/5) was published in the Official Gazette dated 27.08.2014 and numbered 29101, valid as of 14.08.2014.
- The Communiqué on the Amendment of the Communiqué regarding the Branding of Turkish Products Abroad, the Image Settlement of Turkish Products and the Support of TURQUALITY® entered into force through publication in the Official Gazette dated 27.08.2014 and numbered 29101.
- The Communiqué on the Amendment of the Communiqué regarding the Payment of Support for the Farmers Involved in the Farmer Registry System concerning the Diesel Fuel, Fertilizer and Land Analyze (No: 2014/39) entered into force through publication in the Official Gazette dated 30.09.2014 and numbered 29104.
- The Communiqué on the Amendment of the Communiqué regarding the Health Enforcement of Social Security Institution entered into force through publication in the Official Gazette dated 30.08.2014 and numbered 29104 whereas the articles 2, 3 and 21 were valid as of 18.04.2014, article 4 was valid as of 25.07.2014, article 7 was valid as of 01.08.2014, article 8/a was valid as of 01.09.2014, article 33 was valid as of 01.10.2014. Articles 9-20 and 2 entered into force 5 days after the publication of this Communiqué.
- The Communiqué on the Amendment of the Communiqué on the Implementation of Import Survey (No: 2009/8) entered into force through its publication in the Official Gazette dated 05.09.2014 and numbered 29110.

- The Communiqué (III-59.1a) on the Amendment of the Communiqué regarding the Guaranteed Securities entered into force through publication in the Official Gazette dated 05.09.2014 and numbered 29110.
- The Communiqué on Credit Risk Reduction Techniques entered into force through publication in the Official Gazette dated 06.09.2014 and numbered 29111.
- The Communiqué on the Calculation of the Amount Subject to Credit Risk through an Internal Ratings Based Approach entered into force through publication in the Official Gazette dated 06.09.2014 and numbered 29111.
- The Communiqué on the Calculation of the Amount Subject to Operational Risk through an Advanced Measurement Approach entered into force through publication in the Official Gazette dated 06.09.2014 and numbered 29111.
- The Communiqué on Domestic Goods (SGM 2014/35) entered into force through publication in the Official Gazette dated 13.09.2014 and numbered 29118.
- The Communiqué (No: 2014/6) on the Amendment of the Communiqué regarding National Professional Standards (No: 2014/4) was published in the Official Gazette dated 13.09.2014 and numbered 29118. This Communiqué entered into force on 14.08.2014.
- The Communiqué on the National Profession Standards (No: 2014/5) entered into force through publication in the repeated Official Gazette dated 13.09.2014 and numbered 29118.
- The Communiqué (No:18) on the Amendment of the Regulation (Serial No: 36), regarding the Turkish Financial Reporting Standard (TFRS 2) pertaining to Payments based on Shares was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (No:19) on the Amendment of the Communiqué (Serial No: 67) regarding the Turkish Financial Reporting Standard (TFRS3) pertaining to the Mergers was

published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.

- The Communiqué (No:20) on the Amendment of the Communiqué (Serial No: 172) regarding the Turkish Financial Reporting Standard (TFRS 9) on Financial Instruments was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (Serial No:21) on the Amendment of the Communiqué (Serial No: 211) regarding the Turkish Financial Reporting Standard (TFRS 9) pertaining to the Financial Instruments was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (Serial No:22) on the Amendment of the Communiqué (Serial No: 20) regarding the Turkish Accounting Standards (TAS 37) pertaining to the Reserves, Contingent Liability and Contingent Assets was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (Serial No:23) on the Amendment of the Communiqué (Serial No: 41) regarding the Turkish Accounting Standard (TAS 39) on Financial Instruments, Recognition and Measurement was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (Serial No:24) on the Amendment of the Communiqué (Serial No: 45) regarding the Turkish Financial Reporting Standard (TFRS 8) on Facility Departments was pub-

lished in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.

- The Communiqué (Serial No:25) on the Amendment of the Communiqué (Serial No: 15) regarding the Turkish Accounting Standard (TAS 16) on Tangible Assets was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (Serial No:26) on the Amendment of the Communiqué (No: 167) regarding the Turkish Accounting Standard (TAS 24) on Related Party Disclosures was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (Serial No:27) on the Amendment of the Communiqué (Serial No: 26) regarding the Turkish Accounting Standard (TAS 38) on Intangible Assets was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (Serial No:28) on the Amendment of the Communiqué (Serial No: 5) regarding the Turkish Accounting Standard (TAS 13) on the Measurement of Fair Value was published in the Official Gazette dated 18.09.2014 and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.
- The Communiqué (No:29) on the Amendment of the Communiqué (No: 27) regarding the Turkish Accounting Standard (TAS 40) on Investment Estates entered into force through publication in the Official Gazette dated 18.09.2014

and numbered 29123. This Communiqué entered into force through publication to be applied as of the accounting periods starting on 30.06.2014 and afterwards.

- The Communiqué (2014/3) on the Amendment to the Communiqué on the Implementation of the Decree on State Aids in Investments (Communiqué No: 2012/1) entered into force through its publication in the Official Gazette dated 25.09.2014 and numbered 29130.
- The Communiqué (No: 2014/2) on the Implementation of Import Survey entered into force through its publication in the Official Gazette dated 26.09.2014 and numbered 29131.
- The Communiqué on the Amendment to the Communiqué on the Social Security Institution Health Implementation was published in the Official Gazette dated 01.10.2014 and numbered 29136.
- The Communiqué on the Amendment to the Communiqué on the General Purposes of Independent Auditor and Conducting of Independent Auditing in line with the Independent Auditing Standards (IAS 200) – Turkish Auditing Standards Communiqué (No: 2) entered into force through publication in the Official Gazette dated 01.10.2014 and numbered 29136.
- The Communiqué Amending the Communiqué on the Relevant Processes Related to Electronic Signature and Technical Criteria entered into force through its publication in the Official Gazette dated 03.10.2014 and numbered 29138.
- The Communiqué Amending the Communiqué on the Implementation of Import Survey (Communiqué No: 2011/5) entered into force through its publication in the Official Gazette dated 11.10.2014 and numbered 20142.
- The Communiqué on the Prevention of Unfair Competition in Importation (No: 2014/31) entered into force through its publication in the Official Gazette dated 16.10.2014 and numbered 29147.

- The Communiqué on the Prevention of Unfair Competition in Importation (No: 2014/33) entered into force through its publication in the Official Gazette dated 18.10.2014 and numbered 29149.
- The Communiqué on the Maximum Interest Rate to be Applied in Credit Card Transactions entered into force through publication in the Official Gazette dated 22.10.2014 and numbered 29153.
- The Communiqué on Industrial Registry (SGM 2014/11) entered into force through publication in the Official Gazette dated 22.10.2014 and numbered 29156.
- The Communiqué on the Prevention of Unfair Competition in Importation (No: 2014/34) entered into force through publication in the Official Gazette dated 07.11.2014 and numbered 29168.
- The Communiqué on the Prevention of Unfair Competition in Importation (No: 2014/39) entered into force through publication in the Official Gazette dated 11.11.2014 and numbered 29172.
- The Communiqué on the Amendment to the Communiqué on the Implementation of Import Survey (Communiqué No: 2007/26) entered into force through publication in the Official Gazette dated 11.11.2014 and numbered 29172.
- The Communiqué on Restructuring of the Receivables Regarding Customs with Respect to Law No. 6552 entered into force through publication in the Official Gazette dated 12.11.2014 and numbered 29173.
- The Communiqué on Right to Squeeze Out and Sell-Out (II-27.2) entered into force through publication in the Official Gazette dated 12.11.2014 and numbered 29173.
- The Communiqué (Serial No: 33) on the Amendment to the Communiqué (Serial No: 21) on Turkish Accounting Standards (TAS 17) on Leasing Transactions was published in the Official Gazette dated 12.11.2014 and numbered 29173. This

Communiqué will be enforced from the accounting period starting on 31.12.2015.

- The Communiqué (Serial No: 33) on the Amendment to the Communiqué (Serial No: 66) on Turkish Accounting Standards (TAS 1) for the Presentation of Financial Statements was published in the Official Gazette dated 12.11.2014 and numbered 29173. This Communiqué will be enforced from the accounting period starting on 31.12.2015.
- The Communiqué (Serial No: 34) on the Amendment to the Communiqué (Serial No: 46) on Turkish Accounting Standards (TAS 23) on Borrowing Costs was published in the Official Gazette dated 12.11.2014 and numbered 29173. This Communiqué will be enforced from the accounting period starting on 31.12.2015.
- The Communiqué (Serial No: 35) on the Amendment to the Communiqué (Serial No: 28) on Turkish Accounting Standards (TAS 36) on Low Asset Values was published in the Official Gazette dated 12.11.2014 and numbered 29173. This Communiqué will be enforced from the accounting period starting on 31.12.2015.
- The Communiqué (Serial No: 36) on the Amendment to the Communiqué (Serial No: 27) on Turkish Accounting Standards (TAS 40) on Investment Estates was published in the Official Gazette dated 12.11.2014 and numbered 29173. This Communiqué will be enforced from the accounting period starting on 31.12.2015.
- The Communiqué (Serial No: 37) on the Amendment to the Communiqué (Serial No: 217) on Turkish Financial Reporting Standards (TFRS 11) on Joint Agreements was published in the Official Gazette dated 12.11.2014 and numbered 29173. This Communiqué will be enforced from the accounting period starting on 31.12.2015.

- The Communiqués on the Prevention of Unfair Competition in Importation (No: 2014/36, No: 2014/37, No: 2014/38) entered into force through publication in the Official Gazette dated 13.11.2014 and numbered 29174.
- The Communiqué (Serial No: 39) on the Amendment to the Communiqué (Serial No: 13) on Turkish Accounting Standards (TAS 21) on the Effects of Change in the Exchange Rate entered into force through publication in the Official Gazette dated 13.11.2014 and numbered 29174.
- The Communiqué (No: 2014/6) on the Amendment to the Communiqué (No: 2006/1) Relating to Deposit and Loan Interest Rates, Participation Accounts Profit and Loss Participation Rates and Other Benefits except for Interest Derived from Loan Transactions entered into force through publication in the Official Gazette dated 15.11.2014 and numbered 29176.
- The Communiqué on Management of Quotas and Tariffs in Importation (No: 2014/6) was published in the Official Gazette dated 22.11.2014 and numbered 29183. This Communiqué entered into force through publication, effective from 08.11.2014.
- The Communiqués on Amendment to the Communiqués on Supervision in Imports No: 2005/3 and No: 2010/9 entered into force through publication in the Official Gazette dated 23.11.2014 and numbered 29184.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/35) entered into force by publication in the Official Gazette dated 30.11.2014 and numbered 29191.
- The Communiqué on Supervision in Imports (No: 2014/3) entered into force through publication in the Official Gazette dated 05.12.2014 and numbered 29196. This Communiqué shall enter into force on the 30th day following its publication.
- The Communiqué on the Safeguard Measures in Importation (Communiqué No: 2014/10) entered into force through publi-

cation in the Official Gazette dated 05.12.2014 and numbered 29196.

