FEBRUARY 2019

LAW UPDATES

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ISSUE

Amendments on the Banks' Transactions Subject to Approval and Indirect Shareholding Regulation

The Regulation on the Amendment of the Banks' Transactions Subject to Approval and Indirect Shareholding (dated November 1, 2006 and numbered 26333) was published in the Official Gazette dated February 13,2019 and numbered 30685. With this amendment, some exceptions were introduced to the permissions of banks to be taken by the Banking Regulation and Supervision Agency ("BRSA"). According to the regulation before relevant Amendment, banks operating in Turkey was subjected to the approval of the Agency for establishing new subsidiaries domestically or abroad or participating in established subsidiaries. However, with the new regulation, by adding the financing provided under the financing partnership stated in Article 19 of the Regulation No. 26333 exceptions granted to this permission have been extended. Therefore, the financing partnerships defined in Article 19 will not be subject to Agency permission for the financing to be provided by participating in the capital of the companies. Again, due to the Amendment, by observing the corporate governance principles and prudential provisions, banks established in Turkey can perform some operations only if they notify the Agency at least 30 days before the operation. These operations are as follows:

• Banks, whose total share in foreign partnership does not exceed 0.3% of the Bank's equity, can acquire foreign companies' shares if such acquisition is mandatory under the laws of the relevant jurisdiction provided that it reports to the Agency a report detailing the scope of activity of the partnership,

• Banks whose ratio of the total branch size in a country to bank's assets does not exceed 10% and obtained previous approval to open a new branch in that country from the Agency, can open additional branches in the same jurisdiction.

Debate and Cancellation on the Constitutional Framework of Disciplinary Penalties Given to Opposition to Interim Injunction

In the Official Gazette dated February 20, 2019, the decision of the Constitutional Court dated July 11, 2018 and numbered 2018/1 was published. In this decision, the first sentence of Article 398 (1), entitled "The punishment of the opposition", of Law No. 6100 on Civil Procedure was annulled on the grounds that it was against the Constitution. The application for annulment has been made on the basis of violation of Articles 13, 19 and 38 which are entitled respectively; restriction of fundamental rights and freedoms, personal liberty and security, principles relating to offences and penalties. However, because of the Court is not bound by examining and justifying the issue through the file in accordance with Article 43 of the Law No. 6216 on Establishment and Rules of Procedures of the Constitutional Court, he found the provision to be annulled contrary to Articles 2 and 36 of the Constitution. Article 2 of the Constitution defines the Republic of Turkey as a constitutional state and as a result of being a state of law, principles of certainty, legal security and proportionality must be mainly. In the case of opposition to the interim injunction of the aforementioned Article 398, a disciplinary imprisonment of one month to six months has been envisaged and which actions will be punished, the type of punishment to be applied and the upper-lower limits of the penalty has been indicated. Therefore, the relevant provision is in compliance with the principles of predictability and certainty, thus, it ensures the respect for the court decisions by not leaving unlawful actions against interim injunction. However, when the Article 398 is taken together with the other articles of Law No. 6100, contradictory and inadequate statements are formed. Although it is foreseen that right to appeal can be used in case of the rejection of interim injunction, the procedural principles of the disciplinary imprisonment and the right to appeal against disciplinary imprisonment were not mentioned. In this respect, the provision is not clear and predictable. There is no doubt that disciplinary confinement will restrict the freedom of the person. As a result of a provision, which is not stipulated with rules and procedures and the right to be appealed is left in uncertainty, will harm the legal security of persons and the right to seek rights, Article 398 (1) of Law No. 6100 has been annulled. This Decision shall enter into force nine months after the date of publication in the Official Gazette.

Acceleration The Vat Refund Process

The Ministry of Treasury and Finance has determined the principles of monetary claim for refund with The Communique related to making amendments on the Value Added Tax General Practice Communique which has been published in the Official Gazette dated February 15, 2019. Pursuant to the Communique, 50 percent of the monetary cash refund claims arising from the transactions in January, 2019 and after, which have the necessary conditions and does not contain any negativity, will be pay back within 10 working days after drafting VAT Refund Preliminary Report. The 10-day period will begin with the clarification of the amount after the preparation of the VAT Refund Pre-Check Report. The rest of the amount will be paid following the controls related to the Certified Public Accountant VAT Refund Confirmation Report and other controls to be made by the tax office.

