

# YAZICILEGAL

## NEWSLETTER

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### Brand New Law on Pledge Transactions of Movable Properties

The Law on Pledges of Movable Property in Commercial Transactions (the “**Law**”) has been published in the Official Gazette dated 28 October 2016. The Law will come into force on 1 January 2017 and the Law on Commercial Enterprise Pledges No. 1447 will be abolished with the Law’s enactment. The Law envisages significant novelties and changes on Turkish legal principles on the pledges of movable properties.

Unlike the current legal principle on movable pledge, the Law enables the pledgor to establish a pledge over its movable property in favor of the pledgee without being required to transfer the possession of its movable property to the pledgee. The Law introduces a registry for the pledges of movable property where the parties are required to register the pledge agreement (which can also be drafted via online platform) in order to establish the pledge, thus, such mechanism will maintain the accessibility to and transparency for information on movable property subject to the pledge. Furthermore, the scope of the movables that can be pledged is extended with the Law, which also allows the pledgor to establish a pledge over its commercial receivables, the rental incomes and raw materials. With these reforms in the movable pledge concept under Turkish law, it has been aimed to popularize the pledge of movable property in financial transactions and enable the enterprises to find the financing sources easier.

### Borsa Istanbul Money Market Directive

On 12 October 2016, Borsa Istanbul Money Market Directive (the “**Directive**”) has been published on website of Borsa Istanbul in order to regulate the operation of the procedures and principles of Borsa Istanbul Money Market. According to the announcement of Borsa Istanbul “Borsa İstanbul Money Market” has been established for secured funding, in an effort to encourage the institutional investors in the capital markets as part of the Turkish Government Action Plan and in order to ensure the development of organized money markets.

According to the Directive, trades on Borsa İstanbul Money Market will be conducted in the form of Turkish Lira lending and borrowing under the scope of the Borsa Istanbul Stock Exchange on the interest rates and maturities discovered by the matching of competitive bid

### Legislative Highlights

**The Regulation on Amendment on the Electricity Market License Regulation** (the “**License Regulation**”) has been published in the Official Gazette dated 22 October 2016 and numbered 29865 and entered into force on the date of its publication. This amending regulation contemplates major changes in the License Regulation, some of which are as follow:

- (i) In case a legal entity holding a production license intends to sell, assign or lease its production facility, the assignee legal entity is required to obtain from the EMRA an approval instead of obtaining a new license.
- (ii) The pre-license period has been extended from 24 months to 36 months.
- (iii) Transactions regarding the production facilities and nuclear energy based production facilities which are contemplated to be constructed under RESF (*Yenilenebilir Enerji Kaynak Alanları*) have been added to the works and transactions to be completed within the pre-license period.
- (iv) Except for organized industrial zones, the license owner is under obligation to publish its activity report on its internet site until next May instead of April and this obligation will be also applicable to the legal entities operating in organized industrial zones.

**The Regulation on Amendment on the Electricity Market Unlicensed Electricity Production Regulation** (the “**Unlicensed Production Regulation**”) has been published in the Official Gazette dated 22 October 2016 and numbered 29865 and entered into force on the date of its publication. This amending regulation brings certain changes in the Unlicensed Production Regulation, some of which are as follow:

- (i) The applicants will no longer be required to obtain the TETC’s (TEİAŞ) feedbacks related to the connection rules.
- (ii) The Connection Agreement Call Letter, Connection Agreement and System Use Agreement will be cancelled upon the determination of illegal electricity use by the subscriber pertaining to the consumption facility or facilities associated with the production facility under the supervision of real persons or legal entities who own a Connection Agreement Call Letter and have signed the Connection Agreement.
- (iii) A statute of limitation of 15 days has been brought for the document to be signed by the Relevant Network Operator indicating that the production facility is ready for provisional acceptance under Article 15 bearing the title “Compliance, maintenance, tests and provisional acceptance”
- (iv) Article 21 regarding the support for the use of domestic products has been abolished.