- The Communiqué on the Implementation of Article 79 of Law No. 6552 (Regarding Vehicle Inspections) (Serial No: 2) was published in the Official Gazette dated 05.12.2014 and numbered 29196.
- The Communiqué on the National Professional Standards (No: 2014/8) entered into force through publication in the Official Gazette dated 05.12.2014 and numbered 29196.
- The Communiqué on the Classification of the Goods and Services Related to Trademark Registration Applications (TPE: 2014/2) was published in the Official Gazette dated 08.12.2014 and numbered 29199. This Communiqué shall enter into force on 01.01.2015.
- The Communiqué (Customs Transactions) (Serial No: 120) on the Amendment to the General Customs Communiqué (Customs Transactions) (Serial No: 94) entered into force through its publication in the Official Gazette dated 10.12.2014 and numbered 29201.
- The Communiqué on the Safeguard Measures in Importation (Communiqué No: 2014/11) entered into force through publication in the Official Gazette dated 12.12.2014 and numbered 29203.
- The Communiqués No: 2014/42 and 2014/43 on the Prevention of Unfair Competition in Importation entered into force through publication in the Official Gazette dated 12.12.2014 and numbered 29203.
- The Communiqué (No: 2014/3) on the Amendment to the Communiqué Pertaining to Supporting Foreign Unit, Trademark and Advertisement Activities (No: 2014/6) was published in the Official Gazette dated 12.12.2014 and numbered 29203.
- The Communiqué on Monetary Sanctions to be Applied in 2015 Pursuant to Article16 of Electricity Market Law No. 6446;

Communiqué on Monetary Sanctions to be Applied in 2015 Pursuant to Liquefied Petroleum Gas Market Law No. 5307, and Article 16 of the Law on the Amendment to the Electricity Market Law; Communiqué on Monetary Sanctions to be Applicable in 2015 Pursuant to Article 19 of the Petroleum Market Law No. 5015; Communiqué on Monetary Sanctions to be Applied in 2015 Pursuant to Law No. 4646 on the Amendment to the Electricity Market Law and Article 9 of the Natural Gas Market Law were published in the Official Gazette dated 12.12.2014 and numbered 29203.

- The Communiqué on the National Profession Standards (No: 2014/9) entered into force through publication in the Reiterated Official Gazette dated 14.12.2014 and numbered 29205.
- The Communiqué on Increasing the Inferior Limit of Administrative Fines Being Valid Until 31.12.2015 with respect to Article 16/1 of Act No. 4054 on the Protection of Competition (Communiqué No: 2015/1) was published in the Official Gazette dated 16.12.2014 numbered 29207. This Communiqué shall enter into force on 01.01.2015.
- The Communiqué on the Prevention of Unfair Competition in Importation (Communiqué No: 2014/41) entered into force by publication in the Official Gazette dated 17.12.2014 and numbered 29208.

Important Changes and Developments in General Communiqués

- The General Communiqué (Serial No 2) on the Amendment to the General Communiqué pertaining to the Electronic Book (Serial No 1) entered into force through publication in the Official Gazette dated 24.12.2013 and numbered 28861.
- The General Communiqué on the Tax Procedure Law (Serial No: 434) was published in the Official Gazette dated 23.01.2014 and numbered 28891.
- The General Communiqué on National Estate (Communiqué Serial No: 361) was published in the Official Gazette dated 05.02.2014 and numbered 28904.
- The General Communiqué on Income Tax (Serial No: 286) was published in the Official Gazette dated 18.02.2014 and numbered 28917.
- The Communiqué on the Amendment to the General Communiqué pertaining to Public Tenders was published in the Official Gazette dated 07.06.2014 and numbered 29023.
- The Communiqué Serial No. 7 (Transit Procedure) on the Amendments of the General Communiqué on Customs (Transit Procedure) Serial No. 3 entered into force through the Official Gazette dated 22.07.2014 and numbered 29068.
- The Communiqué Serial No. 35 on the Amendments of the Private Consumption Tax General Communiqué (Serial No. 1) entered into force through the Official Gazette dated 24.07.2014 and numbered 29070.
- The Customs General Communiqué (Custom Transactions) Serial No. 114 entered into force through the Official Gazette dated 09.08.2014 and numbered 29083.
- The General Communiqué on the Research Board of Financial Crimes (No: 13) entered into force through publication in the Official Gazette dated 23.08.2014 and numbered 29097.

- The General Communiqué of Real Estate Tax (Serial No: 64) was published in the Official Gazette dated 27.08.2014 and numbered 29101.
- The Customs General Communiqué (Custom Transactions) (Serial No: 115) entered into force through publication in the Official Gazette dated 12.09.2014 and numbered 29117.
- The General Communiqué of Tax Procedure Law (Serial No: 440) entered into force by its publication in the Official Gazette dated 24.09.2014 and numbered 29129.
- The General Communiqué on the Restructuring of Certain Receivables within the scope of Law No. 6552 was published in the Official Gazette dated 27.09.2014 and numbered 29132.
- The Communiqué (Customs Transactions) on the Amendments to the General Customs Communiqué (Customs Transactions) (Serial No: 90) entered into force through publication in the Official Gazette dated 03.10.2014 and numbered 29138.
- The General Customs Communiqué (Tariff-Classification Decisions) entered into force through its publication in the Official Gazette dated 12.10.2014 and numbered 29143.
- The Communiqué on the Amendment to the General Communiqué on Public Procurement was published in the Official Gazette dated 25.10.2014 and numbered 29156, effective as of 11.09.2014.
- The Communiqué (Customs Transactions) (Serial No: 118) on the Amendment to the General Customs Communiqué (Customs Transactions) (Serial No: 102) entered into force through its publication in the Official Gazette dated 23.11.2014 and numbered 29184.
- The Communiqué (Authorized Customs Consultancy) (Serial No: 5) on the Amendment to the General Customs Communiqué (Authorized Customs Consultancy) (Serial No: 2) entered into force through its publication in the Official Gazette dated 02.12.2014 and numbered 29193.

- The General Customs Communiqué (Customs Transactions) (Serial No: 119) was published in the Official Gazette dated 05.12.2014 and numbered 29196.
- The Communiqué (Customs Transactions) (Serial No: 120) on the Amendment to the General Customs Communiqué (Customs Transactions) (Serial No: 94) entered into force through its publication in the Official Gazette dated 10.12.2014 and numbered 29201.
- The General Communiqué (Serial No: 2) on the Restructuring of Certain Receivables within the Scope of Law No. 6552 was published in the Official Gazette dated 11.12.2014 and numbered 29202.
- The General Customs Communiqué (Obligator Register and Tracking System) (Serial No: 1) was published in the Official Gazette dated 20.12.2014 and numbered 29211. Different dates of entry into force have been determined for the Articles of this Communiqué.

Other Important Changes and Developments

- The List of Investment Incentive Certificates for November 2013 was published in the Official Gazette dated 08.01.2014 and numbered 28876.
- The List of Cancelled Investment Incentive Certificates for November 2013 was published in the Official Gazette dated 08.01.2014 and numbered 28876.
- The 2004 York Anvers Rules was published in the Official Gazette dated 13.01.2014 and numbered 28881.
- The Resolution of the Ministry of Economy on the Companies that obtained the status Foreign Trade Company in 2014 was published in the Official Gazette dated 08.04.2014 and numbered 28966.
- The List of Investment Incentive Certificates for February 2014 was published in the Official Gazette dated 24.04.2014 and numbered 28981.
- The List of Investment Incentive Certificates which were cancelled in February 2014 was published in the Official Gazette dated 24.04.2014 and numbered 28981.
- The List of Exemption Certificates with regards to Tax, Duties and Charges for March 2014 was published in the Official Gazette dated 24.04.2014 and numbered 28981.
- The Accounting Standard of State numbered 32 relevant to the determination of the principles of recognition for the service concession agreements was published in the Official Gazette dated 07.05.2014 and numbered 28993. This standard entered into force on its date of publication to be regulated by the Ministry of Finance and relevant institution for the application.
- The List of Investment Incentive Certificates for March 2014 was published in the Official Gazette dated 10.05.2014 and numbered 28996.
- The List of Investment Incentive Certificates which were cancelled in March 2014 was published in the Official Gazette dated 10.05.2014 and numbered 28996.

- The Resolution of the Tobacco and Alcohol Market Regulatory Authority on the Procedures and Principles Concerning the Acquisition and Sale of the Tobaccos Extra Contractually Produced in 2013 through Auction was published in the Official Gazette dated 16.05.2014 and numbered 29002.
- The List of Exemption Certificates with regards to Tax, Duties and Charges for April 2014 was published in the Official Gazette dated 28.05.2014 and numbered 29013.
- The List of Investment Incentive Certificates for April 2014 was published in the Official Gazette dated 14.05.2014 and numbered 29030.
- The List of Investment Incentive Certificates which were cancelled in April 2014 was published in the Official Gazette dated 14.06.2014 and numbered 29030.
- The List of Exemption Certificates with regards to Tax, Duties, and Charges for May 2014 was published in the Official Gazette dated 18.06.2014 and numbered 29034.
- The List of Investment Incentive Certificates for May 2014 was published in the Official Gazette dated 09.07.2014 and numbered 29055.
- The List of Investment Incentive Certificates which were cancelled in May 2014 was published in the Official Gazette dated 09.07.2014 and numbered 29055.
- The By-Law No: 2014/6506 on the Abolishment of the Occupational Safety and Health Regulation entered into force through the Official Gazette dated 23.07.2014 and numbered 29069.
- The Principle Decision No. 60 regarding the Hydroelectric Power Plants (HES) planned for establishment on the natural protected areas entered into force through publication in the Official Gazette dated 12.08.2014 and numbered 29086.
- The Resolution of the Money-Credit and Coordination Board, dated 25.07.2014 and numbered 2014/2 regarding the foundation of a State Support Assessment Committee in the scale of

export, entered into force through publication in the Official Gazette dated 16.08.2014 and numbered 29090.

- The Resolution of the Money-Credit and Coordination Board dated 18.08.2014 and numbered 2014/6 pertaining to the Aid of Import Refund in Agricultural Products was published in the Official Gazette dated 28.08.2014 and numbered 29102.
- The Resolution of the Money-Credit and Coordination Board, dated 26.08.2014 and numbered 2014/8 pertaining to the Support of the Market Entrance Documents was published in the Official Gazette dated 04.09.2014 and numbered 29109.
- The List of Investment Incentive Certificates for the month of July of the year 2014 was published in the Official Gazette dated 10.09.2014 and numbered 29115.
- The Resolution of the Council of Ministers dated 01.09.2014 and numbered 2014/6746 on the Amendment of the Resolution concerning the Procedures and Principals of Treasury Support Provided for the Credit Guarantee Institutions was published in the Official Gazette dated 13.09.2014 and numbered 29118.
- The Prime Ministry Circular Concerning the Coordination of the Works Related to the European Union was published in the Official Gazette dated 25.09.2014 and numbered 29130.
- The Tariff on the Amendment to the Minimum Fee Tariff for Attorneys-at-Law entered into force through publication in the Official Gazette dated 26.11.2014 and numbered 29187.

