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NEWSLETTER

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Updates on the use of Central Registration System ("MERSIS") by the Trade Registry

MERSIS (*Merkezi Sicil Kayıt Sistemi*), Central Registration System is an electronic trade registry portal, designated by Article 24/2 of the Turkish Commercial Code No. 6102, in which companies' trade registry records and their registered content are stored. MERSIS has been continuously used and developed by trade registries in Turkey since 2010. The software and technological infrastructure have been renewed and the new version of the portal has been put into effect on March 6, 2017, in order to meet the needs that arose in the software depending on the basic changes in the legislation.

A company may be registered with MERSIS by registering one of the authorized signatories of the company as a registration representative and may obtain an electronic signature. The registration representative shall register and login with the MERSIS system to complete the process.

Istanbul Chamber of Commerce announced that as of May 7, 2018, companies are required to use MERSIS to submit any registration applications. However, MERSIS does not completely remove paper-based registration system and therefore, documentation regarding the registration shall still need to be signed and submitted to the trade registry. All original documents shall be submitted with the application number that is generated by MERSIS specifically for the application.

Conciliation Regulation Regarding the Administrative Fines Imposed Under Consumer Protection Law

Conciliation Regulation Regarding the Administrative Fines Imposed under Consumer Protection Law (the "**Regulation**") has been published in the Official Gazette dated May 30, 2018 and numbered 30436 and entered into force as of the publish date.

The Regulation sets forth the principles and procedures for the conciliation process foreseen for the administrative fines imposed under the Consumer Protection Law numbered 6502 (the "**Law**"). According to Article 77/A of the Law, persons who are imposed administrative fines under the Law may appeal to the Ministry of Customs and Trade (the "**Ministry**") or the relevant governor's office within 15 days following the date of notification of the fine. According to the Regulation, persons on whom administrative fine imposed may claim that;

(i) the subject matter of the fine is caused by the inability to sufficiently penetrate the provisions of the Law or the misunderstanding of the Law, or

(ii) the opinions of administration and courts on the subject matter are contradicting.

Persons having these claims about the imposed administrative fines may request for a conciliation process to begin. However, already paid administrative fines shall not be subject to conciliation. Conciliation requests will be conveyed and evaluated by the commissions that shall be established by the Ministry.

The conciliation requests shall be concluded by the Ministry within three months from the date of application. However, if (i) the claimant does not reasonably agree on the settlement date; (ii) the negotiations cannot be finalized on the specified day; (iii) further investigation is deemed required; or (iv) the commission cannot convey on the settlement date, a new date for the settlement shall be determined and the claimant shall be notified thereon. If three months period is exceeded for such reasons, the commission must conclude the conciliation request within four months following the date of application of conciliation. If the parties come to an agreement at the end of conciliation, the commission's procedures and decisions shall be final and shall not be subject to further appeal. As a result of the conciliation, administrative fines can be reduced only up to 50%.

Regulation on Mediation in Legal Disputes Law

Regulation on Mediation in Legal Disputes Law ("**Mediation Regulation**") has been published in the Official Gazette dated June 2, 2018 and numbered 30439 and has entered into force as of the publish date. All kinds of mediation activities regarding legal disputes, representation of the administration on legal disputes, training, examination and audit of mediators are further regulated by the Mediation Regulation.

According to the Mediation Regulation, parties may agree to apply for mediation before or during the litigation process. In addition, the court may enlighten and encourage the parties to apply for mediation as well. Unless otherwise agreed, if one party does not respond positively to the mediation proposal of the other party within 30 days, it shall be deemed as a refusal of mediation. Unless a particular

procedure is agreed, the mediator or mediators shall be elected by the parties.

If the application for mediation is made before any case is filed, the mediation process shall begin when the parties are invited to the first meeting and the parties and the mediator agree on the continuation of the process and the agreement is documented with a record. If the mediation application is made after the case is filed, then the mediation process shall begin on the date when the court's invitation for mediation is accepted by the parties or when the parties submit their signed statements during the hearing evidencing that they agree on mediation and it is written in the record of trial. The period between the beginning and the end of the mediation process shall not be taken into account in the calculation of the statute of limitations.

Decision of General Assembly of Civil Chambers on Judgement Unification regarding Provisional Attachment

Decision of General Assembly of Civil Chambers on Judgment Unification regarding Provisional Attachment (the "**Decision**") has been published by the Presidency of the Supreme Court on the Official Gazette dated June 29, 2018 and numbered 30463.

