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Legislation Proposal Regarding the Amendment of the Law on Payment and Securities Consensus Systems, Payment Services and Electronic Money Institutions Along With Some Laws that Has Been Accepted

Legislation Proposal Regarding Amendment of the Law on Payment and Securities Consensus Systems, Payment Services and Electronic Money Institutions Along With Some Laws which had been offered to the Committee on Planning and Budget on October 16, 2019, has been accepted by the General Assembly of TGNA on November 12, 2019.

Following this development, duties and authorities of the Banking Regulation and Supervision Agency (“BRSA”) within the scope of the Law on Payment and Securities Consensus Systems, Payment Services and Electronic Money Institutions, numbered 6493, will be transferred to the Central Bank of the Republic of Turkey (“the Central Bank”).

Thus, the Central Bank will have the authorization for;

- i. determining the qualifications and maximum amounts or rates of fees, charges, commissions and other interests received by one of the parties in a transaction within the scope of payment service and releasing these fees, charges, commissions and other interests partially or completely,
- ii. observing the legal relations of payment service providers to which they are a party due to their activities in this field and identifying the problems that may arise,
- iii. establishing working committees in case of determination of situations and practices that may adversely affect the development of the payments area.

Moreover, the BRSA will not be receiving contributions from payment institutions and electronic Money institutions.

Finally, Turkish Payment and Electronic Money Institutions Association will be established in order to ensure the supply of the common needs, facilitation of professional activities and protection of the moral and professional disciplines of the institutions and becoming a member of the association will be compulsory.

The Intellectual Property Academy Regulation Has Been Published

The Intellectual Property Academy Regulation (“Regulation“) has been published in the Official Gazette dated 14 November 2019 and numbered 30948. The Regulation regulates the issues related to the training, consultancy, research and coordination activities related to the intellectual property rights to be realized by the Intellectual Property Academy (“Academy”), and the fees to be charged for the activities and services provided.

The Academy includes theoretical and practical training in the field of intellectual property. Organizing activities such as domestic internship programs, panels, conferences, symposiums, congresses, conducting field researches, conducting coordination and domestic cooperation activities, providing consultancy and personnel certification in accordance with relevant national and international standards, as well as basic and specialist training programs. The Academy will also have activities to ensure that the professional knowledge and skills of public and private sector employees in the field of property are established within the framework of international norms.

The Academy will consist of the Executive Board and the Training Centers. Training Centers will be able to charge fees for those who will benefit from training, research, consultancy and similar activities they will conduct. The Board of Directors is the advisory body of the Academy. Recommendations of the Board of Directors will be executed by the Training Centers upon the approval of the Ministry of Culture and Tourism and the Turkish Patent and Trademark Agency.



Current Decisions of the Personal Data Protection Board



The Board of Protection of Personal Data (“Board”) published the following decisions on its website on November 6, 2019.

- Decision on the two-sided copy of the ID card;

In the concrete case, upon the request of data subject to change the user name and password information within the loyalty program offered by an air carrier, the air carrier requested the passenger to submit their two-sided copy of the ID card. The Board did not find the request to have a causal link and to be restrained enough to require a two-sided identification image of the ID since less data could be processed for the authentication process. It is also stated that explicit consent shall be obtained when processing special categories of personal data such as blood type and religion on the back of the identity card.

As a result, the Board has decided to impose an administrative fine of TRY 100,000 on the data controller air carrier based on the reason that the data security obligations have not been fulfilled by the air carrier.

- Decision on the application remedies of the data subjects to the data controllers;

Article 5 of the “Communiqué on Application Methods and Principles to the Data Controller” (“Communiqué”) states that the data subject may submit his/her requests in writing or via Registered Electronic Mail (REM) and secure signature within the scope of his/her rights stated in Article 11 of the Turkish Personal Data Protection Law No. 6698. In the concrete case, in order to provide confirmation of the identity, the Company has notified to the data subject that they can only apply to them through a notary public or e-signature in order to provide confirmation of identity. It has been decided by the Board that the notification imposes a material burden that is not mentioned in the Communiqué and does not comply with the rule of law and honesty.

