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NEWSLETTER

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An Overview on the Recent Developments in E-Commerce Legislation in Turkey

The improvements in technology and the increased usage of electronic devices resulted in significant developments globally in the e-commerce market which enables customers easily to meet their needs through an online platform, without coming face to face with the service providers. Above mentioned developments brought a positive impact in the development of Turkish e-commerce life as well and an urgent need for the existence of a legislation regulating the e-commerce world came up.

As the main legislation regulating the Turkish e-commerce market, the Law on the Regulation of Electronic Commerce (the "**LREC**") was published on November 5, 2014 in the Official Gazette and entered into force on 1 May 2015.

The LREC basically regulates electronic communication, the liabilities of the service providers and intermediary service providers, the contracts concluded via electronic communication devices and the obligation to provide information to the customers in relation to the electronic commerce transactions and the sanctions to be imposed in case of failure to fulfil the requirements set forth under the LREC.

Following the entry into force of the LREC, two regulations based on the LREC were enacted by the Ministry of Customs and Trade (the "**Ministry**") which mainly set out detailed provisions regarding commercial electronic messages and the service providers and intermediary service providers in electronic commerce.

✓ Regulation on Commercial Communication and Commercial Electronic Messages

The Regulation on Commercial Communication and Commercial Electronic Messages (the "**Regulation**") was published in the Official Gazette on 15 July 2015 and entered into force on the same date.

The Regulation sets out that service providers must obtain the purchaser's consent before delivering commercial electronic messages to the purchasers' electronic communication addresses in order to advertise their products, services or enterprise, to conduct marketing activities regarding its products or services and increase its reputation within the market.

Legislative Highlights

With the decision of the Energy Market Regulatory Authority published in the Official Gazette dated August 25, 2015, a standard form of a "Retail Sales Agreement" was introduced which sets forth the terms and conditions between a retail sales company and a customer related to the activities carried out to provide electricity and/or capacity and to purchase services based on a connection agreement. The standard agreement contains 27 articles and 3 annexes and the terms and expressions used under this agreement will have the same meaning as specified under the Regulation on Electricity Market Customer Services or related legislation.

Jurisdictional Highlights

The Constitutional Court rendered a recent award (published on July 4, 2015, in the Official Gazette) which abolishes the sentence "*which has passed the post planning phase and whose tendering process has been started or...*" in the provisional article 3 of Environmental Law numbered 2872. With this award, the projects which had been included in public investment programme before June 23, 1997 and has passed the post planning phase and whose tendering process has been started as of May 21, 2013 will be subject to the Environmental Impact Assessment Report.

Pursuant to the Regulation, such consent can be obtained from the purchaser in written form or by means of any other electronic communication tools. The Regulation also allows the service providers to take such a consent by way of concluding a subscription, sale, or membership agreement with the purchaser provided that the relevant consent must be inserted as an article under the heading of "commercial electronic messages" which refers the purchaser's refusal right as well. Moreover, the Regulation clearly prohibits the purchaser from being forced to provide its prior consent as a precondition in order to be served or provided goods.

According to the Regulation, once such consent is granted, it will be valid until the purchaser makes a refusal notification in order not to receive the above mentioned messages. Purchasers can refuse receiving commercial electronic messages without providing any reason. In addition, it should be mentioned in each commercial electronic message that the purchaser has the refusal right. Service providers must cease to send commercial electronic messages to purchasers within three business days after receiving such a refusal notification.

Another important topic regulated under the Regulation is *protection of the purchaser's personal data*. According to the respective provision of the Regulation, service providers and intermediary service providers are under an obligation to take required measures to keep the information safely which are received while providing their services and to prevent third parties of reaching them. In addition, prior consent from the purchaser is required to share this information with third parties.

The Regulation also introduces a *complaint mechanism* as to the commercial electronic messages. A complaint application should be filed within three months starting from the delivery date of the message.

As a last point, the relevant provincial director of the Ministry who is authorized at the registered address of the service provider and intermediary service provider, is entitled to impose financial penalties if a provider fails to comply with the provisions of the Regulation.

✓ Regulation on Service Provider and Intermediary Service Providers in E-Commerce

The Regulation on Service Provider and Intermediary Service Providers in E-Commerce (the “**Regulation**”) was published in the Official Gazette on 26 August 2015 and entered into force on the same date.

Under the Regulation, the providers and intermediary service providers must provide on the main web page, through which the electronic commercial transactions are conducted, the following up-to-date information under the heading of “Transaction Guide”: (i) technical steps to be completed to conclude an agreement, (ii) information on whether the agreement will be kept on the electronic platform, whether the purchaser will be able to reach this contract on the same electronic platform and if yes the availability date, (iii) information related to a “summary order form” and those technical tools such as “undo” and “change” options to be provided before the completion of the order, in order to give the purchaser the check and correct the data entry related to the commercial transaction, (iv) confidentiality clauses regarding the personal information obtained during the e-commerce transactions and (v) alternative dispute resolution methods in case a conflict arises between the parties.

The Regulation also covers the liabilities of the service providers and intermediary service providers in terms of the order process. The most important ones are those; (i) during the confirmation of the order and prior to the payment phase, the total amount (including tax and delivery cost) and the other articles of the contracts should be clearly seen by the purchaser, and (ii) in case the total amount of the order cannot be estimated, before the purchaser confirms the order, the provider must inform the purchaser on the additional costs that may occur.

In addition, the Regulation requires the service providers or intermediary service providers to notify the purchaser immediately upon receipt of the order. Finally, pursuant to the Regulation, electronic records related to e-commerce related transactions must be kept for three years starting from the transaction date and upon the Ministry's request, the provider and intermediary service provider must submit this information to the Ministry.

A New System for Cheque Users: QR Code Cheque Application

A new application has been launched as of June 15, 2015 which will enable the cheque holders to easily receive information about the cheque and the cheque issuer as a summary report via their mobile phones. This application which has been implemented by the Credit Reference Bureau, the Turkish Banking Institution, and the Turkish Union of Chambers and Commodity Exchanges is expected to decrease the risk of bounced check issuance and to increase the usage of cheques which are important payment and debt instruments in the Turkish commercial life.

What is a QR Code? A QR code basically consists of the information of the bank, the account number of the cheque issuer and the number on the cheque. Upon the request of their customers, the banks will be providing the cheques bearing this code to their clients. Sekerbank is the first bank in Turkey which provides cheques with a QR code to its customers.

How can a cheque report be received? A cheque holder who has a QR Code Cheque will be able to receive a check report after scanning the QR code on the check via an application on his smartphone without having any prior consent of the cheque issuer. Cheque report provides information on the validity of the cheque, the former cheque payment performance and credibility of the cheque issuer. In order to receive this report, the user should grant a membership on Findeks, a financial service platform which has been implemented by the Credit Reference Bureau and download the Findeks application to its smartphone.

Moreover, the cheque report includes data pertaining to the period after 2009 for bounced cheques, and 2007 for paid cheques by issuers. It is also worth underlining that using this application is not mandatory. However, since it brings convenience and transparency in commercial life, there is an expectation that this application will result in a significant increase in cheque usage and commercial transactions by issuing cheque in the market.

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Yours faithfully,
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