Important Legislation and Decisions regarding Competition

- The Competition Board ("Board") granted a certificate of negative clearance to the Distribution Agreement signed between Total Oil Türkiye A.Ş. and Ali İhsan Aktekin-Hülyak Market; and decided that the exploitation contract shall benefit from a block exemption under the scope of the Communiqué No. 2002/2. (26.12.2013; 13-72/996-427)
- The Board decided that the protocol concluded between OMV Petrol Ofisi A.Ş. and Lubratek Endüstriyel Yağlar ve Kimyasal Mad. Paz. ve Tic. Ltd. Şti., subject to the production and sale of heat treatment oil, shall benefit from a block exemption under the scope of the Communiqué No. 2013/3. (26.12.2013; 13-72/997-428)
- The Board did not grant an exemption to the advised price list which was planned to be published by the Association of Advertising Agencies and the sector research to be conducted by a third enterprise. (09.01.2014; 14-01/1-1)
- The Board gave a certificate of negative clearance to the contract manufacturing agreement signed between Göltaş Göller Bölgesi Çimento San. ve Tic. A.Ş. and Batısöke Söke Çimento Sanayii T.A.Ş.. (09.01.2014; 14-01/6-5)
- The Board decided that the vertical relationship established between OMV Petrol Ofisi A.Ş. and Okur Petrol Ürünleri Gıda İnşaat ve Taşımacılık Ltd. Şti., which is subject to notice shall benefit from a block exemption under the scope of the Communiqué No. 2002/2 until the date of 08.05.2017. (09.01.2014; 14-01/10-8)
- The Board granted an exemption to the Agreement on Cooperation and Contract Manufacturing signed between GlaxoSmithKline İlaçları Sanayi ve Ticaret A.Ş., GlaxoSmith Kline Biologicals S.A. and İdol İlaç Dolum Sanayi ve Ticaret A.Ş. (09.01.2014; 14-01/11-9)
- The Board authorized the transformation of Clariant Masterbatches Ltd. into the joint venture of Rowad National Plastics Co. Ltd. and Clariant Participations Ltd. (16.01.2014; 14-02/34-13)

- The Board granted an exemption to the Business Partnership Agreement signed between Dimes Gıda Tarım Sanayii Ticaret A.Ş. and Pınar Süt Mamülleri Sanayi A.Ş. (16.01.2014; 14-02/37-15)
- The Board granted a negative clearance certificate to the Agreement on Sharing the General Health Insurance Data of the Republic of Turkey Social Security Institution signed between the Social Security Institution and Datamed Bilgi Yönetimi Ltd. Şti. (16.01.2014; 14-02/38-16)
- The Board granted an exemption to Interbank Card Center Inc. TechPOS Project for three years. (16.01.2014; 14-02/42-20)
- The Board granted an exemption to the Bonus Credit Card Program Sharing Agreement, signed between Türkiye Garanti Bankası A.Ş. and Fibabanka A.Ş. (19.02.2014; 14-07/149-64)
- The Board granted an individual exemption to the Warehouse Sales Agreement and the Agreement Amending the Warehouse Sales Agreement, which were signed between Lilly İlaç Tic. Ltd. Şti. and Yusufpaşa Ecza Deposu A.Ş. (26.02.2014; 14-08/161-70)
- The Board did not grant an exemption to the Base Expertise Fees Tariff prepared by the Insurance Experts' Executive Committee. (26.02.2014; 14-08/162-71)
- The Board issued a certificate of negative clearance for the protocol signed between GDZ Enerji Yatırımları A.Ş. and MARSH Sigorta ve Reasürans Brokerliği A.Ş. (26.02.2014; 14-08/163-72)
- The Board authorized granting the operating right for oil storage, sale and refuel units in Istanbul Sabiha Gökçen Airport to THY OPET Havacılık Yakıtları A.Ş. for five years within the framework of the commitments made by THY OPET Havacılık Yakıtları A.Ş. (05.03.2014; 14-08/155-66)
- The Board granted a negative clearance certificate to the recommendation decision of the Banks Association of Turkey concerning the restructuring of Swiss franc and Japanese yen indexed housing loans given by its members between 2007 and

2009 to their customers in Turkish Liras. (26.03.2014; 14-12/222-98)

- The Board decided that an individual exemption shall be granted to the "Distribution Agreement" and the amendment text signed between Tekeda İlaç Sağlık Sanayi ve Ticaret Ltd. Şti. and Anika Therapeutics, Inc. (03.04.2014)
- The Board has found no objections to authorizing the transfer of the operating rights of Dalaman Airport Domestic Terminal and its Complementaries, as well as International Terminal and its Complementaries, to YDA İnşaat Sanayi ve Ticaret A.Ş. for 25 years. (09.04.2014; 14-14/255-110)
- The Board has found no objections to authorizing the transfer of the operating rights of Milas-Bodrum Airport Domestic Terminal and its Complementaries, as well as International Terminal and its Complementaries, to TAV Havalimanları Holding A.Ş for 20 years. (09.04.2014; 14-14/256-111)
- The Board decided that the vertical relationship between Altınbaş Petrol ve Ticaret A.Ş. and Yunak Otomotiv İnşaat ve Sanayi Ticaret Ltd. Şti. shall benefit from the group exemption within the scope of the Communiqué numbered 2002/2 until the date of 20.09.2015. (16.04.2014; 14-15/271-115)
- The Board granted an individual exemption to the Sales Agreement dated 01.06.2013 and signed between Chiesi İlaç Ticaret A.Ş. and Özsel Ecza Depoları Tic. ve Paz. A.Ş., concerning the products Curosurf and Aggrastat, on the condition that the Peyona branded product was also included in the agreement. (30.04.2014; 14-16/292-124)
- The Board decided that the Franchising Agreements to be concluded between Brisa Bridgestone Sabancı Lastik Sanayi ve Ticaret A.Ş. and OtoPratik/ProPratiktaları branches could benefit from block exemption under the Communiqué No. 2005/4 except the non-compete obligation, which was granted an individual exemption. Additionally, the agreements concluded with Karat Güç Sistemleri San. ve Tic. A.Ş. were granted individual exemptions for five years. (30.04.2014; 14-16/295-126)

- The Board granted an individual exemption to the Bonus Credit Card Sharing Agreement, concluded between Türkiye Garanti Bankası A.Ş. and Tekstil Bankası A.Ş. (30.04.2014; 14-16/296-127)
- The Board decided that the contract to be concluded between Ascendum Makine Tic. A.Ş. and its dealers could benefit from block exemption under the Block Exemption Communiqué on Vertical Agreements, No. 2002/2. (20.05.2014; 14-18/335-145)
- The Board granted an individual exemption to the system established by Çaytaş Gıda Pazarlama ve Reklam Hizmetleri San. ve Tic. A.Ş. that is intended for coordinating the sales and distribution of Çaykur products (20.05.2014).
- The Board decided that, with the exception of the regulations in Articles 4 and 21, the "Authorized Vehicle Sales Dealership Agreement," to be signed between Anadolu Isuzu Otomotiv Sanayi ve Ticaret A.Ş. and its dealers was covered by the block exemption of the Block Exemption Communiqué concerning Vertical Agreements and Concerted Practices in the Motor Vehicle Sector, No. 2005/4, and that it would benefit from block exemption under the aforementioned Communiqué provided that the articles in question were amended. In addition, an individual exemption was granted to the New Dealer Bonus System in the supplements of the agreement in question. (20.05.2014; 14-18/342-149)
- The Board granted an individual exemption to the Amendment Text to the Television Audience Measurement Service Agreement, which was signed between TİAK Televizyon İzleme Araştırmaları Anonim Şirketi and TNS Piyasa Araştırma Danışmanlık ve Ticaret A.Ş. (29.05.2014; 14-19/362-158) The Board granted an individual exemption to the framework exclusive warehouse contract, signed between Boehringer Ingelheim İlaç Ticaret A.Ş. and Ankara Beşer Ecza Deposu İlaç ve Pazarlama A.Ş. (29.05.2014; 14-19/366-161)
- The Board decided that there were no drawbacks for authorizing the acquisition of certain assets by either of the bidders, Demir Madencilik Petrol Ürünleri Enerji İnşaat Liman Gemi,

Yat Yapım Turizm Nakliyat Sanayi ve Ticaret A.Ş., Elsan Elektrik Gereçleri A.Ş. and Alsim Alarko Sanayi Tesisleri ve Ticaret A.Ş., within the scope of the privatization of Çatalağzı Thermal Plant by means of selling assets. (05.06.2014; 14-20/383-167)

- The Board decided that within the scope of the privatization of Fenerbahçe-Kalamış Marina, acquisition of the said Marina by either of TEK-ART Kalamış ve Fenerbahçe Marmara Turizm Tesisleri A.Ş., Akdeniz İnşaat ve Eğitim Hizmetleri A.Ş., Yılport Holding A.Ş. Ortak Girişim Grubu and SAFİ Gayrimenkul ve Yatırımları San. Tic. A.Ş. was not subject to authorization. (05.06.2014; 14-20/386-170)
- The Board granted individual exemption to acquisition by Shell & Turcas Petrol A.Ş. of 45% shares of Marmara Depoculuk Hizmetleri A.Ş. whose 90% shares are held by OMV Petrol Ofisi A.Ş. (05.06.2014; 14-20/382-166)
- The Board granted individual exemption to the assignment by Verney Carron SA of Armsan Silah Sanayi ve Ticaret A.Ş. as its exclusive distributor/representative in Turkey for hunting rifles and products that are used in social events and qualified as non-lethal rifles. (05.06.2014; 14-20/388-172)
- The Board decided that there were no drawbacks for authorizing the acquisition of certain assets by the bidders, IC İçtaş Enerji Üretim ve Tic. A.Ş. or Çelikler Taah. İnş. ve San. A.Ş. – Kalyon İnş. San. ve Tic. A.Ş. Joint Venture Group, within the scope of the privatization of Kemerköy and Yeniköy Thermal Plants and Kemerköy Port Area. (12.06.2014; 14-21/411-179)
- The Board decided that the acquisition of Esendal and Işıklar Hydroelectric Power Plants by granting operating rights by Metek Hidro Enerji Sanayi ve Ticaret A.Ş., Demars İnşaat Turizm Ticaret Ltd. Şti.Ltd. Şti. or Timerk Enerji İletim Üretim Dağıtım Elektrik Makine ve Tesisat Malzemeleri Ticaret ve Pazarlama Ltd. Ştd. was not subject to authorization. (25.06.2014; 14-22/423-187)

- The Board decided that the acquisition of Kayaköy Hydroelectric Power Plant by granting operating rights by Veysi Madencilik İnşaat Nakliyat Petrol Temizlik Sanayi ve Ticaret Ltd. Şti. or Abdülmecit Modoğlu İnşaat Sanayi ve Petrol Ürünleri Ltd. Şti. was not subject to authorization. (25.06.2014; 14-22/424-188)
- The Board decided that the acquisition of Dere and İvriz Hydroelectric Power Plants by granting operating rights by Ülke Yatırım Araştırma Geliştirme Madencilik İnş. ve Elk. Üretim A.Ş. or Erova Tarım Hayvancılık Enerji San. ve Tic. A.Ş. was not subject to authorization. (25.06.2014; 14-22/425-189)
- The Board issued a certificate of negative clearance to the Agreement of Distribution of Journals to be signed between Doğan Dağıtım Satış Pazarlama Matbaacılık Ödeme Aracılık ve Tahsilat Sistemleri A.Ş. and the journal publication undertakings. (02.07.2014; 14-23/463-204)
- The Board issued a certificate of negative clearance to the Agreement of Distribution of Newspapers to be signed between Doğan Dağıtım Satış Pazarlama Matbaacılık Ödeme Aracılık ve Tahsilat Sistemleri A.Ş. and the undertakings of newspaper publishers. (02.07.2014; 14-23/464-205)
- The Board, within the framework of the privatization of Yatağan Thermal Power Plant and the movables and immovables connected to this plant as well as the relevant mine sites, decided that there were no drawbacks for the authorization of the acquisition of the relevant assets by the bidders Konya Şeker Sanayi ve Ticaret A.Ş., Elsan Elektrik Gereçleri A.Ş. or Alsim Alarko Sanayi Tesisleri ve Ticaret A.Ş. (02.07.2014; 14-23/479-210)
- The Board granted an individual exemption certificate to the Articles of Association of Bantaş Nakit ve Kıymetli Mal Taşıma ve Güvenlik Hizmetleri A.Ş. which was incorporated as a partnership of Denizbank A.Ş., Finansbank A.Ş., Türk Ekonomi Bankası A.Ş., Finans Yatırım Menkul Değerler A.Ş. and TEB Holding A.Ş. (16.07.2014; 14-24/489-219)
- The Board granted an individual exemption to the "Agreement of Bonus Credit Card's Program Sharing" signed between

Türkiye Garanti Bankası A.Ş. and ING Bank A.Ş. (14-26/524-232; 07.08.2014)

