

# YAZICILEGAL

## NEWSLETTER

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### State of Emergency and Decree Law No. 667

A state of emergency (“SoE”) has been declared by the council of ministers of the Republic of Turkey within the context of Article 120 of the Constitution of the Republic of Turkey on 20 July 2016. The SoE decision was taken as a result of and in response to the failed military coup attempt made on 15 July 2016 and entered into force on 21 July 2016. The most significant legal implication of SoEs under Turkish law is known to be the legislative authority, which under normal circumstances belongs to the Parliament, being also granted to council of ministers for the matters that are necessitated by the SoE. By way of such authorization, the council of ministers (as the executive body) becomes entitled to issue decree laws (*Kanun Hükmünde Kararname*) with respect to matters necessitated by the SoE, without following the Parliament’s ordinary legislative procedures. Such decree laws stand in the equal position with the laws under the hierarchy of norms. Detailed information regarding SoE and decree laws has been given in our info note dated 21 July 2016.

The first decree law adopted following the declaration of SoE has been published in the Official Gazette dated 23 July 2016 (“**Decree Law No. 667**”). The regulations brought with Decree Law No. 667 may be summarized under three main section which are as follows:

#### 1. *Measures against the closed institutions and organizations:*

2351 institution and/or organizations (i.e. associations, charitable foundations, unions, federations, confederations, certain universities) in total have been closed due to their link with the terror organisation. All movable and immovable properties, assets, rights and receivables of the closed charitable foundations are transferred to the General Directorate of Foundations, whilst all assets, rights and receivables of the remaining institutions and/or organizations have been transferred to the Treasury, without any consideration.

#### 2. *Investigation and prosecution measures:*

- The maximum period which a person may be held under custody has been increased to 30 days

### Legislative Highlights

- ✓ The Regulation on Procedures and Principles for Determining Loan Classifications by Banks and Provision Requirements for Such has been published in the Official Gazette dated 22 June 2016, by the Banking Regulation and Supervision Agency (“**BRSA**”). This regulation replacing the Regulation on Provisions and Classification of Loans and Receivables will enter into force on 1 January 2017 in order to ensure compliance (by 1 January 2018) with the requirements of IFRS and the Financial Sector Assessment Programme, which is a joint programme of the International Monetary Fund and World Bank. The regulation will require banks to adopt IFRS 9 principles (unless an exemption is granted by the BRSA) related to the assessment of credit risk by the end of 2017 and to set aside general provisions in line with such principles.

### Regulatory Highlights

- ✓ Asya Katılım Bankası A.Ş.’s (“**Bank Asya**”) Operation Permit (*Faaliyet İzni*) has been cancelled by the BRSA with its decision dated 22 July 2016, which has been published in the Official Gazette on the next day. Accordingly, the Capital Markets Board obtained a decision on the same date for cease of activities of Bank Asya.

for both individual offenses and collective offenses.

- All statements to be made by suspects, victims or witnesses may be taken by police authorities, including military personnel and public officials. Further, the military personnel who are apprehended may be submitted to police.
- Pursuant to the Criminal Procedure Law No. 5271; the right to attorney during every stage of investigation and prosecution may not be hindered or restricted. However, Decree Law No. 667 states that, upon a decision to be granted by the public prosecutor, the meetings between the

attorney and his/her arrested client may be, among others;

- (i) recorded (voice recording or video recording),
- (ii) conducted in the presence of an official,
- (iii) limited on time, or
- (iv) ceased (in such case, this shall be officially recorded).

Further, upon the request of public prosecutor and by the decision of criminal court of first instance, the right to an attorney may be prohibited for such designated attorney of the arrestee. Such decision of the criminal court shall be promptly notified to the relevant bar association for the appointment of another attorney. The public prosecutor is also entitled to request the change of the appointed attorney.

- The arrestees may only be visited by limited number of people, provided that they are able to document that such visitors are among the ones that are granted with a visitation right by Decree Law No. 667 (e.g. spouse).
- The minutes to be recorded by the public officials at the prisons where arrestees are held, such public officers shall not be required to indicate their full names under the minutes but only their registration numbers shall be sufficient.
- Objections to and requests regarding the arrests may be decided upon review of the file, whereas under normal circumstances the judge is required to hear either the suspect or his/her attorney.

### 3. *Measures regarding judiciary members:*

Persons who are judge or prosecutor nominees as of the date of Decree Law No. 667 may be appointed as judges or prosecutors, without considering the time period they have spent as a nominee.

Lastly, it is also worth reminding that it is not possible to initiate an action before the Constitutional Court for the annulment of Decree Law No. 667, as well as other decree laws.

### **Changes in the Regulation regarding Use of Domestically Manufactured Equipment in Facilities Generating Electricity from Renewable Energy Sources**

The Regulation on Support for Domestically Manufactured Equipment Used in Facilities Generating Electricity from Renewable Energy Sources has been published in the Official Gazette dated 24 July 2016 and

has entered into force on the same date. Such new regulation abolishes the Regulation on Domestic Production of Equipment Used in Generation Facilities Based on the Renewable Energy Resources. The new provisions of such regulation includes, among others, the following:

- Legal entity license holders who intend to benefit from the incentives set forth under Article 6/B of the Law on Utilisation of Renewable Energy Sources for the Purpose of Generation of Electricity Numbered 5346 (“**Law**”) for the first time shall apply to the Ministry of Energy and Natural Sources (or entities designated by such Ministry) until 1 August of the relevant year. The mentioned incentive under the Law states that certain facilities may be entitled to receive additional payments for the electricity generated therein, provided that mechanical and/or electro-mechanical equipment used in such facilities are manufactured in Turkey.
- Following such application, the Ministry of Energy and Natural Resources reverts to the applicant by 15 September of such year, if there are any missing documentation regarding such application and the applicants are required to provide such missing documentation to the Ministry of Energy and Natural Resources until 30 September of the relevant year. Following the completion of all documentation, the Ministry of Energy and Natural Resources (or entities designated by such ministry) conducts its examination and notifies the Energy Market Regulatory Authority and the applicant of the determined additional domestic participation price until 31 October of the relevant year.
- The additional domestic participation price to be paid as per the above-mentioned provisions shall be valid for 5 years from the operation date and shall be calculated in accordance with the formula stated under the regulation.

Domestic Manufacturing Determination Committee is entitled to conduct controls regarding the place and/or montage of the equipment, if it deems necessary.

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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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