

YAZICILEGAL

NEWSLETTER

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Capital Movements Circular

The Capital Movements Circular has been amended by the letters (i) numbered 2203 and dated January 25, 2019, and (ii) numbered 3403 and dated February 11, 2019, which have been released by the Ministry of Treasury and Finance of the Republic of Turkey (the “**Amendment**”). Accordingly, the examination obligation of the Turkish banks, in terms of the loans utilized from abroad, is extended. Before the Amendment, the banks’ obligation was limited to receiving a declaration from the firm that collects the sum to determine whether the foreign currency amount is a loan or not; yet as a new obligation the Amendment requires the banks to obtain information and documents that certifies the firm’s declaration.

Amended Articles 21 and 40 on the loans that are not required to be qualified as a foreign currency income, set forth the rules for the loans that are disbursed within the scope of an investment incentive certificate (*yatırım teşvik belgesi*) (“**IIC**”) outside and within Turkey. Accordingly, foreign currency loans must be converted into Turkish Liras when these are specified in the IIC. For conversion, the calculation shall be made as per the selling exchange rate of the Central Bank of the Republic of Turkey on the date of the IIC application. In addition, pursuant to the Amendment the banks or financial institutions disbursing a foreign currency loan within the scope of an IIC to a person resident in Turkey and for the financial leasing procedures and for the financing of machines and equipment fall into the customs tariff statistics positions listed on the relevant article of the Decree on Fixing of the Value-Added Tax Ratios to be Applied to Goods and Services, shall add an annotation on the IICs in order to prevent repetitive utilization.

Regulation on the Transactions of the Banks Subject to Approval and Indirect Shareholding

On February 13, 2019 the Regulation Amending the Regulation on the Transactions of Banks Subject to Approval and Indirect Shareholding (the “**Amending Regulation**”) has been published in the Official Gazette numbered 30685 and been entered into force on the same date. Prior to the Amending Regulation, banks established in Turkey were obliged to obtain approval from the Banking Regulation and Supervision Board (*Bankacılık Düzenleme ve Denetleme Kurulu*) (the “**Board**”) to open a representative office, to form a partnership or to join a partnership abroad. However, certain

exceptions to this rule have been brought by the Amending Regulation.

Accordingly, if the corporate governance provisions and protective provisions in connection with the Banking Law numbered 5411 are satisfied, the following transactions shall be not subject to the Board’s approval:

- a) Mandatory share acquisitions, as per the law of the country in which the partnership is established, by the banks established in Turkey on the condition that such banks’ total shareholding in the partnership does not exceed 3/1000 of the equity capital of the bank and a notification to the Board is filed at least 30 days in advance along with a report setting forth the reasons of joining the partnership in detail.
- b) Opening of additional branches in countries for which the Board’s approval on opening branches has been obtained before, provided that the ratio of the total branch size to the bank assets does not exceed 10% and a notification has been made to the Board at least 30 days in advance.

Regulation on the Amendment of the Regulation on the Loan Transactions of the Banks

The Regulation on the Loan Transactions of the Banks (the “**Regulation**”) has been recently amended through two different amending regulations one of which published in the Official Gazette dated February 10, 2019 and numbered 30682 whilst the other one published in the Official Gazette dated February 19, 2019 and numbered 30691; both entered into force on the date of publication.

The amendment dated February 19, 2019, brings out a few novelties relating to the financial tables (*hesap durum belgesi*) required for disbursement of loans.

Firstly, the minimum amount required for being exempt from the requirement of obtaining financial tables while granting loans has been increased from TRY 1,000,000 to TRY 2,000,000.

Moreover, according to the amendment regarding financial tables, the financial statements, which are audited independently and prepared in compliance with the financial reporting and accounting standards published by the Public

Oversight, Accounting and Auditing Standards Authority (the “**Authority**”), of the companies that are subject to independent audit as per the Decree Law Re. Organization and Duties of the Authority, will be accepted as financial tables. The financial table provided as an annex to the Regulation, has been repealed and therefore, for those which do not fall within the scope of the aforementioned provision, the financial statements drafted as per the Tax Procedure Law, and for the non-Turkish residents the balance sheets, financial statements and profit-loss statements will be considered as financial tables.

Furthermore, a new provision relating to the obligation of obtaining additional documents by the banks from the borrowers has been introduced. As per such provision, the banks shall obtain financial statements described in the Regulation along with the analysis table form of which is provided in the Regulation as Annex 4, including the security report of an independent auditing firm drafted in line with the information on the financial statements, from the credit customers whose total risk –including the loan requested– at the banking sector is at least TRY 500,000,000, according to the Turkey Banking Association Risk Centre. The financial statements required for the non-resident credit consumers by the Regulation consist of the balance sheet, profit-loss statement and additional financial statements that are prepared in compliance with the laws the non-resident credit consumer is subject to, including the footnotes pursuant to the international standards. The financial statements shall be obtained by the banks every year within 6 months following the accounting period to the extent that the relevant credit relationship continues.

The same amendment also includes a provision titled “Sectoral and Financial Analysis Reports” which regulates the storage obligation for the systemic important banks which are determined as per the criteria set forth under the Regulation on Systemic Important Banks. Accordingly, such systemic important banks are required to store (i) the analysis reports that are drafted on an annual basis by specifying the first five sectors in which the banks’ credit risk is the highest excluding the personal loans, and (ii) consolidated financial analysis and information reports that are drafted on an annual basis for the largest 50 risk groups by the end of the year as per the risk group definition provided under the Banking Law numbered 5411.