- The Board decided that the acquisition of all shares and the control of Eston İnşaat Yatırım A.Ş., whose management and control belongs to Tasarruf Mevduatı Sigorta Fonu, by PLT İnşaat Gayrimenkul Yatırım Turizm Ticaret A.Ş. was not subject to authorization. (07.08.2014; 14-26/549-237)
- The Board, within the framework of the privatization of the license rights of Games of Chance, which is under the control of General Directorate of the National Lottery, decided that there were no drawbacks for the authorization of the acquisition of the relevant assets for ten years. (07.08.2014; 14-26/548-236)
- The Board decided that there are no drawbacks for the authorization on acquisition of Derince Port by Safi Katı Yakıt Sanayi and Ticaret A.Ş., Kumport Liman Hizmetleri or Lojistik Sanayi and Ticaret A.Ş. or Yılport Holding A.Ş, by providing the right of managing, within the framework of the privatization of the Derince Port, which belongs to the General Directorate of the Turkish Railway Enterprise. (07.08.2014; 14-26/527-23)
- The Board granted a provisional individual exemption to the Common Service Agreement signed between TTNET and FON Wireless LLC. (13.08.2014; 14-28/558-24)
- The Board decided that the acquisition of all the shares of Resvel Enerji Pazarlama Sanayi and Ticaret A.Ş. by Sancak Enerji Hizmetleri A.Ş. was not subject to authorization. (13.08.2014)
- The Board, within the framework of the regulation numbered 2002/2, granted a group exemption to the Dealership Agreement to be signed between Doğan Dağıtım Satış Pazarlama Matbaacılık Ödeme Aracılık and Tahsilat Sistemleri A.Ş. and its had dealers, with a conditional individual exemption. (20.08.2014; 14-29/612-265)
- The Board granted an individual exemption to the Entrusting Sale Agreement, which will be signed between Amgen İlaç

Ticaret Limited Şirketi, İmtaş Ecza Deposu, Gereçleri Sanayi and Tic. Ltd. Şti., Aksel Ecza Deposu Ticaret A.Ş., Sistem Araç and Gereçleri Ecza Deposu Ticaret Paz. Ltd. Şti. (20.08.2014; 14-29/591-257)

- The Board authorized the foundation of a joint venture called Vergi İade Aracılık A.Ş. between Türk Hava Yolları A.O., VK Holding A.Ş., Maslak Otomotiv Sanayi and Ticaret A.Ş. (20.08.2014)
- The Board decided that the acquisition of all shares of Güneşevi Enerji Sanayi and Ticaret Ltd. Şti. by Sancak Enerji Hizmetleri A.Ş. was not subject to authorization. (20.08.2014; 14-29/598-BD)
- The Board granted an individual exemption to the vertical agreements signed between Can Aslan Petrolcülük Sanayi A.Ş. and Emir Madencilik Akaryakıt Petrol Ürn. San. ve Tic. Ltd. Şti., Aktoprak Petrol Taşıma Gıda İnş. Turz. Teks. San. ve Tic. Ltd. Şti. up to ten years (03.09.2014; 14-30/621-273).
- The Board authorized the foundation of a joint venture company between Mitsubishi Heavy Industries, Ltd. and Siemens AG through the combination of their facilities of metal production site installation (03.09.2014; 14-30/621-273).
- The Board decided that the agreement signed between AbbVie Tıbbi İlaçlar Sanayi ve Ticaret Ltd. Şti. and Polimed İlaç ve Tıbbi Cihazlar San. ve Tic. Ltd. Şti. benefited the group exemption and granted an individual exemption to the Exclusive Distributership Framework Agreement Regarding the Procurements, which was signed separately and includes different conditions (08.09.2014; 14-30/629-278).
- The Board granted an individual exemption to the Exclusive Procurement Depository Agreement and Exclusive Procurement Depository Agreement-Annex Protocol, signed between EİP Eczacıbaşı İlaç Pazarlama A.Ş. and Gül Ecza Deposu San. ve Tic. A.Ş. (12.09.2014; 14-32/647-284).
- The Board decided that Termopet Akaryakıt Nakliyat ve Ticaret Ltd. Şti. did not violate the Law on the Protection of Competition

(Law No. 4054) by vertical agreements and anti-competitive behavior. (16.09.2014; 14-33/665-291)

- The Board granted individual exemption to the entrusting sale agreement concluded between Bayer Türk Kimya Sanayi Ltd. Şti. and Medifar Ecza Deposu İlaç San. ve Tic. A.Ş. (24.09.2014; 14-37/714-319)
- The Board granted conditional individual exemption to the Agency Contractconcluded between Akbank T.A.Ş. and Avivasa Emeklilik and Hayat A.Ş. (01.10.2014; 14-37/714-319) The Board granted negative clearance to the sharing of information published quarterly by the Banking Regulation and Supervision Agency by Financial Leasing, Factoring and Financing Companies Association to the public and members in a consolidated manner; the Board granted individual exemption for 3 years with respect to the information to be shared with the members on a company basis. (01.10.2014; 14-37/715-320)
- The Board granted negative clearance to the gathering of risk information relating to the customers of the financial institutions by the Banks Association of Turkey Risk Center within the scope of the relevant legislation and the sharing of this information with financial institutions and third parties. (16.10.2014; 14-40/741-332)
- The Competition Board granted negative clearance to the sale practices imposed as a standard in contracts in 2014 between Türkiye Petrol Rafinerileri A.Ş. and fuel distribution companies. (22.10.2014; 14-42/760-336)
- The Board granted individual exemption to the "Additional Agreement" to be concluded between Turkcell İletişim Hizmetleri A.Ş. and its business partners regarding bulk messaging 3G Tasarım Bilişim Teknolojileri Danışmanlık Elektronik İletişim Hiz. İth. İhr. Ltd. Şti., Balaban Yazılım ve İletişim Hizmetleri Ltd. Şti., Mobilpark Telek. Bil. Yaz. Hiz. Tic. A.Ş., Codec İletişim ve Danışmanlık Hizmetleri Ltd. Şti., Dataport Bilgi İşlem Çözümleri Ltd. Şti., Hermes Internet İletişim, Reklam ve Danışmanlık Hizmetleri, Sürat Bilişim Teknolojileri San. Tic. A.Ş., Teknomart Teknoloji Ürünleri San.

ve Tic. Ltd. Şti. However, the Board did not grant individual exemption to the "Additional Agreement" to be concluded with Yazılım Evi Tic. Ltd. Şti., Mobildev İletişim Hizmetleri San. ve Tic. A.Ş., ODC İş Çözümleri Danışmanlık Tic. Ltd. Şti., or Turatel Mobil Medya İletişim ve Bilişim Sistemleri Elektronik San. Tic. Ltd. Şti. (22.10.2014; 14-42/767-342)

- The Board granted individual exemption to the Tender Sales Agreement, concluded between Mustafa Nevzat İlaç Sanayii A.Ş. and Gül Ecza Deposu Sanayi ve Ticaret A.Ş. (04.11.2014; 14-43/797-358)
- The Board granted individual exemption to the sharing of the retail sales reports of the authorized sellers of Land Rover, MINI and BMW; the sharing of Customer Satisfaction Reports with authorized repairers on a monthly base; the sharing of Spare Parts Purchasing Volume and Market Share Reports, as well as Spare Parts Sales Volume and Market Share Reports, to be shared with authorized repairers. In addition, the Board granted individual exemption to the sharing, on an annual basis, of the "labor volume produced, the number of services, free time in the workshop, and workshop productivity data, to be shared with authorized repairers, provided that this data is shared, annually. (12.11.2014; 14-45/814-367)
- The Board granted individual exemption to the Exclusive Tender Warehouse Agreement, concluded between Abdi İbrahim İlaç Pazarlama A.Ş. and Çam Ecza Deposu A.Ş. (12.11.2014; 14-45/809-364)
- The Board Board granted negative clearance to URYAD Radyo Dinleme Hizmetleri Organizasyon Tanıtım ve Yayıncılık A.Ş. for the activities related to the procurement of the audience ratio indication services and the transmission of such services within the scope of the Subscription Agreement. (26.11.2014; 14-46/833-373)
- The Board granted individual exemption to CMA CGM S.A. and Botros & Levante Taşımacılık ve Tic. Ltd. Şti. in the establishment of a joint venture. (26.11.2014; 14-46/848-387)

- The Board granted negative clearance to the "Cooperation Protocol" signed by and between İnka Yapı Bağlantı Elemanları San.ve Tic. A.Ş., Hacı Ayvaz Endüstriyel Mamuller San. ve Tic. A.Ş. and Darhan İç ve Dış Tic. Ltd. Şti. (11.12.2014; 14-50/880-400)
- The Board decided that the exclusive distribution agreements signed by and between Traçim Çimento San. ve Tic. A.Ş. and Ertan Çimento San. ve Tic. Ltd. Şti.; also Ertan Çimento San. ve Tic. Ltd. Şti. and Ulucanlar İnşaat Malzemeleri Tic. ve San. Ltd. Şti. employed the group exemption within the framework of Block Exemption Communiqué on Vertical Agreements No: 2002/2. (11.12.2014; 14-50/881-401)
- The Board granted an individual exemption to the Exclusive Distribution Agreement for Non-Life Insurances dated 30.09.2014 and signed by and between Zurich Sigorta A.Ş. and ING Bank A.Ş. (11.12.2014; 14-50/892-408)

Important Legislation and Decisions regarding Mergers and Acquisitions

- The Competition Board ("Board") authorized the acquisition by Infinity Invest Holding A.Ş. of all of the shares of Ozan Enerji LPG Akaryakıt Dağıtım ve Nakliye Ticaret A.Ş. from Ümit Ozan. (26.12.2013; 13-72/993-424)
- The Board authorized the acquisition by Huntsman International LLC of Rockwood Specialities Group Inc.'s 16 subsidiaries, operating in various business branches. (26.12.2013; 13-72/994-425)
- The Board authorized the establishment of a joint venture between Mitsubishi Heavy Industries and Vestas Wind Systems A/S for the activities relating to the sale, procurement, production, assembly, brokerage, operation, research and development and maintenance and repair of offshore wind turbine generators. (26.12.2013; 13-72/995-426)
- The Board authorized the acquisition by Avic International Engineering Holdings Pte. Ltd. of the full control of KHD Humboldt Wedag International AG. (26.12.2013; 13-72/999-430)
- The Board decided that the acquisition of all of the shares of İkisu Enerji Üretim ve Ticaret A.Ş. by IC İçtaş Enerji Üretim ve Ticaret A.Ş. was not subject to authorization. (26.12.2013; 13-72/1000-BD)
- The Board decided that the transformation of Ege Turizm ve Gayrimenkul Yatırımları A.Ş. to a joint venture through the acquisition of 50% of its shares by Doğuş Turizm Sağlık Yatırımları ve İşletmeciliği Sanayi ve Ticaret A.Ş. was not subject to authorization. (26.12.2013; 13-72/1002-BD)
- The Board authorized the transformation of M Steel Indústria e Comércio de Produtos Siderúrgicos Ltda. to the joint venture of Mitsui & Co., Ltd. and ArcelorMittal Gonvarri Brasil Produtos Siderurgicos, S.A. (26.12.2013; 14-01/3-2)