Amendment on Capital Movements Circular

With the amendment of the Capital Movements Circular, the Central Bank of the Republic of Turkey ("CBT"), drew attention to the capital advance paid by the foreign investors to Turkish companies. According to the amendment which came into force on November 4, 2019; the foreign currency amounts to be deposited by the foreign investors to the accounts of the Turkish companies to which they are shareholders, must be converted to capital within three months at the latest.

Although the Turkish Commercial Code stipulates that if the amounts invested by the shareholders for capital increase are not converted into capital within three months, these amounts will be returned to the shareholders, pursuant to the Circular of the Central Bank of the Republic of Turkey, dated March 29, 2013 and numbered 2013/YB-7, in the absence of capital increase, the advances paid by the shareholders to the company will be counted as loans.

In the current situation, the advances paid to the company by foreign shareholders for capital increase should be converted to capital within three months, otherwise the advances paid to the company will be counted as loans.



Communique on the Implementation of the Regulation on the Qualifications of Tourism Facilities



Communique on the Implementation of the Regulation on the Qualifications of Tourism Facilities (“the Communique”) has been published in the Official Gazette Dated November 29, 2019 numbered 30961 pursuant to Article 44 of Regulation on the Qualifications of Tourism Facilities.

The Communique regulates; principals of application, necessary documents to be submitted with application and evaluation process of the application related to tourism operation certificate, partial tourism operation certificate, tourism investment certificate, special facility tourism operation certificate and special accommodation facility tourism certificate; the principles of the applications to be submitted relating to Tourism certificate, plate and bottom plate preparation and subjects to be included in these documents; procedures and forms related to tourism facility classification process and certification controls; the provinces that possession of air conditioning system is obligatory in a tourism facility according to climate conditions.

Resolution of the Board of Protection of Personal Data Dated October 18, 2019 and numbered 2019/308

With the resolution of the Board of Protection of Personal Data (“Board”) dated October 18, 2019 and numbered 2019/308 (“Decision”), it has been determined that lawyers, law offices, the people and organizations operating in the finance, real estate consultancy and insurance sectors, which use softwares, programs and applications allowing the querying of personal datas of citizens, such as identity and contact information, to be filed against with criminal complaints under the relevant Turkish Criminal Code (“TCC”) and to be subjected to administrative proceedings in accordance with Article 18 of the Law on Protection of Personal Data No. 6698 (“KVKK”) for using these softwares, programs and applications.

In the Decision which primarily concerns the law offices and the legal and real persons operating in the finance, real estate and insurance sectors, it is stated that obtaining the identity and contact information by various means constitutes a violation of the data security obligations of the data controller in the context of the KVKK. In addition, it has been stated that it will be notified to the Chief Public Prosecutor’s Office in accordance with the relevant articles of the TCC.

The use of the software mentioned in the Decision shall be within the scope of each type of crime regulated in the provision of TCC regarding the protection of personal data. According to Decision, criminal charges and criminal responsibilities may arise for real and legal persons, who use the related software, which may cause significant damages especially in the context of the TCC.

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Kavlak Law Firm, growing since 2006 with its qualified and dynamic lawyers, is one of the leading law firms of Turkey. With our effective works provided for our client portfolio which includes, by majority, local, international and multinational commercial and financial organizations, we provide distinguished legal support. Kavlak Law Firm, with the lawyers it co-operates in all of the major cities of Turkey, and worldwide, is able to respond immediately to clients' demands, provides a time-efficient service, based on mutual trust, works on long-term cases with each client, and adapts the clients' working principles and provides service accordingly.

Please visit our web site at www.kavlak.com.tr for further information on our legal team and practice areas.

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