Pursuant to another novelty brought, in case of a demand from the debtor, debit balances of consumer loans the principal and/or interest payments of which have been delayed before February 10, 2019, may be restructured with an instalment plan up to 60 months.

The same provisional article has also been included to the Regulation on the Establishment and Operation Principles of Leasing, Factoring and Financing Companies upon the publication in the Official Gazette dated February 10, 2019 and numbered 30682.

Amendments on the Communiqué regarding Reserve Requirements

In addition to the abovementioned changes in banking legislation, the Communiqué Amending the Communiqué Re. the Reserve Requirements has been published in the Official Gazette dated February 16, 2019 and numbered 30688 to support effective functioning of financial markets and flexibility of the banks in their liquidity management and to adjust the reserve requirements for different currencies in an effort to encourage or discourage certain types of lending.

A detailed list of the former and updated ratios of reserve requirements of the banks in Turkish Lira are as follows:

Deposits/Participation funds (Excluding deposits/participation funds of foreign banks)	Former Reserve Requirement Ratio	New Reserve Requirement Ratio
a) Drawing, callable, up to 1-month maturity and up to (and including) 3-month maturity	8%	7%
b) Up to (and including) 6-month maturity	5%	4%
c) Up to 1-year maturity	3%	2%
d) Exceeding and including 1-year maturity	1.5%	1%
Funds of borrowers	8%	7%
Other Liabilities (Including deposits/participation funds of foreign banks)		
a) Up to (and including) 1-year maturity	8%	7%
b) Up to (and including) 3-year maturity	4.5%	3.5%
c) Exceeding 3-year maturity	1.5%	1%

Highlights on Obligations of the Sellers and Providers under E-Commerce and Consumer Legislations

The Regulation on the Amendment of the Regulation on Distance Contracts has been published in the Official Gazette dated February 9, 2019 and numbered 30681 while the Regulation on the Amendment of the Regulation on the Service Providers and Intermediary Service Providers in Electronic Commerce has been published in the Official Gazette dated February 15, 2019 and numbered 30687. As per the amendments, the seller/provider or the service provider (as applicable) is now obliged to keep records and present information when the subscription agreement is executed through a mutual public electronic platform that provides public services from a single spot.

Electricity Market License Regulation

The Regulation on the Amendment of the Electricity Market License Regulation (the “**Amending Regulation**”) has been published in the Official Gazette numbered 30688 and dated February 16, 2019, and entered into force on the same date. As per Article 57 of the Electricity Market Regulation, until the license is obtained, the transactions that result in a direct or indirect change of the shareholding structure of the legal person holding a pre-license or transfer of shares of the licensee shall not be made. The same article also lists the exceptions to such rule; and as a novelty brought by the Amending Regulation, if the pre-license has been given for a renewable energy resource area, the direct or indirect change of shareholding structure of the legal person holding a pre-license shall also be exempt from the aforementioned rule.

Law on the Amendment of the Criminal Procedure Law and Other Laws

The Law on the Amendment of the Criminal Procedure Law and Other Laws (the “**Law**”) has been published in the Official Gazette dated February 28, 2019 and entered into force on the same date.

The aim of the Law is to eliminate some flaws of the regional courts of appeal, to ensure the means of appeal is efficient, and to provide consistency between particular laws. The Law has increased the pecuniary limit for the right of appeal from TRY 40,000 to TRY 58,800 which was determined by the Bankruptcy and Enforcement Law. The Law stipulates that for the final judgments made before the Law, the limit of TRY 40,000 shall apply.

The Law has also amended the Law on the Organisation, Duties and Authorities of the Trial Courts and the Regional Courts of Justice and grants the courts the opportunity to form more than one court committee considering the work-load of such courts.

Article 307 of the Criminal Procedure Law titled “Procedures of the Court that Re-rules the Case” specifies the process at the lower courts after the Supreme Court’s verdict. The Law introduces an additional provision according to which in case

the court of first instance accedes the Supreme Court’s decision to overturn, the decision of the court of first instance shall only be appealed at the Supreme Court, without considering the limits for appeal.

Competition Board’s Decision on “sahibinden.com”

The Competition Board’s (the “**Board**”) reasoned decision dated October 1, 2018 was published on the Competition Authority’s official website, concerning the investigation on whether Sahibinden Bilgi Teknolojileri Paz. ve Tic. A.Ş. (“**Sahibinden**”) violated Article 6 of the Law on Protection of the Competition numbered 4054, which sets forth the conditions to be considered as the abuse of the dominant position, by means of excessive pricing.

Sahibinden is a platform that provides online listing services for real estate sales and renting, second hand automobile sales, other kinds of second hand good sales, job adverts and other announcements. It has been claimed that Sahibinden has been dominant in the online real estate listings market because of its market share and it has abused such dominant position by applying much higher prices than other similar platforms. While the service is free to the buyers on Sahibinden, a tariff of fares depending on the seller’s identity is applied on the sellers.

As a result of the investigation; the Board has unanimously resolved that Sahibinden has been dominant in the market and also resolved by the majority of the votes that it has abused its dominant position and therefore Sahibinden has been imposed an administrative fine of TRY 10.680.425,98.

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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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