

CLIENT ALERT

COVID-19 | TURKEY

APRIL 2020

NEW LEGISLATION MITIGATING THE IMPACT OF COVID-19 ON ECONOMIC AND SOCIAL LIFE IN TURKEY

The Law No. 7244 (the “**Omnibus Bill**”) containing new regulations aiming at reducing the impact of the Covid-19 pandemic has entered into force and was published in the Official Gazette on 17 April 2020.

LIMITATION TO THE DISTRIBUTION OF DIVIDENDS FOR CAPITAL COMPANIES

To protect the financial structure of capital companies during this period, a limitation on the dividend distribution to be performed by said companies in the course of 2020 has been brought into the Turkish Commercial Code No. 6102. Accordingly, the recommendation letter submitted by the Ministry of Commerce to the Union of Chambers and Commodity Exchanges of Turkey regarding dividend distribution on 31 March 2020 is now legally binding with the insertion of a new temporary provision into the Turkish Commercial Code.

In this context, for the sake of preventing the decrease of companies' resources resulting from the distribution of cash dividends and protecting current equity capital structures, the following limitations have been imposed on capital companies:

- the amount of cash dividends that can be distributed until 30 September 2020 shall not exceed 25% of the net profit generated in 2019;
- profits of the previous year(s) or free reserve funds cannot be subject to any distribution; and
- the board of directors shall not be authorised by the general assembly for the distribution of advance dividends.

The above shall however not apply to companies whose share capital is held directly or indirectly at more than 50% by the state, provincial special administrations, municipalities, village administrations, or any other public legal entities, or by funds that are state-controlled at over 50%.

In the event that the company's general assembly has previously decided to distribute dividends for the 2019 fiscal period but no payment has yet been made or partial payment has been made to the shareholders, the payments for the portion exceeding 25% of the net profit for the year 2019 shall be postponed until 30 September 2020.

The 30 September 2020 date can be extended by three months or shortened on decision of the President. In addition, the Ministry of Commerce is authorised to set forth exemptions from the above regarding certain capital companies as well as implementation procedures and principles, subject to consultation with the Ministry of Treasury and Finance.

REGULATIONS REGARDING RETAIL TRADE

One of the most critical matters brought by the Omnibus Bill (Articles 13 and 14) is the amendment made to the Law on the Regulation of Retail Trade, numbered 6585 (“**Law No. 6585**”).

Establishment of a new watchdog

Pursuant to subparagraph 3 of the newly brought Additional Article 1 of the Law No. 6585, the Unfair Price Assessment Board (the “**Board**”) has been established. The objectives and powers of the Board are, among others, to regulate excessive price increases and stocking practices of producers, suppliers and retail businesses, and to impose administrative fines by conducting inspections or examinations when necessary and taking all kinds of measures with no distinction of sector. Currently, the Law No. 6585 does not explicitly define concepts such as excessive price or stocking, but clarifications in this respect are expected to be provided under secondary legislations.

The presidency of the Board, which will be established under the Ministry of Trade, will be held by the General Director of Domestic Trade. The Board will consist of 13 members, composed of members appointed by the General Director of Consumer Protection and Market Surveillance, the General Director of Merchants, Craftsmen and Cooperation, the Ministry of Justice, the Ministry of Treasury and Finance, the Ministry of Industry and Technology and the Ministry of Agriculture and Forestry, the relevant Domestic Trade Directorate, the Union of Chambers and Commodity Exchanges of Turkey and the Confederation of Turkish Tradesmen and Craftsmen.

Regulation of administrative fines for excessive pricing and opportunistic behaviour

As regulated under the first paragraph of the Additional Article introduced to Law No. 6585, no excessive increase in the sales prices of goods or services shall be made by undertakings and an administrative fine of TRY 10,000 to 100,000 shall be imposed to the breaching undertakings in accordance with the subparagraph added to the first paragraph of Article 18 of said Law. Furthermore, the Law No. 6585 provides that undertakings shall not engage in any activity which may create a scarcity in the market, disrupt the balance of the market and distort free competition and any activity which may prevent consumers from accessing goods. Otherwise, an administrative fine of TRY 50,000 to 500,000 shall be imposed on said undertakings. The Board has been granted authority for the implementation and imposition of such administrative fines.

POSTPONEMENT REGARDING GENERAL ASSEMBLY MEETINGS OF COOPERATIVES AND ASSOCIATIONS

General assembly meetings of cooperatives within the scope of Cooperatives Law No. 1163 and general assembly meetings of associations according to the Associations Law No. 5253 and the Turkish Civil Code no. 4721 have been postponed until 31 July 2020, effective as from 10 March 2020. Postponement can be extended up to three months at the end of this period.

The Omnibus Law further provides that the postponed general assembly meetings of cooperatives must be held within three months as from the end of the postponement period and within 30 days from the end of such period regarding associations. Duties, powers and responsibilities of existing bodies shall validly continue until the first general assembly meeting to be held after the postponement period.

Furthermore, notifications and declarations to be submitted by associations have been postponed until 31 July 2020.

REGULATIONS ON TREASURY IMMOVABLES

Regarding the postponement, waiver or restructuring of some receivables, the fees to be paid in accordance with the contracts and compensation payments regarding Treasury immovables for the first quarter of the year have been postponed for three months as from 1 April 2020. The Minister of Environment and Urbanization has been granted authority to extend this postponement for three additional months. These receivables will be collected in equal monthly instalments without any delay penalty or interest at the end of the deferral period.