The application for the Decision has been made to resolve the contradictory decisions of 11th Civil Chamber and 19th Civil Chamber on the matter of whether it is possible to resolve on provisional attachment (*ihtiyati haciz*) for obligation of providing a guarantee.

As to Article 257 of the Enforcement and Bankruptcy Law No. 2004 (the "**Law**");

"*(1) The creditor of a debt which is not secured with a pledge and is matured may ask for the distraint of the movable and immovable assets of the debtor which is possessed or which exists at the third party or for the other rights as a reserve.*

(2) Provisional attachment may be requested for a debt that has not yet become due only in following cases:
- *If the debtor does not have a registered residency;*
- *If, with the purpose of getting out of commitments, the debtor gets ready to hide or smuggle the assets or the debtor refrains from paying its debts or commits fraud in breach of the rights of the creditor.*

(3) With the execution of the provisional attachment, the debt will be matured only for the debtor."

Following the discussions of the General Assembly of Civil Chambers it has been resolved that, to appeal for provisional attachment a debt must be due and payable, since Article 257 of the Law is about a due and payable debt. A bank's authority to ask for deposit before the occurrence of the risk granted under the check account and guarantee letter agreements signed between the bank and the customer does not indicate that the receivables exist or payable. Yet, depositing does not mean performing and such authorities granted under the agreements only give the bank the authority to ask for deposit, not the authority to demand payment. Fundamentally, a provision such as the abovementioned already secures the bank's receivables therefore, the provisional attachment which is a special legal protection institution shall no longer be deemed necessary.

Additionally, for retarding conditional receivables (*geciktirici şarta bağlı alacak*) the effectiveness of the legal transaction is linked to the actualization of such condition. However, Article 257 of the Law addresses to existing and due debts. As a principle, the retarding conditional transaction provisions starts at the moment of the actualization of the condition, not on the date of the legal transaction. Since the proof of the realization of the condition requires a court decision, unless there is a compromise between the parties, it is not possible to pursue the collection of receivable by way of general seizure proceedings (*haciz yolu ile takip)*.

As per the result of the discussions of General Assembly of Civils Chambers on Unification, it has been resolved that the provisional attachment is not an execution transaction, but is an institution of special temporary protection, that it is only envisaged for pecuniary claims within the frame of Article 257 of the Law and accordingly a provisional attachment decision may not be resolved for security receivables (*teminat alacakları*) and to deposit a security.

Amendments to the Pledge on Movables Provisions

Regulation Amending the Regulation on Movable Pledge Registry, Regulation Amending the Regulation on the Valuation of Movable Assets in Commercial Transaction and Regulation Amending the Regulation on the Establishment of the Right to Pledge in Movables and the Use of Rights After the Event of Default have been published on the Official Gazette dated May 22, 2018 and numbered 30428.

Some of the significant changes made by the abovementioned regulations are listed below.

Regulation Amending the Regulation on Movable Pledge Registry

- Pledges on construction equipment are no longer required to be reported to the related registry center.

- The good faith of the third party that does not know or needs to know that a movable is pledged shall be protected if such third party is not obligated to examine the registry or does not have a standing to the pledge agreement.

- The deadline for cancellation request of the pledge agreement, once there are no receivables left, has been extended to 30 business days for pledgors subject to foreign law and 15 business days for pledgors subject to Turkish law.

Regulation Amending the Regulation on the Establishment of the Right to Pledge in Movables and the Use of Rights after the Event of Default

- It is no longer required to include a provision in the pledge agreements stating that "the pledgor shall use its right to transfer the ownership in an event of default".

- It has become mandatory to include the movable asset's general qualities in the pledge agreement if the movable asset has no distinctive feature.

- The scope of the pledgeable assets has been extended by adding "all kinds of similar assets and rights" to the definition.

- The scope of the pledge has also been clarified. As per the amendment, all future proceeds such as interest and insurance and natural products and their substitutes shall be included in the scope of the pledge together with the movable asset.

- The statute of limitations shall not run for the receivables after the registration of the pledge agreement to the registration.

Regulation Amending the Regulation on the Valuation of Movable Assets in Commercial Transaction

- Pledgor's right to request for the valuation of the asset, when the asset is processed, merged or blended with another asset, has been revoked.

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Yours faithfully,
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