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LAW UPDATES

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Regulation on Banks' Information Systems and Electronic Banking Services Has Been Published

I. Open Banking

“Open Banking Services” and “API” are the concepts defined in the Regulation. With the Regulation that has been established as one of the compliance steps of Turkish Legislation to the EU Payment Services Directive (PSD2), BRSA has been authorized to regulate open banking services.

II. Information Systems

Information Systems (“IS”) are defined as “the collection, processing, storage, distribution and use of information for the human resources, operational activities and processes and information technologies that interact with all the foregoing”.

Policies, procedures and inventories that shall be prepared in the scope of IS management have been established in the Regulation.

With the Regulation, the ultimate responsibility for ensuring the information security has been assigned to the Board of Directors of the Bank, and a parallel regulation is provided with the requirement that senior management should play an important role in the information security processes. Pursuant to the Regulation, the Board of Directors is responsible for carrying out and performing all necessary activities within the scope of the continuity of the IS systems

III. Data Privacy

Article 9 of the Regulation regulates the data privacy processes. Accordingly; it has been decided that the banks should take measures to ensure confidentiality for the occasions when the data used in banking activities are carried, transmitted, processed, stored and kept as backup.

For the encryption techniques to be used to ensure data privacy, algorithms that are reliable and compatible with today's technology shall be used. In this context, it is expected that the security questions such as “Your mother's surname before marriage” which is still being used by the banks despite losing their security function, will be replaced by current technical practices.

Sensitive data, which are regulated in the regulation subject to different security measures, may cause confusion by definition. While the concepts of "Explicit Consent" and "Personal Data" has been regulated parallel to the Personal Data Protection Law ("KVKK"), the sensitive data definition in the Regulation does not coincide with the one under Article 6 of KVKK. Therefore, it probably will turn into a problematic topic in practice.

IV. Management of Identity and Access

Banks shall provide an authentication method regarding the access to information assets in accordance with the security category of the asset. The authentication method to be used shall be determined as per the principle of separation and access controls defined for users as a consequence of their responsibility.

V. Track Record

Banks shall establish an effective track record mechanism for transactions and events that take place within information systems pro rata the size and complexity of their information systems and activities.

In the phase of providing the telephone banking services the procedures and principles determined for the track records will be applied..

VI. Network Security

Within the scope of the Regulation, banks are obliged to establish the necessary network security control systems for threats that may arise both from their own corporate network and external networks. In the establishment of security measures, gradational security measures shall be used in cases when one level of security is overpassed.

Unless approved by the information security officer, remote access to inhouse bank applications and system shall not be made possible by the bank personnel and external service providers.

VII. Physical Security Control

Critical information systems shall be placed in secure areas such as data centres, system rooms, network equipment rooms with appropriate security barriers and access controls, and access to these areas shall be restricted to use of the personnel, having exclusive access permission. Banks are obliged to take into account the natural risks and environmental threats while choosing the locations of the data centres, and to use camera recording systems without a blind spots for specific areas to be observed and shall keep records for at least one (1) year.

VIII. Cyber Incident Management

The bank is obliged to create a cyber incident management and cyber incident response process for the handling and monitoring of cyber incidents that take place after cyber incidents, and to return BS services to normal operation as soon as possible with the least impact on banking activities.

IX. Preservation of Data Within the Country

Within the scope of Article 25 of the Regulation, it is made obligatory for banks to have their primary and secondary systems within the country.

It is determined that banking activities should be served using primary and secondary systems that are established within the country, except for the banking transactions such as payment or messaging systems, where interaction with abroad is required due to the nature of the transactions.

It is important that the Regulation is in line with both the Personal Data Protection Board's Google Decision and the Presidential Decree dated July 6, 2019, stating that the data belonging to public institutions and organizations cannot be stored in cloud storage services having a foreign origin.

X. Outsourcing Service

Article 29 of the Regulation regulates the outsourcing of services, and determines that necessary precautions must be taken to ensure that the security principles and practices of the external service providers have at least the same level with the Banks'.