- The Board authorized the acquisition of Clariant International AG's leather business line by Stahl Lux 2 SA and the acquisition by Clariant International AG of the new shares to be issued by Stahl Lux 2 SA after the transfer. (09.01.2014; 14-01/8-7).
- The Board authorized the acquisition by Fibabanka A.Ş. of Societe Generale Istanbul Turkey Central Branch's activities concerning consumer loans under the name of the brand "KrediVer" (16.01.2014; 14-02/39-17)
- The Board authorized the acquisition by Sanko Holding A.Ş. of 30% of the shares in Çimko Çimento ve Beton San. Tic. A.Ş.'s from Barbetti Cement Çimento San. ve Tic. Ltd. Şti. (16.01.2014; 14-02/48-22)
- The Board authorized the acquisition by Worthington Industries International S.a.r.l. of 75% of the shares in Arıtaş Basınçlı Kaplar Sanayi A.Ş.'s. (16.01.2014; 14-02/49-23)
- The Board decided that the acquisition by Es Mali Yatırım ve Danışmanlık A.Ş. of all of the shares of T Medya Yatırım ve Sanayi A.Ş., Atlas Yayıncılık ve Ticaret A.Ş., Alem Radyo ve Televizyon Yayıncılık Ticaret A.Ş., Bilişim Radyo Televizyon Yayıncılık Sanayi ve Ticaret A.Ş., Sakarya Kent Radyo ve Televizyon Sanayi ve Ticaret A.Ş., T Medya Magazin Yayıncılık Sanayi ve Ticaret A.Ş., T Medya Televizyon Yayıncılık Sanayi ve Ticaret A.Ş., Karova Medya Sanayi ve Ticaret A.Ş., T Medya Pazarlama ve Dış Ticaret A.Ş., T Medya Baskı Teknolojileri A.Ş. and Ad Grup Basın Servisleri ve Ticaret A.Ş., all of which belong to Çukurova Group was not subject to authorization. (16.01.2014; 14-02/50-BD)
- The Board authorized the transformation of Galata Enerji Üretim Sanayi ve Ticaret A.Ş. and Geliş Madencilik İnşaat Ticaret A.Ş. into a joint venture by means of the acquisition of 55% of the shares of Global Enerji Hizmetler ve İşletmeler A.Ş. by Akkök Sanayi Yatırım ve Geliştirme A.Ş. (29.01.2014; 14-05/82-35)
- The Board authorized the acquisition of all shares of Arlight Aydınlatma A.Ş.from real person shareholders by Fagerhult GmbH. (29.01.2014; 14-05/86-38)

- The Board authorized the transformation of ThyssenKrupp Steel USA LLC, which is under the control of ThyssenKrupp AG, into a joint venture by means of acquisition by ArcelorMittal USA LLC and Nippon Steel & Sumitomo Metal Corporation and the group companies. (29.01.2014; 14-05/89-39)
- The Board authorized the acquisition of minimum 60%, maximum 65% of the shares in Ayakkabı Dünyası Mağazacılık ve İnşaat A.Ş. and Akbacakoğlu Kundura Sanayi ve Ticaret A.Ş. by Esas Holding A.Ş. (29.01.2014; 14-05/99-40)
- The Board authorized the acquisition of all shares of Adnan Polat Enerji Yatırımı A.Ş. by the Public Sector Pension Investment Board through its indirect subsidiary PSPEUR S.a.r.l., and therefore transfer of Polat Enerji Sanayi ve Ticaret A.Ş. to the joint control of the Public Sector Pension Investment Board, Electricité de France S.A. and the Polat Family. (29.01.2014; 14-05/100-41)
- The Board decided that establishment of a joint venture between Doğuş Holding A.Ş. and BLG Gayrimenkul Yatırımları ve Ticaret A.Ş. in order to operate Salıpazarı Port Area was not subject to authorization. (29.01.2014)
- The Board authorized the acquisition of Schmolz+Bickenbach AG by Venetos Holding AG. (12.02.2014; 14-06/105-44)
- The Board authorized the acquisition of all of the shares of Mission Energy Holdings International Inc., a subsidiary of Edison Mission Energy, by NRG Energy Holdings Inc. (12.02.2014; 14-06/108-47)
- The Board decided that the establishment of a joint venture company between Anadolu Enerji Üretim Sanayi ve Ticaret A.Ş. and Talesun Solar Germany was not subject to authorization. (12.02.2014; 14-06/117-BD)
- The Board authorized the acquisition of 51% of the shares of Sıla Teknik Oto Yan San. ve Tic. A.Ş. and STG Otomotiv Sanayi ve Ticaret A.Ş. by Orhan Holding A.Ş. from Sıla Holding Industriale S.p.a. (19.02.2014; 14-07/133-60)

- The Board authorized the establishment of a joint venture company by Omur Denizcilik A.Ş., Ziraat Sigorta A.Ş., Güneş Sigorta A.Ş., Halk Sigorta A.Ş., Metropole Denizcilik ve Tic. Ltd. Şti. and Vitsan Denizcilik A.Ş. (19.02.2014; 14-07/134-61)
- The Board authorized the acquisition of all inventory and fixed assets, employees and related rental contracts for the 28 stores of Kesa Turkey Limited, operating under the "Darty" brand, by Bimeks Bilgi İşlem ve Dış Ticaret A.Ş. (19.02.2014; 14-07/137-63)
- The Board authorized the acquisition of all of the shares of OMK Oluklu Mukavva ve Kutu Ambalaj San. A.Ş. by Industrias Celulosa Aragonesa CIF. (26.02.2014; 14-08/152-65)
- The Board authorized the acquisition by K1 Group SAS joint venture of all shares of Kem One SAS. (05.03.2014; 14-09/172-68)
- The Board authorized the acquisition by Ravago SA of Landmark Chemicals International SA and Multitube BV together with their shareholdings. (05.03.2014; 14-09/173-73)
- The Board authorized the acquisition of IMG Worldwide Holdings, Inc. by WME Entertainment Parent, LLC and the establishment of indirect joint control over MG Doğuş Spor Moda ve Medya Hizmetleri ve Tic. A.Ş. together with Doğuş Holding A.Ş. (05.03.2014; 14-09/184-78)
- The Board authorized the acquisition of all of the shares of Artenius Turkpet Kimyevi Maddeler Sanayi A.Ş. from La Seda De Barcelona S.A. by Indorama Netherlands B.V.(12.03.2014; 14-10/188-79)
- The Board authorized the transformation of Deltom Jeotermal Analiz Enerji Üretim İnş. San. ve Tic. A.Ş. into a joint venture through the acquisition of 30% of its shares held by Delta Yatırım Holding A.Ş. by Alstom Power ve Ulaşım A.Ş. and Alstom Renewable Holding B.V. (12.03.2014; 14-10/189-80)
- The Board determined that the acquisition of all of the shares of Datmar Turzim A.Ş. from Doğuş Holding A.Ş. by Diana Otel

Yatırımları ve İşletmeciliği A.Ş. is not subject to authorization. (12.03.2014; 14-10/192-BD)

- The Board authorized the acquisition directly and indirectly by Mitsubishi Electric Turkey Elektrik Ürünleri A.Ş. of the shares of Klimaplus Enerji ve Klima Teknolojileri Pazarlama Sanayi ve Ticaret A.Ş., which belong to Atko Klima A.Ş. and real persons. (20.03.2014; 14-11/198-82)
- The Board authorized the acquisition of Procter & Gamble's Hedef Business Line by Fater S.p.A., the joint venture of Procter & Gamble Company and Tenimenti Angelini S.p.A was authorized. (20.03.2014; 14-11/199-83)
- The Board authorized the acquisition of the majority shares of Biostar Biomedikal Mühendislik A.Ş., directly or indirectly, by Medtronic Inc. following the transfer of the activities related to the distribution of the products of Medtronic Inc. in Turkey from Medicall Biomedikal Mühendislik Sağlık Hizmetleri Ticaret A.Ş. to Biostar Biomedikal Mühendislik A.Ş. (20.03.2014; 14-11/200-84)
- The Board authorized the transfer of Martur Sünger ve Koltuk Tesisleri Ticaret ve Sanayi A.Ş. from the joint control of HVB Capital Partners AG and Üstünberk Holding A.Ş.to the full control of Üstünberk Holding A.Ş. (20.03.2014; 14-11/201-85)
- The Board authorized the transfer of Multi Retail Turkey Coöperatieve U.A. from the joint control of Coöperatieve CPPIB U.A. and Blackstone Group L.P. to the full control of Blackstone Group L.P. (20.03.2014; 14-11/208-92)
- The Board authorized the acquisition of certain assets, agreements and enterprises which belong to Ofisteknik Dokümantasyon Hizmetleri ve Büro Makineleri Ltd. Şti. and Ofisteknik Büro Makineleri ve Teknik Servis Hizmetleri A.Ş. by Ricoh Turkey Baskı Çözümleri Ltd. Şti. (20.03.2014; 14-11/218-94)
- The Board authorized the acquisition of 50% of the shares of Gama Enerji A.Ş. and Gama Enerji İş Geliştirme A.Ş. by Gama Holding A.Ş. from EFS-L Inc., and thus the transformation from joint control to full control. (26.03.2014; 14-12/219-95)

- The Board authorized the acquisition of 60% of the shares of UCZ Mağazacılık Tic. A.Ş. from Park Holding A.Ş. by Ertan Acar, İsmet Or, Ahmet Özaktaç, Veysel Taşkın ve Ergün Bodur. (26.03.2014; 14-12/221-97)
- The Board authorized the acquisition of Temsa İş Makinaları İmalat Pazarlama ve Satış A.Ş.'s joint control by Marubeni Corporation, which is controlled by Temsa Global Sanayi ve Ticaret A.Ş. (03.04.2014; 14-13/237-103)
- The Board decided that the acquisition of all of Metronet İletişim Teknoloji A.Ş.'s shares by Superonline İletişim Hizmetleri A.Ş. from Es Mali Yatırım ve Danışmanlık A.Ş. was not subject to authorization. (03.04.2014; 14-13/248-BD)
- The Board authorized the establishment of a joint venture by Ideal Standard Sanitaryware Holding Ltd. and Ece Banyo Gereçleri Sanayi. (03.04.2014; 14-13/236-102)
- The Board authorized the establishment of a joint venture company between Nisshin Foods Inc., Nisshin Seifun Group Inc., Nuh'un Ankara Makarnası San. ve Tic. A.Ş. and Marubeni Corporation. (09.04.2014; 14-14/251-109)
- The Board decided that the acquisition of TNT Fashion Group B.V. by Netlog Lojistik Hizmetleri A.Ş. and Halifax N.V. was not subject to authorization. (09.04.2014; 14-14/257-BD)
- The Board authorized the acquisition of Cam Laminasyon Çözümleri ve Vinyil İşletmesi of DuPont de Nemours and Company by Kuraray Co. Ltd. (16.04.2014; 14-15/269-113)
- The Board authorized the acquisition of all the shares of Open Joint Stock Company Segezha Pulp and Paper Mill by Limited Liability Company Lesinvest. (16.04.2014; 14-15/273-116)
- The Board authorized the acquisition of 50% of the shares of Hero Gıda Sanayi ve Ticaret A.Ş., which was under the joint control of Yıldız Holding A.Ş. and Hero Nederland B.V., by HeroBeteiligungen AG, and the termination of intellectual property licenses and contracts which constitute the transactions concerning baby biscuits. (16.04.2014; 14-15/288-121)

- The Board decided that the transformation of Acarlar Dış Ticaret ve Makine Sanayi A.Ş. into a joint venture through the acquisition of 50% of its shares by Haulotte Group SA was not subject to authorization. (16.04.2014; 14-15/267-BD)
- The Board decided that the acquisition of 70% of the shares of Argos Turizm Yatırım ve Ticaret A.Ş. by Doğuş Otel Yatırımları ve Turizm A.Ş. was not subject to authorization. (16.04.2014; 14-15/289-BD)
- The Board authorized the acquisition of full control over Artı Döviz Ticaret A.Ş. by Travelex Group Investments Limited. (30.04.2014; 14-16/293-125)
- The Board authorized the acquisition of 99.99% of the shares of Nezih Kitap Kırtasiye Sanayi ve Ticaret A.Ş. by Muharrem Ender Karvar. (30.04.2014; 14-16/298-128)
- The Board authorized the acquisition of 28.8% of the shares of Vipindirim Elektronik Hizmetler ve Ticaret A.Ş. by MIH Allegro B.V. (30.04.2014; 4-16/299-129)
- The Board authorized the acquisition of International Business Machines Corporation's x86 Server Business Unit and the related network assets by Lenovo Group Limited. (30.04.2014; 14-16/300-130)
- The Board decided that the acquisition of full control over Frank Mohn AS by Alfa Laval Nordic AS was not subject to authorization. (30.04.2014; 14-16/305-BD)
- The Board authorized the acquisition, by Migros Ticaret A.Ş., of operating rights over the petrol station markets which are established at the fuel stations owned or rented, or whose usufruct rights are held by OMV Petrol Ofisi A.Ş., and which are operated by the latter undertaking's dealers or by third parties. (08.05.2014; 14-17/321-139)
- The Board decided that the acquisition of BMC Commercial and Economic Entity, made up of various assets of BMC Sanayi ve Ticaret A.Ş., by Es Mali Yatırım ve Danışmanlık A.Ş. could be authorized. (20.05.2014; 14-18/340-150)