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and ask orders according to multiple price method. Borsa İstanbul Money Market is operated through the Debt Securities Market Trading System and started launching on 14 October 2016. Market transactions are processed between 9.15 a.m and 5.00 p.m. on every weekday. Takasbank serves as the central counterparty for the trades in the Market and regulations regarding security, clearing and default will be determined by Takasbank.

### ISDA Amendment 2.0

The International Swaps and Derivatives Association (“**ISDA**”) has announced the launch of ISDA Amendment 2.0 on 4 August 2016. ISDA Amendment initially launched in August 2012 as an online service developed by ISDA and IHS Markit, and allows the market participants to amend multiple ISDA Master Agreements and share regulatory representations. The new ISDA Amendment can be examined under three main sections:

- (i) ISDA Regulatory Margin Self-Disclosure Letter,
- (ii) VM Protocol, and
- (iii) ISDA Resolution Stay Jurisdictional Modular Protocol.

New margin regulations for uncleared derivatives have been adopted in the United States, Canada and Japan. The global market compliance date for the variation margin requirements is March 1, 2017, whereas, there is a possibility that the adoption of such regulations for uncleared derivatives by Europe and Switzerland will be delayed. In this respect, the parties are required to update their existing ISDA collateral documentation or put in place new ISDA collateral documentation thus, ISDA is in the process of developing various tools from which the market participants can benefit during the updating process of the relevant ISDA documentation.

As to the updating process, the parties have two steps to follow in order to comply with the new margin regulations. First step is to determine if and when the relevant margin regulations will be applicable to the trading relationship between the parties. This step is clarified in Regulatory Margin Self Disclosure Letter (“**SDL**”) prepared by ISDA. Second step is to make a plan in order for the parties to identify the appropriate margin regulation to be applied to their documentation. ISDA has also been published the ISDA 2016 Variation Margin Protocol (“**VM Protocol**”) for this process.

The SDL (published on 30 July 2016) allows the market participants to disclose several information (e.g. general biographic information, entity status of the company under

the applicable margin regulations) to counterparties in order to comply with the new margin requirements. The SDL has been also designed in a modular fashion and grant an opportunity to the parties to advise their counterparties which modules they will need to receive for the compliance of necessary regulatory determinations.

VM Protocol prepared by ISDA has been published in order to assist the market participants on updating their ISDA documentation. Therefore, market participants can have the ability to comply with the new regulations by either amending their existing ISDA collateral documentation, entering into new ISDA collateral documentation or to enter into 2002 ISDA Master Agreement via the VM Protocol. The VM Protocol is prepared as a questionnaire style protocol. Furthermore, in order for the market participants to update their documentation via VM Protocol, each market participant is required to submit an adherence letter to ISDA in the manner contemplated under the VM Protocol and to satisfy the relevant conditions precedent specified in the Protocol Agreement.

Finally, there is another protocol published by ISDA under ISDA Amendment 2.0, which is ISDA Jurisdictional Modular Protocol (“**ISDA JMP**”). In general, ISDA JPM is aimed at resolving the confusions arising from the existing multijurisdictional regulations and facilitating the compliance with the regulations in various judicial systems under an umbrella structure.

### Cabinet’s Decision on Extension of State of Emergency

On July 15, 2016, the Turkish government had been subject to an attempted coup by a group within the Turkish army and the Turkish government and the Turkish security forces (including the Turkish army) took control of the situation in a short period of time and the ruling government remained in control. Accordingly, on 20 July 2016 the decision of council of ministers regarding the nationwide three month state of emergency had been adopted by the cabinet. On 11 October 2016, the decision of council of ministers regarding extension of the state of emergency has been adopted by the cabinet and such decision has been published in the Official Gazette on 13 October 2016. Accordingly, the state of emergency which has been continuing across the country since 20 July 2016 has been renewed for a period of three months starting from 1 p.m. on October 19, 2016.

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Yours faithfully,  
**YAZICI LEGAL**