Activities conducted by external service providers should be subject to the same inspections as if the activities are carried out within the bank.

These measures for external service providers shall constitute an important step in minimizing the risks arising from third parties' activities.

XI. Electronic Banking Services

Unless otherwise stated, Article 34 of the Regulation states that banks are supposed to apply to their customers an authentication mechanism consisting of at least two (2) components for electronic banking services, which shall have totally different algorithms, and such authentication components shall contain all necessary precautions of non-disclosure during their use of the authentication process. These two components shall be selected amongst the following data that the customer "knows" or "owns", or "has a biometric characteristic".

The Regulation, which shall enter into force on July 1, 2020, has a nature to play a substantial role in terms of bringing an institutional arrangement to the banks' information systems and internal operations, business continuity, electronic banking issues by BRSA and supporting all aforementioned issues by the help of the principles of cyber security and data privacy.

Communiqué Amending the Communiqué on the Procedures and Principles Regarding the Fees Banks can Charge to Corporate Clients has been Published in the Official Gazette

Communiqué Amending the Communiqué on the Procedures and Principles Regarding Fees Banks can Charge to Corporate Clients numbered 2020/8 has been published in the Official Gazette dated March 11, 2020 and numbered 31065(“Communiqué”).

With the Communiqué, some changes have been introduced regarding the commercial loans received by commercial customers from banks. Accordingly, banks will have to accept the requests of the customers for the early payment of the entire loan.

Early payment fees that may be collected from customers for the loans in Turkish Liras shall not exceed one percent (1%) of the loan amount, which is calculated by the discounts made on the necessary interest and other cost elements and paid early to the bank by the customer and the remaining time for due date of which, does not exceed twenty-four (24) months, and two percent (2%) for the same foregoing loan amount, the remaining time for due date of which, exceeds twenty-four (24) months. In foreign currency or foreign currency indexed loans, the foregoing maximum fees will be applied with one-point increment.

The Decree has come into force on the date of publication which is March 11, 2020.



Communiqué on Implementation of Digital Service Tax Has Been Published

Communiqué on Implementation of Digital Service Tax (“Communiqué”), has been published and entered into force with the Official Gazette dated March 20, 2020 and numbered 31074. With the Communiqué, practical issues such as the subject of the digital service tax (“Tax”), taxpayers, exemptions and exceptions are regulated. According to the Communiqué, the revenue generated from (i) search engine advertisements, (ii) banner advertisements, (iii) all kinds of audial, visual or written advertisements published in digital media, (iv) advertisements transmitted online through software in electronic devices, (v) pop-up advertisements shall be subject to the Tax.

Additionally, the revenue generated from the services provided in digital media intended for listening, watching, playing or using electronic devices on digital media shall also be subject to the Tax. Within this scope, the sale of (i) programs used in electronic devices such as computers, tablets, (ii) image, sound and text file contents, (iii) all kinds of digital games in digital media will be taxed. The services providing and operating digital media where users can interact with each other and the intermediary services for digital services shall also be subject to the Tax.

According to the Communiqué, the taxpayers shall be the service providers. However, the fact that the taxpayers are resident in Turkey or not does not affect the obligation of to pay the Tax. Thus, the persons generating revenue from the aforesaid services which do not exceed 20 million Turkish Liras in Turkey or 750 million Euros worldwdes shall be exempt from the Tax.