- The Board authorized the indirect acquisition of full control over Foster Wheeler AG by AMEC plc, via open tender. (20.05.2014; 14-18/333-143)
- The Board authorized the transformation of Flint Group GmbH into a joint venture of Broad Street Principal Investments Holding LP and KFG Investment LLC. (20.05.2014; 14-18/334-144)
- The Board authorized the transformation of Grup Florence Nightingale Hastaneleri A.Ş., controlled by Florence Nightingale Hastaneleri Holding A.Ş., into a joint venture through the acquisition of a portion of its shares by Fiba Sağlık Yatırımları A.Ş. (20.05.2014; 14-18/336-146)
- The Board authorized the merger of Rautaruukki Oyj and SSAB AB through Rautaruukki Oyj shareholders' bartering of their Rautaruukki Oyj shares with SSAB AB shares. (20.05.2014; 14-18/348-154)
- The Board authorized the acquisition of a portion of the shares of Scholz AG by Toyota Tsusho Corporation and the consequent transformation of the undertaking into a joint venture under the title Scholz GmbH. (20.05.2014; 14-18/349-155)
- The Board authorized the acquisition of the majority shares, and thereby the full control of, T-I Holdings S.a.r.l, which owns all shares of Traxys S.a.r.l, through Metals Cayman HoldCo Limited that is under the control of The Carlyle Group L.P. (29.05.2014; 14-19/363-159)
- The Board authorized the acquisition of 30% of the shares in MOL Turkey Bilgi Sistemleri Yay. San. ve Tic. A.Ş. and Sihirli Kule Bilgi Sistemleri Ltd. by MOL Access Portal Sdn Bhd. (29.05.2014; 14-19/377-152)
- The Board decided that the acquisition of the shares corresponding to 100% of the capital of Superlas Süperplastik Kauçuk ve Plastik San. ve Tic. A.Ş. and Superlas International GmbH by Trelleborg Holding Austria GmbH were not subject to authorization. (29.05.2014; 14-19/368-BD)

- The Board decided that the acquisition of 21.84% of the shares of Yeni Mağazacılık A.Ş., which is a subsidiary of the Asya Group, by Aydın Perakendecilik Yatırımları A.Ş., which is a member of the same group was not subject to authorization. (29.05.2014; 14-19/369-BD)
- The Board decided that the acquisition of control over Kerisper SAS by Symrise AG was not subject to authorization. (29.05.2014; 14-19/370-BD)
- The Board authorized acquisition by the funds managed by the affiliates of Carlyle Group L.P. and PAI Partners S.A.S. of 70% of the shares of Schneider Electric SA's Custom Sensors and Technologies business unit. (05.06.2014; 14-20/380-164)
- The Board authorized a merger between Kraton Performance Polimers Inc. and LCY Chemical Corp.'s styrene block copolymer business line and acquisition of 50% of the shares in UK Holdco by LCY Chemical Corp., which was established to acquire Kraton Performance Polimers Inc. (05.06.2014; 14-20/381-165)
- The Board authorized the acquisition of Motorola Corporate Enterprise, which was owned by Motorola Solutions Incorporation and the shares and assets of affiliate companies by Zebra Technologies (except IDEN-integrated digital enhanced network). (05.06.2014; 14-20/387-171)
- The Board authorized the acquisition of İnci Mobilya Malzemeleri San. ve Tic. A.Ş. and indirectly, the control of Yatsan Sünger ve Yatak San. ve Tic. A.Ş. by Dream Investments Sarl, which is controlled by NBK Capital Equity Partners Fund II LP (12.06.2014; 14-21/398-174)
- The Board authorized the acquisition of Turyağ Gıda San. ve Tic. A.Ş's certain business lines and assets by Cargill Tarım ve Gıda San. Tic. A.Ş.(12.06.2014; 14-21/399-163)
- The Board authorized the merger between Fyffes plc and Chiquita Brands International Inc. under the umbrella of ChiquitaFyffes plc. (12.06.2014; 14-12/412-180)

- The Board decided that the acquisition of 50% of Stoper Yapı ve Yalıtım Sistemleri A.Ş.'s shares by Ravago Production SA was not subject to authorization. (12.06.2014; 14-21/413-BD)
- The Board authorized the acquisition of the sole control of the enterprises of HX Holding GmbH and GEA Air Treatment GmbH which are owned by GEA Group AG, by Triton Fund IV which is owned by Triton Group. (25.06.2014; 14-22/418-1829)
- The Board authorized the acquisition of all of the outstanding shares and the optional rights of Vinnolit Holdings GmbH by Westlake Chemical Corporation. (25.06.2014; 14-22/418-1829)
- The Board authorized the acquisition of Mauser Holding GmbH's full control by CD&R Fund IX. (25.06.2014; 14-22/420-184)
- The Board authorized the acquisition of Anayurt Kömür Madencilik San. ve Tic. A.Ş.'s 33,3 % shares by Mahmut Can Çalık and the acquisition of Başkent Gölbaşı Maden Enerji Kömür Elektrik Üretim ve San. Tic. Ltd. Şti.'s all shares by Anayurt Kömür Madencilik San. ve Tic. A.Ş. (25.06.2014; 14-22/421-185)
- The Board authorized the acquisition of Nidera Capital B.V.'s control by Cofco Corporation. (25.06.2014; 14-22/429-193)
- The Board authorized the transformation of Tüyap Endüstri Fuarcılık A.Ş into the joint venture of Tüyap Tüm Fuarcılık Yapım A.Ş. and Reed CEE GmbH after the acquisition of its 50% shares by Reed CEE GmbH. (25.06.2014; 14-22/432-195)
- The Board decided that the acquisition of Atagür Enerji Üretim İnşaat ve Ticaret A.Ş.'s 85% shares by Rönesans Enerji Üretim ve Ticaret A.Ş. was not subject to authorization. (25.06.2014; 14-22/442-BD)
- The Board authorized the acquisition of 98.66% of the shares of Aviva Sigorta A.Ş. which was held by Aviva International Holdings Limited, by Kibele B.V.'s. (02.07.2014; 14-23/467-206)

- The Board authorized the acquisition of all of the shares of the Nuance Group AG by Dufty AG. (02.07.2014; 14-23/474-207)
- The Board authorized the acquisition of the 15 supermarkets operated by Genyapı Mühendislik Hizmetleri İnşaat Gıda Turizm Ticaret ve Sanayi A.Ş. in Antalya and Mupla provinces by Carrefour Sabancı Ticaret Merkezi A.Ş. (02.07.2014; 14-23/475-208)
- The Board authorized the acquisition of 70% of the shares in Günaydın Et Şarküteri Ürünleri Gıda San. ve Tic. A.Ş., Günaydın Et Sanayi ve Ticaret A.Ş., Günaydın İstanbul Merkez Gıda Ticaret A.Ş., Tiendes Turizm İşletmeleri A.Ş., and Günaydın İdealtepe Gurme Gıda Sanayi ve Ticaret A.Ş. by Nahita Restoran İşletmeciliği ve Yatırım A.Ş. and establishment of joint control over the said undertakings. (02.07.2014; 14-23/476-209)
- The Board authorized the transformation of Sinarmas Oleo Pte. Ltd.into the joint venture of Golden Agri-Resource Ltd. and Cepsa Quimica S.A through the acquisition of 50% of Sinarmas Oleo Pte. Ltd.'s shares by Cepsa Quimica S.A. (16.07.2014; 14-24/480-211)
- The Board authorized the transformation of Enerji Yatırım Holding A.Ş. into the joint venture of STFA Yatırım Holding A.Ş. and Partners Group AG Holding through the acquisition of 30% of STFA Yatırım Holding A.Ş.' shares by Partners Group AG Holding. (16.07.2014; 14-24/481-212)
- The Board authorized the acquisition of 25% of the property rights on the assets, which are subject to the Aviation Operation Agreement for Storage and Fuel Delivery in Airports of Turkey of Mobil Oil A.Ş. by THY OPET Havacılık Yakıtları A.Ş. (16.07.2014; 14-24/482-213)
- The Board decided that the acquisition of Real Hipermarketler Zinciri A.Ş., 100% of whose shares are owned by Metro AG, by Hacı Duran Beğendik was not subject to authorization. (16.07.2014; 14-24/484-241)

- The Board authorized the acquisition of the full control of Megadyne S.p.A. by FCPR Astorg V that is operated by Astorg Partners SAS which is a private investment fund. (16.07.2014; 14-24/485-215)
- The Board authorized the transformation of İnci Lojistik Dağıtım Depolama Gemicilik Uluslararası Taşımacılık ve Ticaret A.Ş. into the joint venture of Yusen Logistics Co. Ltd. and İnci Holding A.Ş. through the acquisition of İnci Lojistik Dağıtım Depolama Gemicilik Uluslararası Taşımacılık ve Ticaret A.Ş.'s shares, and participation in the capital increase by Yusen Logistics Turkey Lojistik Hizmetleri Ltd. Şti. (16.07.2014; 14-24/486-216)
- The Board authorized the transformation of DJ Cool Klima ve Soğutma Cihazları Sanayi Ticaret A.Ş., which is under the control of ALJ Holding A.Ş., into the joint venture of ALJ Holding A.Ş. and Denso International Asia Pte. Ltd. (16.07.2014; 14-24/487-217)
- The Board decided that operating Ankara High Speed Train Station by ATG Ankara Tren Garı İşletmeciliği A.Ş. for 19 years and 7 months as of the end of the construction term, which is two years from the delivery of construction area was not subject to authorization, that the establishment of ATG Ankara Tren Garı İşletmeciliği A.Ş. shall be subject to authorization if the tender procedures are completed; that therefore, no administrative penalty shall apply. (16.07.2014; 14-24/488-218)
- The Board authorized the acquisition of 90% of the new company that will be established by Morgan Stanley Private Equity Vision Holdings AB and provided with construction materials business of Hanwha L&C Corporation. (17.07.2014; 14-25/503-222)
- The Board authorized the merger of Lafarge S.A. and Holcim Ltd. (17.07.2014; 14-25/504-223)
- The Board authorized the acquisition of the full control of the Global Fuel Oil Commerce department of Morgan Stanley by OJSC Rosneft Oil Company. (17.07.2014; 14-25/506-224)

