

04. 2020

# LAW UPDATES

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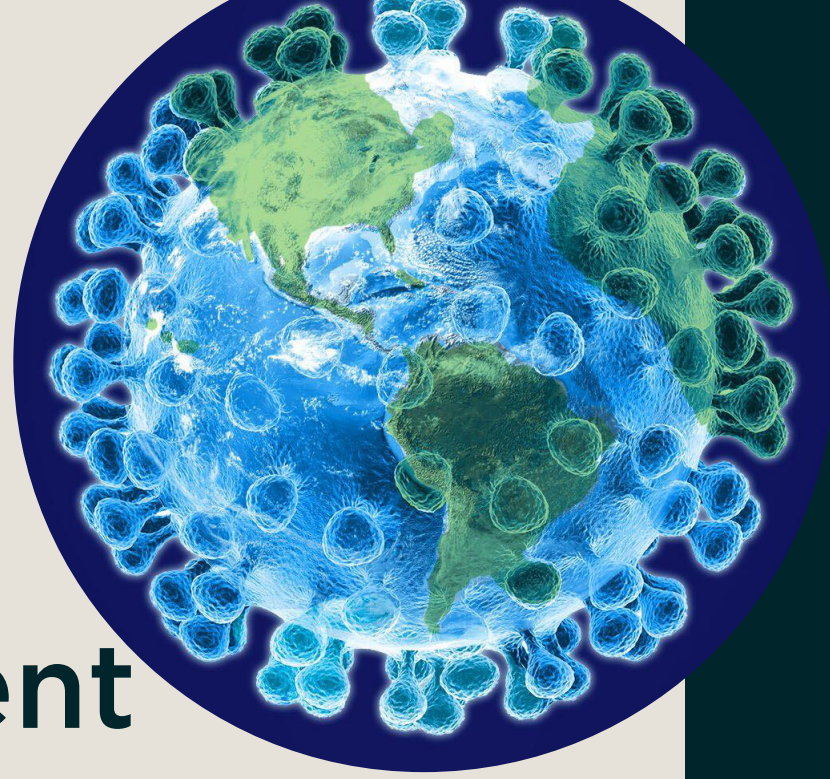


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# Public Announcement on Distance Education Platforms

The Personal Data Protection Authority (“the Authority”) has published a public announcement on distance education platforms on April 7, 2020 (“the Announcement”). The Authority has evaluated the increasing usage of distance education platform due to Covid - 19 Pandemic; and accordingly detected that the personal and biometric data of the students has been processed and such data has continuously been transferred abroad because of the use of the cloud service providers. In the Announcement, it is emphasized that the aforementioned activities of the platforms have to be in line with the data processing and transfer conditions set out by Personal Data Protection Law and necessary data security measures should be taken by all platforms.



# Announcement on Processing of Location Data in the Fight Against COVID-19

Personal Data Protection Authority (“Authority”) has published a public announcement titled Processing of Location Data in Fighting Against Covid-19 and the Requirements in Monitoring the Mobility of Individuals (“the Announcement”) on April 9, 2020. The Authority has announced that it is possible to process the location data for public institutions and organizations in order to prevent the spread of the Covid-19 pandemic, due to its threat to public security and public order. It is announced that the relevant data processing will be evaluated within the scope of Article 28 of the Personal Data Protection Law (“the Law”) and will not be evaluated within the scope of the Law. However, it is emphasized to ensure data security and destruct processed data if the legal reason of processing activity disappears.





# Announcement on Binding Corporate Rules Has Been Published

Personal Data Protection Authority (“the Authority”) has published an announcement on the Binding Corporate Rules regarding the personal data transfers between multinational corporate communities (“Announcement”) on April 10, 2020. With the Announcement, in addition to the already existing conditions of obtaining explicit consent of owner of personal data to be transferred and drafting an undertaking and applying for an approval to the Authority, a new opportunity has been introduced to the members of the same multinational corporate communities enabling them to transfer the data by drafting Binding Corporate Rules and applying for approval to the Authority within the scope of the Personal Data Protection Law. Headquarter located in Turkey of relevant corporate community shall apply to the Authority for Binding Corporate Rules together with the Application Form attached to the Announcement and the other required documents.





# Artificial Intelligence and Data Science

Personal Data Protection Authority (“Authority”) and Istanbul Technical University (“ITU”) has executed a cooperation protocol on artificial intelligence and data science (“Protocol”). Within the scope of the Protocol, it is aimed both by the Authority and ITU to carry out joint studies and publications regarding the protection of personal data, data privacy and data security; to carry out national and international projects and to cooperate on education and training areas.