Precautions for Coronavirus

The corona virus ("COVID-19") emerged in Wuhan, People's Republic of China at the end of 2019 and has become an international epidemic by spreading to many countries since the beginning of 2020. After March 11, 2020, with the T.C. Health Ministry's official declaration that a patient with a positive test result, Turkey has become one of the countries having the epidemics. In this context, with the Circulars issued by the Ministry of Internal Affairs, a number of measures has been announced in order to prevent the spread of the epidemic across the country. According to the foregoing, the following resolutions have been made:

- Passengers' entries in and exits to have been ceased for the countries determined by the Scientific Board,
- To make fourteen (14) days of inspection, control, surveillance and if necessary, quarantine proceedings, according to the procedures and principles determined by the Ministry of Health, for such countries detected to be risky;
- To cease the activities of such pavilions, discotheques, bars, night clubs for temporary conditions, which operate as "Public Resting and Recreation Areas" and the such places where the citizens will be together very closely and increase the risk of infection;
- With the published last Circular, to temporarily cease the activities of theatre, cinema, show centre, concert hall, engagement/wedding hall, restaurant/cafe with music, casino, pub, tavern, coffeehouse, cafe, cafeteria, country garden, hookah hall, hookah cafe, internet lounge, internet cafe, all kinds of game halls, all kinds of indoor playgrounds (including shopping malls and restaurants), tea garden, association lounges, amusement park, swimming pool, Turkish bath, sauna, spa, massage parlour, SPA and sports centre of 81 provinces;
- To temporarily postpone all kinds of meetings and activities that bring people together, including the general assemblies and trainings of Non - governmental Organizations (Associations, foundations).

Decision Summary of Personal Data Protection Board on Exposure of Personal Data via SMS to Third Parties by Data Controller Attorney at Law Has Been Published

Personal Data Protection Board (“Board”) has published Decision Summary dated January 14, 2020 and numbered 2020/26 (“Decision Summary”). Following the examination of incident subject to the application, the Board has decided that; due to acting within the intention of protecting the rights and interest of the client Bank, data processing activity conducted by the Bank’s lawyer as a data controller to fulfil the legal obligations without explicit consent of data subject is legal within the scope of Article 5(2) of Personal Data Protection Law (“Law”). On the other hand, the Board has stated that obtaining a contact number that does not belong to the data subject through a third person whose identity is unknown and sharing such data with the actual owner of the number via SMS, with the intention of sharing it with the data subject, may not be considered in the scope of Article 5 of the Law. It has been decided to fine attorney at law who has acted uncompliant to data protection and privacy obligations regulated in Article 12 of the Law, administrative fine amounted TRY 50,000 according to Article 18 of the Law.



Decision Summary of Personal Data Protection Board on the Delivery of Data Subject's Credit Card to Third Parties by a Bank without Their Consent Has Been Published

Personal Data Protection Board (“Board”) has published a Decision Summary dated January 16, 2020 and numbered 2020/32 (“Decision Summary”) on the delivery of data subject’s credit card to third parties without obtaining the data subject’s explicit consent. In the incident, it was understood that the data subject’s renewed credit card distributed by the Bank was delivered to a second address of the data subject, which is a former workplace address. The Board determined that the Bank did not take adequate administrative and technical measures in line with its obligations to ensure the retention of personal data during the card delivery, and did not make sufficient and reasonable efforts to keep the data of the data subject up-to-date. Within this framework, an administrative fine of TRY 50,000 has been executed on the Bank.

Decision Summary of Personal Data Protection Board on Processing of Data Subject's Mobile Phone Number by An Education Institution without Any Legal Data Processing Ground and Sending Advertisement / Informative Messages to the Number Has Been Published

Personal Data Protection Board ("Board") has published Decision Summary dated January 14, 2020 and numbered 2020/20 ("Decision Summary"). The subject of the Decision Summary is the data subject's complaint made to the Board regarding Education Institution's process of the data subject's mobile phone number without any legitimate grounds for such data processing and sending an advertisement / informative message to the relevant number. According to the Board's evaluation of the incident, it was determined that, the data subject's personal data has been processed by the Educational Institution by sending advertisement message to the mobile phone without explicit consent of the data subject or other processing conditions listed in Article 5/2 of the Personal Data Protection Law . Due to this fact, it was decided to impose an administrative fine of TRY 50,000 on the Educational Institution, which did not take the necessary technical and administrative measures to ensure the appropriate level of security in order to prevent the illegal processing of personal data under the Law.

