

YAZICI LEGAL

NEWSLETTER

www.yazicilegal.com

A. Levent Mah. Yasemin Sok. No.13 Beşiktaş 34340 İstanbul T. +90 212 269 02 27 F. +90 212 269 02 28 E. info@yazicilegal.com

The Law Amending Certain Laws to Improve the Investment Climate

The Law Amending Certain Laws to Improve the Investment Climate (“**Law**”) has been published in the Official Gazette numbered 29796 and dated 9 August 2016 introducing some significant amendments to various pieces of legislation. The amendments aim essentially the increase of the efficiency and feasibility of the Turkish investment environment by targeting the reduction of transactional costs, removal of different tax applications to the transactions concerning financial institutions and financial markets, introduction of new incentives to international investments, direction of individual savings to more productive and efficient investments through amendments to tax legislation, increase of the predictability of taxation, reduction of compliance costs, etc.

A. Execution and Bankruptcy Law

The Law introduced certain amendments to the most commonly used restructuring tool under Turkish law in the insolvency of capital companies. If a company is deeply in debt and one of its representatives or creditors submits a recovery project to the court, the company could benefit from the postponement of bankruptcy, allowing the company to recover its financial situation. Although such approach was aiming the interest of the creditors in its essence, the practice over the years has shown a deterioration of the concept favoring extensively the debtor. In light of the foregoing, for the purposes of re-implementing the original intended purpose of the regulation, re-establishing the balance between the creditors and debtors and in order to introduce more tailor-made and individualized system by granting more flexibility to the court, the Law introduced certain significant amendments to the Execution and Bankruptcy Law numbered 2004 for the benefit of all related parties of the process, which are as follows:

✓ In order to avoid the abuse of postponement by the debtors, a company which has already benefited from the postponement of bankruptcy shall not benefit from postponement within the 1 year period starting from the expiry of the postponement period.

✓ As a rule, postponement of bankruptcy decision is granted for a period of 1 year and subsequent extension

of 1 year periods could have been demanded up to 4 additional years before the Law was enacted. Statistical data has shown that asset losses and debt expansion were occurring during such significant time since extension periods were usually lasting longer than 4 years due to judicial process problems in terms of timing. To avoid this, the aggregate postponement period has been shortened to 2 years, by allowing only another 1 year extension after the 1 year postponement period.

✓ In addition to the prevention of execution proceedings during the postponement period, precautionary attachments and precautionary injunctions shall not be applied.

✓ The easy recourse to the postponement of bankruptcy proceedings by the companies has been prevented by introducing a requirement regarding the submission of certain mandatory documents to the court (e.g. feasible and credible assets should be presented in the recovery project, solutions on how to meet operational expenditure and working capital throughout the postponement period, along with lists indicating existing debts amount and maturity dates, the addresses of the creditors, etc.)

✓ The court is no longer bound by the appointment of one administrator as provided under the previous regulation and is able to assign sufficient number of administrator(s).

✓ The 3 months reporting period for administrators has been amended in a way to require reporting in time periods that the court shall consider appropriate, which may either be less or more than 3 months.

✓ The provisions regarding the creditors’ objection to the bankruptcy decision were applied by analogy to the postponement decisions. Such objection has been ensured with legal basis stipulating that creditors may object to the postponement within 2 weeks from the announcement of the postponement of bankruptcy demand.

Please note that, during the term of the state of emergency which began on 21 July 2016 and will last for 90 days, motions from companies and cooperatives for postponement of bankruptcy shall not be accepted by courts, according to decree law numbered 669 published

in Official Gazette dated 31 July 2016 and numbered 29787. Therefore, the foregoing amendments will only become effective at the end of the state of emergency period.

B. Tax Laws

The Law introduces certain changes to the tax legislation including the Income Tax Law No 193, Tax Procedural Law No. 213, Stamp Tax Law No. 488, Act of Fees No.492, Value Added Tax Law No. 3065 and Corporate Income Tax Law No. 5520. Some of the significant amendments made to the Stamp Tax Law No.1319 and Act of Fees are presented below.

1. Stamp Tax Law

✓ If more than 1 original copy of a paper (e.g. agreement) is executed, each copy of such paper was separately subject to stamp duty at a rate of 0.948%, in principle, calculated over the highest monetary amount set forth in the paper, subject to a cap of TRY1,797,117.30 (applicable in 2016 and re-evaluated on an annual basis). In order to reduce such duty burden and accordingly the transactional costs, the Law introduces an exception for original copies of papers subject to proportional stamp duty, pursuant to which the obligation of stamp duty shall only be triggered over 1 copy. Having said the foregoing, each copy of the fix tax rated paper continue to be subject to stamp duty as is.

✓ In relation to guarantees and guarantee commitments; under the previous regulation, in case there were multiple guarantors for 1 paper, each of such guarantees were subject to stamp duty. To reduce cost in such cases, the Law stipulates that only 1 guarantee and/or 1 guarantee commitment shall be subject to stamp duty, as the case may be.

✓ Undertakings/obligations arising from an agreement, such as retention money, forfeit, deduction from wage and penalty clauses, will no longer be subject to separate stamp duty, to the extent that they do not constitute a separate agreement on their own.

✓ Papers regarding loans provided by banks, foreign credit institutions and international institutions, as well as those related to loan repayments and the related sureties were already exempted from stamp duty. Following the enactment of the Law, the scope of this exemption has been clarified and it will explicitly apply to the assignment or transfer of loans provided by banks, foreign credit institutions and international institutions and to the assignment or transfer of receivables derived from these loans.

✓ Papers with respect to the share transfers made by joint stock companies, limited companies, partnership limited by shares and investment funds will also be exempt from stamp duty after the Law. This abolishment of stamp duty on share purchase agreements will have a significant impact on acquisition transaction costs.

2. Act of Fees

A 50% reduction has been introduced for fees calculated on 0.455% of the debt amount relating to the creation of mortgage liens between merchants.

C. Electronic Signature Law

The Law allows banks to use their e-signatures for the issuance of letters of guarantees instead of an original signature requirement for guarantee agreements.

D. Turkish Commercial Code

The Law has introduced significant changes in certain provisions of the Turkish Commercial Code No. 6102 ("TCC"), in terms of less bureaucracy and reduction in expenses/costs with respect to the incorporation and liquidation process of joint stock or limited liability companies. Certain amendments to the TCC in this respect may be summarized as follows:

✓ As an alternative option to the execution of the articles of association before notary publics, it is possible to execute the articles of association before trade registry officers, avoiding notarial costs.

✓ It is no longer required to have the signature specimens of authorized representatives notarized, provided that such individuals sign written declarations before the respective trade registry officers.

✓ Liquidation process of corporations have been expedited by reducing the notice period to the creditors for the assets dissolution from 1 year to 6 months.

In addition, a new barcode system which includes necessary information regarding check account owners has been introduced. Such barcode and serial number shall constitute a form requirement for a valid check.

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This newsletter has been prepared only for information purposes. Please do not hesitate to contact us if you need assistance or more detailed information.

Yours faithfully,
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