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NEWSLETTER
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The Regulation on Concordat Commissariat and Formation of the Board of Creditors

On January 30th, 2019, the Regulation on Concordat Commissariat and Formation of the Board of Creditors (the "**Regulation**") has been published in the Official Gazette No. 30671 and entered into force on the day of its publication, abolishing the Regulation on the Qualifications of the Concordat Commissariat and Mandatory Formation of the Board of Creditors (the "**Former Regulation**") dated June 2nd, 2018.

The fundamental difference between the Regulation and the Former Regulation is that the Regulation details the rules and procedures regarding the application for being listed as a concordat commissar, basic training requirements to be fulfilled and their assignment.

Accordingly, fulfilling the basic training requirements is stipulated as a qualification that the concordat commissars must possess in addition to other preconditions specified under the Regulation. On the other hand, professors and associate professors in certain fields including civil procedure law, execution and bankruptcy law, civil law, commercial law and finance and accounting are exempted from such training requirement. Furthermore, Provisional Article 1 of the Regulation sets forth that the commissariat trainings which have been completed before the entry into force of the Regulation will not be taken into consideration in applications made to be listed as a concordat commissar.

It is also of importance to note that, among their other obligations, the Regulation prescribes that concordat commissars may not be involved in any endeavor or act that might be considered as an advertisement activity to be assigned as a commissar.

In terms of the thresholds as to the formation of a mandatory board of creditors, the amount of receivables has been increased. Accordingly, provided that there are at least three creditor classes, if the number of creditors exceeds 250 or the total amount of receivables exceeds TRY 125 million, then the formation of a board of creditors is mandatory under the Regulation.

The Regulation on Documents for the Concordat Application

The Regulation on Documents for the Concordat Application (the "**Regulation**") has been published in the Official Gazette No. 30671 on January 30th, 2019 and came into force on the same day. The Regulation outlines the required documents to be included in the concordat application in accordance with the documents foreseen under the Execution and Bankruptcy Law (No: 2004), and provides specific rules on the audit process by the independent audit firms. The Regulation clearly states that in case the audit firm is not sufficiently convinced of the reasonableness of the assumptions and prospects of the debtor in its concordat application; then the audit firm cannot issue a positive opinion on the proposal of the debtor under its preliminary project.

The Regulation on Amendment of the Regulation Regarding Establishment and Activities of Financial Leasing, Factoring and Finance Companies

The Regulation on Amendment of the Regulation Regarding Establishment and Activities of Financial Leasing, Factoring and Finance Companies ("**Amendment Regulation**") has been published in the Official Gazette No. 30666 on January 25th, 2019.

Accordingly, Article 11/A of the Regulation Regarding Establishment and Activities of Financial Leasing, Factoring and Finance Companies is amended as follows:

"(1) In automobile loans and vehicle-secured loans to be used for the purchase of passenger cars or in financial leasing transactions to be made, the ratio of the amount of the loan to the value of the vehicle shall not exceed seventy percent for those having final invoice value less than one hundred and twenty thousand Turkish Liras. This rate shall be applied as fifty percent for the portion exceeding one hundred and twenty thousand Turkish Liras in the passenger cars where the final invoice exceeds the said amount. Insurance value shall be considered for the valuation of the second hand passenger cars."

The only amendment to the provision is the increase of TRY 100,000 to TRY 120,000 to determine the amount of the loan to be granted as regard to such vehicles as outlined under the foregoing provision.

The Communique on Amendment of the Communique on Tender Offer (No: II-26.1)

The Communique on Amendment of the Communique on Tender Offer **("Amendment Communique")** has been published in the Official Gazette No. 30643 on January 2nd, 2019.

With this amendment, the Capital Markets Board **("CMB")** has added a new exemption opportunity from mandatory tender offer liability and for this purpose, the following paragraph has been added to the Article 18/1 of the Communique on Tender Offer:

"g) Change of management control occurred as a result of share purchase by the existing shareholders, in capital increases of listed companies where the pre-emption rights of the shareholders are not restricted."

As per this amendment, if an existing shareholder acquires more than 50.0% of the share capital of a listed company in capital increases where the pre-emption rights of the shareholders are not restricted, then such shareholder will be entitled to apply to the CMB for an exemption of liability to make mandatory tender offer. It is worth to highlight that, in any case, even if the conditions are met for this exemption, the applicability of this exemption will be subject to the approval of CMB.

Increased Fines under the Consumer Protection Law

As of January 1st, 2019, higher fines are applicable in case of violations under the Law No. 6502 on the Protection of Consumers. Accordingly, the administrative fines have been increased at a rate of 23.73% and such increased amounts shall be applicable until December 31st, 2019.

The Stamp Tax Cap for 2019

For the year 2019, the maximum amount of stamp tax payable on a document subject to such duty has been set forth as TRY 2,642,810; and it is further provided that fixed amounts under the Table I of the Stamp Tax Law No: 488 will be increased at a rate of 23.73% for the year 2019.

Criteria on the Companies of Cooperatives to Fall Under Public Company Status

On December 28th, 2018, the Law on Amendment of the Highway Traffic Law and Certain Other Laws No. 7159 ("**Amendment Law**") has been published and entered into force. The Amendment Law includes a provision that introduces new criteria for the companies managed by cooperatives to be qualified as public company. Before the amendment, the criteria were based on the ground of having the majority of shares by the cooperatives (having at least 500 (directly/indirectly) participants) in the company. Further to the amendment, it is clarified that the criteria will be based on having the management control over the company by the relevant cooperative. Also, before the amendment, it had been regulated that the companies being held by cooperatives having 500 participants were directly accepted as public company. Now, in addition to this provision; it is further provided that such company will have the annual sales revenue of at least TRY 50,000,000 to fall under the public company status.

Amendment on Lease Certificate Issuances for Participation Banks

The following provision has been added to the Article 61 of the Capital Markets Law No. 6362 ("**Capital Markets Law**") by the Amendment Law defined above.

The amendment provides that the following provisions of Article 61 of the Capital Markets Law *shall not be applied* in lease certificates issuances for Tier I and Tier II capital purposes of participation banks.

- "Until the lease certificates are redeemed, the assets and rights in the asset leasing company's portfolio cannot be disposed of, pledged, provided as guarantee, seized, or attached including for the purposes of public claims or the bankruptcy estate; and no precautionary injunction may be issued; even if the management of the issuer or the supervision of the issuer is transferred to public authorities, including the purpose of collecting public receivables."

- "In the event that the issuer cannot fulfill its obligations arising from the lease certificates as they become due, the issuer's management or supervision is transferred to a public institution, its license is cancelled; or it is declared as bankrupt; then the income generated from the assets in its portfolio must be primarily used for the payments to the lease certificate holders. In this case, the CMB is entitled to take all necessary measures to protect the rights of the lease certificate holders."

Court of Appeal Decision on the Expenses Applicable by Banks

On January 26th, 2019, Civil Chamber No. 11 of the Court of Appeal has passed a decision on fees and expenses collected by banks for banking services in a dispute in relation to a commercial loan. This decision states that whilst there is no prohibition on banks to charge fees and expenses for the services they render; it is required to determine the amount of fees and expenses on a case by case basis. It is set forth under the decision that if the loan agreement is not clear in this respect, then an expert opinion must be obtained and applicable fees and expenses for the similar loan agreements in the market must be taken into consideration in order to determine the applicable amount of fees and expenses in each relevant case.

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Yours faithfully,
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