Furthermore, transactions regarding the sale, leasing, barter, construction in return for land or flat and establishment of limited real rights on the Treasury immovables and tenders for the lease and granting of occupancy permits for the immovables fully owned by the State may be performed electronically, in return for service fee, until 31 July 2020. The Minister of Environment and Urbanization is again entitled to extend this period by up to three months.

REGULATIONS ON THE TURKEY WEALTH FUND

The Omnibus Bill introduces certain amendments on the Law on Establishment of the Turkey Wealth Fund Management Incorporation and Amendments in Certain Laws. Accordingly, the scope of some legal exemptions granted to the Turkey Wealth Fund and related sub-funds, Turkey Wealth Fund Management A.Ş and to the companies established by TWFM ("TWF/TWFM") has been extended to benefit third parties entering into transactions with TWF/TWFM.

Accordingly, provisions of Article 23 and Article 27 of Law No. 6362 and relevant secondary legislation enacted under this Law and of Article 202 of Turkish Commercial Code No. 6102 will not be applicable **to transaction parties, their direct and indirect shareholders, affiliates, subsidiaries and controlled companies** in the scope of transactions resulting in the TWF/TWFM taking control alone or in co-control with third parties over other companies.

In addition, the deadline for submission of all audit reports regarding TWF/TWFM to the Presidency has been extended from June to August.

REGULATION ON TRAVEL AGENCIES' OPERATION LICENCES AND YEARLY CONTRIBUTIONS

Within the scope of the Omnibus Bill, amendments regarding the transfer of operation licences were introduced to the Law on Travel Agencies and Travel Agencies Association No. 1618.

Accordingly, transfer of the operation licence to another legal entity independently of the agency title is only allowed with permission of the Ministry. The amendments further provide that the use of the title of the agency transferring its operation licence, or of a title that would lead to a confusion with said title by any other travel agency, is prohibited for a period of 10 years and the grant of a new operation certificate to the legal entity that transferred its operation certificate is prohibited for a period of three years.

In addition, the yearly contributions (constituting part of the revenues of the Association) will not be collected for the year 2020.

REGULATION ON R&D, DESIGN AND TECHNOLOGY DEVELOPMENT ACTIVITIES

The Omnibus Bill provides that, for a limited period of 4 months starting from 11 March 2020, activities normally performed in R&D and Design Centres within the framework of Law No. 5746 are allowed to be carried out. R&D and Design Centres and activities normally performed within the boundaries of the "Region" as defined in the Law 4691 on Technology Development Zones may be carried out outside said Region. This period can be extended by up to three months.

NEW REGULATIONS REGARDING LABOUR AND TRADE UNION LAW

Within the scope of the Omnibus Bill, additional provisional articles were added to Labour Law No. 4857 ("**Labour Law**") and Unemployment Insurance Law No. 4447 ("**Unemployment Insurance Law**") with respect to the prohibition on termination of employment contracts, unpaid leave practices and financial supports.

Prohibition on termination of employment contracts

Termination of employment contracts by the employer is prohibited for a period of three months starting from 17 April 2020, except in cases regarding the ethics and good faith rules and similar circumstances as per the article 25/II of Turkish Labour Law.

Law-makers aimed to provide legal protection for employees, while at the same time providing support to economically challenged employers.

During the period in which the prohibition on termination of employment contracts is applicable, employers shall be entitled to grant employees an unpaid leave period, and this situation will not constitute a just cause for the employee to terminate the employment contract. Under these circumstances, an employer can unilaterally apply unpaid leave practices, whereas this would normally constitute an essential change to the employment conditions and require the consent of the employee in accordance with the article 22 of the Labour Law.

In the event that the employer terminates the employment contract by violating the abovementioned prohibition, it shall pay an administrative fine in the amount of the monthly gross minimum wage of the employee, applicable at the date of termination for each employee dismissed.

The period of prohibition on the termination of employment contracts was set at three months, and can be extended up to six months by Presidential decree.

Financial supports

The abovementioned legislative changes further provide that employees who are on unpaid leave and employees who cannot benefit from short work allowance as well as employees whose contracts were terminated after 15 March 2020 in accordance with the requirements for unemployment benefit but could not benefit from such benefits due to the fact that other conditions were not duly met, will be paid TRY 39.24 per day by the Unemployment Insurance Fund during the period of prohibition on termination of employment contracts, provided that they do not receive old age pension from any Social Security Institution.

If the employees who benefit from this financial support are not insured (or dependants) under the general health insurance, they will be considered as insured under the general health insurance in accordance with the Social Insurance and General Health Insurance Law No. 5510 and their premiums will be covered by the Unemployment Insurance Fund.

According to this legislation, in cases of determination on the continuance of de facto employment relationship despite either termination or unpaid leave practice, administrative fines corresponding to the monthly gross minimum wage per employee and month can be applied by the Social Security Institution and the financial supports paid by that time will be collected from the employer with the legal interest to be processed from the date of the payment.

However, payments of the short work allowance can start to be made without waiting for the completion of the eligibility assessment for applications to be made on the grounds of compelling reason.

If it is determined afterwards that the employer has given incorrect information or documents, groundless payments will be collected from the employer with legal interest which will accrue as from the date of the payment. This provision is effective from 29 February 2020.

Suspension of collective bargaining processes

Within the scope of the Omnibus Bill, periods that are currently running in accordance with the Trade Unions and Collective Bargaining Law No. 6356 have been suspended.

Accordingly, all applicable periods related to collective bargaining, resolution of collective bargaining disputes and strike and lockout pursuant to the Trade Unions and Collective Bargaining Law have been suspended as of 17 April 2020. Processes will be suspended for three months and will resume after the end of the suspension period.

Said suspension can be extended by three additional months by Presidential decree from the expiry date of the first period.



In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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