The taxpayers shall fulfil the undermentioned requirements in order to benefit from the VAT refund:

- Must have submitted VAT declaration at least for 24 months
- Their 3 previous requests for refund in taxation period should not be concluded
- Taxpayer, his/her partners, partnerships and his/her legal representatives should not be the subject of the special essentials
- Not being taken under examination due to forge a document individually or in an organized manner as a result of the evaluations and analyse made by the relevant departments of the Ministry of Treasury and Finance

The Latest Amendments On The Notice Procedures And Principles Of The Personal Data Violation

Pursuant to Article 12/5 of Law No. 6698 on Personal Data Protection, incase processed personal data is acquired by others through unlawful means, data controllers must notify the data subject and the Personal Data Protection Board of this situation as soon as possible. The Board is required to announce this situation on its own website or in any other proper platform.

In the Personal Data Protection Board's decision dated January 24, 2019 and numbered 2019/10, it has been stated that the term "as soon as possible" should be construed as "within 72 hours". In this regard, data controllers must notify the Board of a data breach within 72 hours at latest and without any delay by using "The Personal Data Breach Notification Form".

In the event that the notification cannot be made within 72 hours by the data controller without reasonable grounds, the reasons for the delay shall be disclosed to the Board with the notification will be made. When the data controller determines the persons affected by the relevant data breach, this breach must be notified the affected data subjects directly or, if this is not possible, by other appropriate means such as publishing information regarding the data breach on its website.

The purpose of making data breach notices is informing the Board and the persons affected by the breach regarding the data breach and ensuring that measures are taken to prevent or minimize the negative consequences that may arise about these persons as a result of the breach. It was noted that the Board aimed that the regulations were approached to the European General Data Protection Regulation (GDPR) which entered into forced on May 25, 2018. Thus, it can be said that Law No. 6698 on Personal Data Protection is gradually approaching the practices in Europe with the decisions and regulations introduced. With the relevant decision, providing the using form which will be used by natural/legal persons may mean that both the Institution pays attention to the process of data violations and they expect to continue the process by standardizing the processes within the legal entities.

Personal Data Protection Board's Current Decisions

Three significant decisions of Personal Data Protection Board have been published on the Board's official website on February 18, 2019. The details of these decisions will be briefly summarized below;

• With the Decision dated June 28, 2018 and numbered 2018/69 on the destruction of personal data in the registry files, The Board has referred to the requests for deletion / destruction / extermination of personal data conducted to the data controller by the person concerned in the Article 7 of the Law on the Protection of Personal Data No. 6698. The person concerned in the decision is a civil servant and his/her request directed to the data controller is destruction of the records related to the examination - investigation requests opened in his/her civil service period. The Board of Protection of Personal Data resolved that it is lawful for the data controller not to fulfill the demand for destruction. In the justification of the decision, it is stated that according to the Civil Servants Law No. 657, such data records, even if the duty of civil servants is terminated, will be kept by the public institution which affiliated with their personal files. It is also stated that, in accordance with the Regulation on the State Archive Services, as long as 101 years have not been passed, this document will be retained as an archival material.

Seeing the processing conditions of personal data which is stipulated in Article 5/2 of the Law No. 6698; and the above-mentioned decision which is a precedent for processing of personal data is clearly stipulated in the law, The Board pointed out that the data destruction times included in the laws will gain importance in the duration of personal data processing and disposal.

• According to the Board's decision dated July 26, 2018 and numbered 2018/91 on the prevention of unlawful access to personal data, the data subject has applied to the data controller which is a ready to wear company since her personal data she shared with the data controller with the aim of receiving the deliveries is also accessible for third parties. The data subject who found the answer to this application insufficient has then applied to the Authority. After the evaluation, since the adequate technic and administrative measures had not been taken by the data controller, the Board has decided to give an administrative fine to the data controller and give instructions to dispose all of her personal data.

• In the decision dated December 5, 2018 and numbered 2018/143 on the transfer of health data to third parties without relying on one of the processing conditions referred to in Article 6 of Law No. 6698, preservation of health data which are counted as special categories of personal data has been mentioned. According to the decision subject, the data subject's special categories of personal data relating to medicines received from the pharmacy has been forwarded to a third party without data subject's explicit consent and any legal measures. This transfer has been deemed as against the legislation, so an administrative penalty was imposed to the data controller. The penalty grounded on the Article 12 Paragraph 4 of Law No. 6698, has showed that technic and administrative measures should have been taken and applied properly especially in the process of special categories of personal data.

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