- The Board authorized the acquisition of LVB Acquisition Inc. and its 100% affiliate Biomet Inc. by Zimmer Holdings Inc. through Owl Merger Sub. Inc. (17.07.2014; 14-25/508-225)
- The Board authorized the acquisition of meat products and meat production facilities, equipment and the trademark Maret of Tat Gıda Sanayi A.Ş. by Namet Gıda Sanayi ve Ticaret A.Ş. (17.07.2014; 14-25/509-226)
- The Board authorized the acquisition of Moova Gıda Sanayi ve Ticaret A.Ş., which was under the control of Söktaş Tekstil Sanayi ve Ticaret A.Ş., by Tat Gıda Sanayi A.Ş. (17.07.2014; 14-25/510-227)
- The Board authorized the merger of the logistic activities of Compania Sud Americana de Vapores S.A. and Hapag-Llyod AG. (14-28/571-250; 13.08.2014)
- The Board authorized the acquisition of total control of Covidien plc by Medtronic, Inc. (14-28/570-249; 13.08.2014)
- The Board authorized the acquisition of all the shares of the owner of Firth Rixson LLC in FR Acquisition Corporation (US), Inc. and FR Acquisitions Corporation (Europe) Limited from FR Acquisition Finance Subco (Luxembourg), by Alcoa Inc and Alcoa IHL S.à.r.l. (14-28/561-242; 13.08.2014)
- The Board authorized the acquisition of the total control of Indesit Company S.p.A. by Whirlpool Corporation. (14-28/557-240; 13.08.2014)
- The Board authorized the acquisition of full control of Rolls-Royce Power Systems Holding GmbH which was under the joint control of Rolls-Royce Holdings plc and Daimler AG by Rolls-Royce Holdings plc. (14-26/521-230; 07.08.2014)
- The Board authorized the acquisition of 70% of STP Gıda San. and Tic. A.Ş.'s shares by Infinity Invest Holding A.Ş. (14-26/518-229; 07.08.2014)
- The Board authorized the acquisition of 51% of Noble Agri Limited's shares by Cofco Corporation. (14-26/517-228; 07.08.2014)

- The Board authorized the acquisition of 75.5% of Tekstil Bankası A.Ş. shares from GSD Holding A.Ş. by Industrial and Commercial Bank of China Limited. (14-29/593-259; 20.08.2014)
- The Board authorized the acquisition of control of Wild Flavors GmbH and Wild Dairy Ingredients GmbH by Archer-Daniels-Midland Company. (14-29/589-256; 20.08.2014)
- The Board authorized the acquisition of all shares of VESTO PVC Holding GmbH by AlphaGary Ltd. (14-32/644-281; 12.09.2014)
- The Board authorized the acquisition of 70.61% of the shares in Milford Yıldız Gıda San. ve Tic. A.Ş from Laurens Spethmann Holding AG & Co KG.by Yıldız Holding A.Ş. Yıldız Holding A.Ş. (14-32/646-283; 12.09.2014)
- The Board authorized the transfer of 50% of the shares in Star Medya Yayıncılık A.Ş., Star Medya Ajans A.Ş., Star Matbaacılık San. ve Tic. A.Ş., Dinamik Radyo Televizyon A.Ş. to Fettah Tamince. (14-32/649-285; 12.09.2014).
- The Board authorized the acquisition of full control of Corio N.V. by Klépierre S.A. (14-32/664-290; 12.09.2014)
- The Board decided that the acquisition of shares in Taç Yönetim Yatırım Danışmanlık Mücevherat Turizm Ticaret A.Ş. by MT Holding A.Ş., made possible by a capital increase that will be equal to 60% of the final capital was not subject to authorization. (14-32/655-BD; 12.09.2014)
- The Board decided that the transfer of a part of the shares in BMC Otomotiv San. ve Tic. A.Ş. owned by Ethem Sancak to Talip Öztürk and Ahmet Öztürk was not subject to authorization. (14-30/632-BD; 03.09.2014)
- The Board authorized the joint control of Actera Partners II L.P. and ESAS Holding A.Ş. on Trieste New Holdco Denizcilik ve Taşımacılık A.Ş. and its affiliates Trieste Holdco Denizcilik ve Taşımacılık A.Ş., Trieste Midco Denizcilik ve Taşımacılık A.Ş; UN Ro-Ro İşletmeleri A.Ş. and its affiliate Samer Seaports

through RORO Investments Limited. (14-30/639-280; 03.09.2014)

- The Board authorized the acquisition of full control of shares in Lombard International Assurance S.A. and lnsurance Development Holdings AG by Blackstone Group L.P. through BTO Monarch Luxembourg Holdings S.A.R.L. via share transfer method. (14-30/631-279; 03.09.2014)
- The Board authorized the acquisition of Homag Group AG by Dürr Technologies GmbH. (14-30/624-275; 03.09.2014)
- The Board authorized the acquisition of 50% of the shares in Styrolution Holding GmbH from BASF SE by INEOS Industries Holdings Limited. (14-30/620-272; 03.09.2014)
- The Board authorized the acquisition of 81.74% of the shares in Tukaş Gıda Sanayi ve Ticaret A.Ş. by Okullu Gıda Maddeleri İnş. San. ve Tic. Ltd. Şti., Cem Okullu and Cengiz Okullu. (14-30/622-274; 03.09.2014)
- The Board authorized the acquisition of 32% of the shares in MNG Sanal Ürün Pazarlama San. ve Dış Tic. A.Ş., MNG Radyo TV and Medya Hizmetleri A.Ş. by Acun Ilıcalı. (14-30/615-267; 03.09.2014)
- The Board authorized the acquisition of the control of Alliance Boots GmbH. by Walgreen Co. (24.09.2014; 14-35/684-301)
- The Board authorized the acquisition of 51% of the shares of Teknik Alüminyum Sanayi A.Ş. by Norsel International BWI. (24.09.2014; 14-35/688-306)
- The Board authorized the acquisition of the majority shares owned by Enka İnşaat Sanayi A.Ş. in Pimaş Plastik İnşaat Malzemeleri A.Ş. by Deceuninck N.V. (24.09.2014; 14-35/689-307)
- The Board authorized the acquisition of all of the shares owned by Capiton III GmbH & Co. Beteiligungs and Lahmeyer Management Beteiligungs GmbH & Co. KG in Mellifera Erste Beteiligungsgesellschaft mbH by Tractebel Engineering S.A. (01.10.2014; 14-37/706-314)

- The Board authorized the acquisition of the total control of Shire plc. by Abbvie, Inc. (01.10.2014; 14-37/709-315)
- The Board authorized the acquisition of all of the shares of Balaban Gıda San. ve Tic. A.Ş. by Elvan Gıda Sanayii ve Ticaret A.Ş. (01.10.2014; 14-37/710-316)
- The Board authorized the acquisition of all of the shares of Merkez Deniz Acenteliği ve Ticaret A.Ş. by Inchape Shipping Services GmbH. (01.10.2014; 14-37/712-317)
- The Board authorized the acquisition of Mikro Ödeme Sistemleri İletişim San. ve Tic. A.Ş. by Wirecard Acquiring & Issuing GmbH. (16.10.2014; 14-40/728-323)
- The Board authorized the acquisition of the control of Rockwood Holdings, Inc. by Albemarle Corporation. (16.10.2014; 14-40/734-326)
- The Board authorized the acquisition of 25% of the shares of each of Bağ Yağları Sanayi ve Ticaret T.A.Ş., Bagin Yağ Sanayi Tesisleri İmalat ve İşletmeciliği Ticaret A.Ş. and Akdeniz Yağları Sanayi ve Ticaret A.Ş. by Seaboard Corporation, and transforming of the said corporations into joint venture. (16.10.2014; 14-40/736-328)
- The Board ruled that the acquisition of the machinery belonging to Akkardan Sanayi ve Ticaret A.Ş. by Tirsan Kardan Sanayi ve Ticaret A.Ş. is not subject to authorization. (16.10.2014; 14-40/738-BD)
- The Board authorized the acquisition of all of the shares of Günsan Elektrik Malzemeleri San. ve Tic. A.Ş. by Schneider Electric Industries S.A.S. (22.10.2014; 14-42/758-334)
- The Board authorized the acquisition of all of the shares of Senerji Enerji Üretim A.Ş. and Düzce Enerji Birliği İmalat İşletme Sanayi ve Ticaret A.Ş. by Eti Krom A.Ş. (22.10.2014; 14-42/759-335)
- The Board authorized the acquisition of the sole control of Embil İlaç Sanayii Ltd. Şti., Edko Pazarlama Tanıtım Ticaret A.Ş. and Embil International Philippines Inc. by Exeltis Pharmaceuticals Holding S.L. (22.10.2014; 14-42/763-339)

- The Board authorized the joint venture planned to be formed by Boeing Singapore Pte. Ltd, the subsidiary of The Boeing Company and SIA Engineering Company Ltd., the subsidiary of Singapore Airlines Ltd. (22.10.2014; 14-40/765-341)
- The Board authorized the acquisition of all of the shares of Denizli Çimento Sanayi T.A.Ş. by Ordu Yardımlaşma Kurumu (OYAK). (22.10.2014; 14-42/769-342)
- The Board authorized the acquisition of 57.94% of the shares of Armada Bilgisayar Sistemleri San. ve Tic. A.Ş. by Aptec Holdings Limited. (04.11.2014; 14-43/784-347)
- The Board authorized the acquisition of a certain amount of shares of Star Medya Yayıncılık A.Ş., Star Medya Ajans A.Ş., Star Matbaacılık San. Ve Tic. A.Ş., Dinamik Radyo Televizyon A.Ş by Murat Sancak. (04.11.2014; 14-43/785-348)
- The Board authorized the acquisition of the sole control of BSH Bosch und Siemens Hausgerate GmbH and Siemens Electrogerate GmbH by Robert Bosch GmbH. (04.11.2014; 14-43/786-349)
- The Board authorized the acquisition of all of the shares owned by AES Mont Blanc Holding B.V. in AES Entek Elektrik Üretimi A.Ş. by Koç Holding A.Ş. and Aygaz A.Ş. (04.11.2014; 14-43/792-353)
- The Competition Authority authorized the acquisition of the operations of Glaxo Smith Kline Plc. by Novartis AG regarding the oncology medicine portfolio, 11 of which are active in the market, and 2 are in the early clinical development phase, excluding the production activities. (04.11.2014; 14-43/796-357)
- The Board authorized the acquisition of TRW Automotive Holdings Corp. by MSNA, Inc., which is owned indirectly by ZF Friedrichshafen AG, and directly by ZF North America, Inc. (04.11.2014; 14-43/798-359)
- The Board authorized the acquisition of the joint control of Plasmar Plastik ve Kimya Sanayi ve Dış Ticaret A.Ş. controlled

by Hakan Üstüntaş, Abdurrahman Bozkurt, Mehmet Altunkiliç and İsmail Sungur by Toyota Tsusho Corporation. (12.11.2014; 14-45/807-362)

- The Board ruled that the acquisition of 15% of the shares of Real Hipermarketler Zinciri A.Ş. by Beğendik Mağaza İşletmeleri Tic. ve San. A.Ş., and 17.5% of the shares of Beğendik Mağaza İşletmeleri Tic. ve San. A.Ş. by Real Hipermarketler Zinciri A.Ş. is not subject to authorization. (12.11.2014; 14-45/808-363)
- The Board authorized the acquisition of 51% of the shares of CNR Moda Fuarcılık A.Ş. by Première Vision S.A. and transformation of the company into a joint venture. (12.11.2014; 14-45/813-366)
- The Board authorized the acquisition of 50% of the shares of Ege İnşaat San. ve Tic. A.Ş. by AGP Gayrimenkul Yatırım İnşaat A.Ş., and the transformation of the company into AGP Gayrimenkul Yatırım A.Ş. ve DKY Otomotiv İnşaat A.Ş. joint venture. (12.11.2014; 14-45/817-369)
- The Board authorized the establishment of a joint venture to be controlled by ArcelorMittal S.A. and RZK HOLDCO. (12.11.2014; 14-45/818-370)
- The Board ruled that the acquisition of the control of Taib Yatırım Bank A.Ş. by Pasha Bank OJSC from Aksoy Holding A.Ş. is not subject to authorization. (12.11.2014; 14-45/822-BD)
- The Board ruled that the acquisition of the shares of Kalekim Mersin Kimyevi Maddeler San. ve Tic. A.Ş. by Kalekim Kimyevi Maddeler San. ve Tic. A.Ş. is not within the scope of application. (12.11.2014; 14-45/823-BD)
- The Board authorized the acquisition of 57% of the shares of Radore Veri Merkezi Hizmetleri A.Ş. by İş Girişim Sermayesi Yatırım Ortaklığı A.Ş. and Doğuş SK Girişim Sermayesi Yatırım Ortaklığı A.Ş. (26.11.2014; 14-46/830-372)