Decision Summary of Personal Data Protection Board on Rejection of the Request Regarding the Phone Call Records between the Contact Person and the Data Controller Company Has Been Published

Personal Data Protection Board (“Board”) has published Decision Summary dated January 14, 2020 and numbered 2020/13 (“Decision Summary”). The subject of Decision Summary is rejection of request of the data subject to access the phone call records made in connection with the transactions regarding the brokerage agreement executed between the data controller company and the data subject. As a result of the evaluation, the Board stated that the balance between (i) data subject’s right of access under Article 11 of the Personal Data Protection Law (“the Law”) and (ii) the explanation of data controller emphasising that records containing personal data of people other than the data subject may only be delivered if it is requested by the legal authorities, should be established. Therefore, instead of the delivery of the recorded media for the requested call recordings directly to the data subject, it has been decided to provide the right to access to the transcripts of the requested audio recordings in a way that allows the content of the data to be fully understood by the data subject, and to inform the Board about such established procedures accordingly.



Regulation Amending the Regulation on Commercial Air Transportation Companies Has Been Published

Regulation Amending the Regulation on Commercial Air Transportation Companies (“Regulation”) has been published in the Official Gazette dated March 6, 2020; numbered 31060 and entered into force on the same date of publication.

Pursuant to the Regulation, a letter of guarantee, which is submitted to the Directorate General of Civil Aviation (“DGCA”) when the certificate of a certified company is cancelled as a result of the transfer of all assets and liabilities of the company to another one, will be returned to the transferee company. However, before the amendment, the final and indefinite guarantee letters, which worth 500 thousand dollars of the airline companies, whose licenses were cancelled, were being converted to cash by DGCA.

Furthermore, with the Regulation, the obligation of not being more than fifteen (15) years old on the date of first registration to the Turkish Civil Aircraft Registry for the passenger transportation aircraft and the obligation of not being more than twenty-five (25) years old on the date of first registration to the Turkish Civil Aircraft Registry for the cargo handling aircraft have been amended.

Lastly, the condition of having aircrew license for the flight operation managers and ground operation managers that will work for airway companies has been amended. Thus, the employees in charge of flight operation and the employees in charge of training will not be obliged to be pilots actively working.



Decree on the Amendments to the Decree No. 32 on Protection of the Value of Turkish Lira Has Been Published in the Official Gazette

Decree on the Amendments to the Decree No. 32 on Protection of the Value of Turkish Lira numbered 2182 has been published in the Official Gazette dated March 3, 2020 and numbered 31057 (“Decree”).

According to the Decree, passengers who are not citizens of Republic of Turkey and are 18 years old or older will be able to bring their unprocessed gold weighing 5 kilograms in total to Turkey within a calendar year.

In this context, the gold to be brought to Turkey should be produced by the refineries included in the Refineries List published by Borsa İstanbul A.Ş., should have the seal or name or emblem of the refinery and should be declared to authorized customs offices with the gold declaration form published by the Ministry of Commerce.

The Decree came into force on the date of publication which is March 3, 2020.



The Decision of The Supreme Court Regarding the Appeals Period

According to the decision of the Supreme Court dated February 5, 2020 and numbered 2020/468E. 2020/538K. (“Decision”), it has been decided that “In case the short decision includes all the elements of the judgment that has been declared to the parties by the court except for the detailed reasoning of such decision, then the appeal period shall commence from the receipt of the notification of the reasoned judgement to the relevant party. However, if the decision has been declared and fulfilled with all its elements together with reasoning, it is accepted that the decision is considered to be properly and completely delivered to the relevant parties in accordance with Article 321/2 of the Code of Civil Procedure, and the appeal period begins on the date of such pronouncement. It is obligatory to understand the concept of delivery, which is mentioned in Article 8 of the Law No. 5521 and the basis of the beginning of the appeal period, as “the occasion where all the reasoning has been declared in the judgment””.

03. 2020

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03. 2020

LAW UPDATES

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ISSUE 18