- The Board authorized the acquisition of the Total S.A's affiliates that are active in adhesive and packing materials area by Arkema S.A. (26.11.2014; 14-46/836-377)
- The Board authorized the acquisition of the control of CJSC Novokuibyshevsk Petrochemical Company by OJSC Oil Company Rosneft via LLC RN-Refining. (26.11.2014; 14-46/837-378)
- The Board authorized the acquisition of the sole control of Grace Yapı Kimyasalları San. ve Tic. A.Ş. by Construction Products Dubai, Inc. as a result of the acquisition of a certain amount of shares that provide joint control of STFA Yatırım Holding A.Ş. found in Grace Yapı Kimyasalları San. ve Tic. A.Ş. by Construction Products Dubai, Inc. (26.11.2014; 14-46/839-380)
- The Board authorized the acquisition of six super markets operated by Genyapı Müh. Hizm. İnş. Gıda Tur. Tic. ve San. A.Ş. in Antalya by Carrefour Sabancı Ticaret Merkezi A.Ş. (26.11.2014; 14-46/844-384)
- The Board found authorization unnecessary for the gradual acquisition of control of Gama Görüntüleme ve Tedavi Hizmetleri A.Ş. by MNT Tanı ve Tedavi Merkezleri A.Ş. (26.11.2014; 14-46/850-BD)
- The Board authorized the acquisition of the shares of Warwick International Holdings Ltd. that is controlled by CBPE Capital LLP by Lubrizol Advanced Materials Europe BVBA, which is controlled by Berskshire Hathway Inc. (03.12.2014; 14-47/858-388)
- The Board authorized the transformation of Gama Enerji A.Ş. into the joint venture of Gama Holding A.Ş. and International Finance Corporation by means of the acquisition of 30% of its shares by International Finance Corporation and IFC Global Infrastructure Fund that is controlled by International Finance Corporation. (03.12.2014)
- The Board authorized the transformation of Chiquita Brands International Inc. into a joint venture by means of its acquisition

by Cavendish Global Ltd., which is jointly controlled by Cutrale Group and Safra Group. (03.12.2014; 14-47/861-391)

- The Board authorized the acquisition of the 49% of the shares of LPD Holding A.Ş. by LeasePlan Corporation N.V. from Doğuş Group. (03.12.2014; 14-47/862-392)
- The Board authorized the acquisition of the full control of İstanbul Sabiha Gökçen Uluslararası Havalimanı Yatırım Yapım ve İşletme A.Ş. and LGM Havalimanı İşletmeleri Ticaret ve Turizm A.Ş., which are currently jointly controlled by Limak ve İnşaat ve Sanayi Ticaret A.Ş., Limak Yatırım Enerji Üretim İşletme Hizmetleri İnşaat A.Ş. and Malaysia Airports Holdings Berhad, by Malaysia Airports Holdings Berhad via its affiliate Malaysia Airports Cities Sdn Bhd. (03.12.2014; 14-47/863-393)
- The Board authorized the transformation of Rönesans Gayrimenkul Yatırım A.Ş. into a joint venture by means of a two-phased acquisition of 21.44% of its shares by Euro Efes S.a r.l. (03.12.2014; 14-47/866-396)
- The Board authorized the acquisition of the activity on textile chemicals of BASF SE by SKCP Fund Management, LLC via its affiliates, Archroma Management LLC and ArchromaTextile S.a.r.l. (11.12.2014; 15-50/884-402)
- The Board authorized the establishment of joint control on Limak Doğalgaz Elektrik Üretim A.Ş. by means of the acquisition of 25% of the shares of Limak Doğalgaz Elektrik Üretim A.Ş. by InfraKan Holding S.a.r.l, from Limak Yatırım Enerji Üretim İşletme Hizmetleri ve İnşaat A.Ş. (11.12.2014; 14-50/886-604)
- The Board authorized the acquisition of the control of Uçkan Medikal San. ve Tic. A.Ş. and Primeks Dış Tic. A.Ş. by Omega Pharma Kişisel Bakım Ürünleri San. ve Tic. Ltd. Şti. (11.12.2014; 14-50/887-405)
- The Board authorized the acquisition of all of the current equity shares of Nutreco N.V. by SHV Holdings N.V. via its affiliate SHV Investments Ltd. (18.12.2014; 14-53/905-412)

- The Board authorized the acquisition of full control of Dosu Maya Mayacılık A.Ş., which is controlled by Yıldız Holding A.Ş., by Lesaffre et Compaigne, within the framework of commitments. (15.12.2014; 14-52/903-411)

Important Publications and Decisions regarding Privatization

- The Competition Board ("Board") decided that the privatization of the Hydroelectric Power Plants in Anamur, Bozyazı, Mut-Derinçay, Silifke and Zeyne by transfer of operating rights is not subject to authorization. (16.10.2014; 14-40/735-327)
- The Board decided that the transaction concerning the construction of the Istanbul New Airport by the build-operate-transfer method within the scope of the Implementation Agreement dated 19.11.2013, signed by the General Directorate Of State Airports Authority, the operation of the airport for 25 years, and the transfer to the Administration following the completion of the operation period was not subject to authorization. Moreover, the Board granted negative clearance to the incorporation of İGA Havalimanı İşletmesi A.Ş. (16.10.2014; 14-40/737-329)
- The Board authorized the acquisition of Kemerköy and Yeniköy Thermal Power Plants and related assets by Yeniköy Kemerköy Elektrik Üretim ve Ticaret A.Ş. and Kemerköy Liman Hizmetleri A.Ş., which are jointly controlled by IC Ibrahim ÇEÇEN Yatırım Holding A.Ş. and Limak Holding A.Ş. (26.11.2014; 14-46/835-376)

Important Changes and Development regarding Energy Law

- The Resolution of the Council of Ministers dated 13.01.2014 and numbered 5830 regarding the ratification of the Memorandum of Understanding on Cooperation in the Fields of Energy and Hydrocarbons between the Government of the Republic of Turkey and the Government of the Republic of Cameroon, signed in Ankara on 26.03.2013 and approved by the Law dated 27.11.2013 and numbered 6508 was published in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Regulation on Electricity Market Connection and System Usage entered into force through publication in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Regulation on the Amendment to the Electricity Market License Regulation was published in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Communiqué (Serial No: 2014/2) on Administrative Monetary Sanctions to be Applied in 2014 Pursuant to Article 10 of the Energy Efficiency Law No. 5627 was published in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Communiqué on Abolition of the Communiqué concerning the Connection to Transmission and Distribution Systems in the Electricity Market and System Usage entered into force through publication in the Official Gazette dated 28.01.2014 and numbered 28896.
- The Resolution of the Council of Ministers, dated 27.01.2014 and numbered 5863 regarding the ratification of the Memorandum of Understanding on Cooperation in the Fields of Energy and Mining between the Government of the Republic of Turkey and the Government of the Republic of Tajikistan, signed in Ankara on 18.12.2012 and approved by the Law dated 27.11.2013 and No. 6507 was published in the Official Gazette dated 11.02.2014 and numbered 28910.
- The Regulation on the Amendment to the Regulation on Increasing the Efficiency of the Usage of Energy Resources and of Energy was published in the Official Gazette dated 25.03.2014 and numbered 28952.

- The Regulation on the Amendment to the Petroleum Market License Regulation entered into force through publication in the Official Gazette dated 27.03.2014 and numbered 28954.
- The Regulation on Statistical System Data of the Ministry of Energy and Natural Resources entered into force through publication in the Official Gazette, dated 04.04.2014 and numbered 28962.
- The Regulation on Consumer Services in the Electricity Market entered into force through publication in the Official Gazette dated 08.05.2014 and numbered 28994.
- The Resolution of the Council of Ministers dated 15.04.2014 and numbered 6233 on the amendment to the Resolution on Establishment of Companies and Joining into Companies Already Established by Türkiye Petrolleri Anonim Şirketi entered into force through publication the Official Gazette dated 17.05.2014 and numbered 29003.
- The Electricity Market Export and Import Regulation entered into force through publication in the Official Gazette dated 17.05.2014 and numbered 29003.
- The Communiqué on the Amendment to the Communiqué Pertaining to the Income of Retail Sale and Service and the Determination Retail Energy Sale Prices entered into force through publication in the Official Gazette dated 21.05.2014 and numbered 29006.
- The Electricity Market Notification Regulation was published in the Official Gazette dated 27.05.2014 and numbered 29012. This Regulation entered into force six months after its date of publication.
- The Regulation on the Amendment to the Regulation Pertaining to the Implementation of the Law on Geothermal Resources and Waters Containing Natural Minerals entered into force through publication in the Official Gazette dated 30.05.2014 and numbered 29015.

- The Communiqué on the Amendment to the Communiqué Pertaining to the Principles and Procedures to be Applied Concerning the Procurement of Petroleum Products Other Than Fuel From Internal Sources or Abroad entered into force through publication in the Official Gazette dated 05.06.2014 and numbered 29021.
- The Resolution of the Council of Ministers dated 25.06.2014 and numbered 6534 on Transportation of Petroleum and Jet Fuel by Highway or Railway through Turkey was published in the Official Gazette dated 04.07.2014 and numbered 29050.
- The Resolution of the Energy Market Regulatory Agency, dated 01.07.2014 and numbered 5104 on the amendment to the Resolution on License Applications and Notification Declarations in Liquified Petroleum Gas Market was published in the Official Gazette dated 17.07.2014 and numbered 29063.
- Energy Market Regulatory Authority ("EMRA") announced the Petroleum Market Pricing Report of June 2014 on 15.08.2014.
- EMRA made an appeal for the C Group Share Ownership of Enerji Piyasaları İşletme Anonim Şirketi (EPİAŞ) on 19.08.2014.
- EMRA announced the Natural Gas Market Sector Report of 2013 on 21.08.2014.
- EMRA announced the Liquified Petroleum Gas Market Sector Report of June 2014 on 25.08.2014.
- EMRA announced the Petroleum Market Sector Report of June 2014 on 03.09.2014.
- EMRA made an announcement regarding the Demands for the Determination of the C Group Share Ownership of Enerji Piyasaları İşletme Anonim Şirketi (EPİAŞ) on 03.09.2014.
- The Profile Preparation Guide, the Final Version of the Principles and Procedures of Profile Application to be used in the Settlement Calculations and Standard Files to be used in Profile Studies of 2015, were announced by EMRA pursuant to the Electricity Market Balancing and Settlement Regulation on 10.09.2014.

- EMRA announced the Karaburun Wind Energy System Production License of Lodos Karaburun Elektrik Üretim Anonim Şirketi within the scope of provisional Article 6/2 of the Energy Market License Communiqué on 11.09.2014.
- EMRA announced the Petroleum Market Pricing Report of August 2014 on 15.09.2014.
- The Announcement Concerning Obtaining a Registered E-mail Address (REA) by Legal Entities Licensed to Operate in the Electricity Market was published on the website of EMRA on 07.11.2014.
- The Announcement Regarding the Chart on Determination of Domestic Sources for the Year 2014 was published on the website of EMRA on 18.11.2014.
- EMRA announced the Petroleum Market Sector Report of September 2014 on 26.11.2014.
- EMRA announced the Liquefied Petroleum Gases Market Sector Report of September on 28.11.2014.
- EMRA announced Projection of Turkish Electric Energy Five-Year Generation Capacity (2014-2018) on 01.12.2014.
- Pursuant to its resolution dated 25.11.2014 and numbered 5317-2, EMRA announced that the preconstruction period of the legal entities holding a wind power generation license in the electricity market may be extended.
- EMRA announced the Petroleum Market Pricing Report of November 2014 on 15.12.2014.

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