# Announcement on Time Period Obligations of Data Controller's Has Been Published

The Personal Data Protection Authority (“Authority”) has published an announcement on 23 March, 2020 regarding the coronavirus (“COVID-19”), which has been declared as a pandemic by the World Health Organization on March 11, 2020 and has become widespread in our country. With the announcement, the Authority has declared to the public that the Authority shall re-evaluate the time periods and deadlines that data controllers must comply with in accordance with present situations due to the current extraordinary condition the public is going through, however the data controllers are still expected to fulfil their obligations within the scope of the currently existing time periods and other matters. The announcement, which underlines the obligations that the data controllers must comply with in the present situation, and also contains the necessary reminders regarding the deadlines, is crucial for many institutions and organizations.



# Public Announcement on Essential Information while Combating Covid-19 under the scope of Personal Data Protection Law Has Been Published

Personal Data Protection Authority (“Authority”) has published an announcement on the essential information to be known in the scope of Personal Data Protection Law (“Law”) during the fight against Covid – 19 pandemic, which has been affecting many countries around the World including Turkey (“the Announcement”) on March 27, 2020. The Authority stated that providing health services and protecting public health is essential in the current situation. However, even in this case, it is explained that all legal obligations of data controllers and processors arising from the Law will continue. In addition to the foregoing, the Authority has answered questions frequently asked by employers related to the the fight against the Covid-19 pandemic.



# Amendments Introduced to Law on Regulation of Retail Trade with the Publication of the Law on Reducing the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law on the Amendment of Certain Laws No. 7244

Law on Regulation of Retail Trade with the Publication of the Law on Reducing the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law on the Amendment of Certain Laws (“Law”) has been published in the Official Gazette dated April 17, 2020 and numbered 31102. Along with the Law, a number of additions and amendments have been introduced in Article 18 of the Law on the Regulation of Retail Trade (“Retail Trade Law”) and Additional Article 1 has been added thereto. The two essential additions that have been brought in to the Retail Trade Law, which have not previously been included in the Retail Trade Law, are about the exorbitant price and stocking.

Accordingly, manufacturers, suppliers and retail businesses are prohibited from (i) exorbitant increase in the sales price of goods or services, and (ii) preventing the consumer from accessing the goods by creating a narrowness in the market, disrupting market balance and free competition. The persons who violate these prohibitions will be subject to administrative fines from (i) 10,000 Turkish liras to 100,000 Turkish liras, (ii) 50,000 Turkish liras to 500,000 Turkish liras, respectively. Stocking and exorbitant price increases have already been prohibited under the Turkish Criminal Law Article 240 and the following articles, and penalties are imposed in this regard.

In addition to the foregoing, Unfair Price Evaluation Board (“Board”) has been established with the aim of making arrangements, imposing administrative fines and taking all kinds of measures by making inspections and examinations for exorbitant price increases and stocking practices of manufacturers, suppliers and retail businesses. The formation, duties, working principles and procedures of the Board, secretarial services and other issues related to the Board will be determined with a different regulation.

# Amendments Introduced to Turkish Commercial Code with the Publication of the Law on Reducing the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law on the Amendment of Certain Laws No. 7244

Law on Reducing the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law on the Amendment of Certain Laws (“Law”) which is prepared in order to reduce the negative effects of COVID-19 epidemic on social and economic life has been published in the Official Gazette dated April 17, 2020 and numbered 31102. With the publication of the Law, some amendments have been made to the Turkish Commercial Code No. 6102 (“Commercial Code”).

In accordance with Article 12 of the Law, Temporary Article 13 has been added to the Commercial Code and accordingly; except for the companies in which the state, special provincial administration, municipality, village or other public legal entity is a shareholder holding or directly or indirectly owning more than fifty percent (50%) of the shares,, the equity companies shall not distribute dividends formore than twenty-five percent (25%) of their net profit for the fiscal year of 2019; shall not distribute retained earnings and free reserve funds, and the general assemblies of these companies shall not grant the board of directors of the company the authority to distribute advance dividends until September 30, 2020. The President of Republic of Turkey is authorized to extend and reduce the mentioned period for three (3) months.

In addition to the foregoing, if the general assembly has already taken a dividend distribution resolution for the 2019 financial year before the enforcement of the Law, but the payment was not yet made or made partially, companies must postpone to make the dividend payments for the amounts exceeding the twenty-five percent (25%) of their net profit for the 2019 financial year.

# Latest Amendments on the Criminal Execution Provisions

The Law Amending the Law on the Execution of Sentences and Security Measures and Certain Laws numbered 7242 has been published in the Official Gazette numbered 31100 dated April 15, 2020 (“Law”). The Law has amended certain criminal law regulations that are in force.

In this context, the scope of penalties to be applied in open penal institutions have been extended and accordingly; the executions of the penalties of (i) the criminals sentenced to imprisonment for three (3) years or less due to intentional crimes (ii) the criminals sentenced to imprisonment for five (5) years or less due to negligent crimes (iii) the criminals, whose punitive fine penalties have been converted to imprisonment and (iv) the criminals, who has been imposed a pressure imprisonment in accordance with the Enforcement and Bankruptcy Law will directly be performed in open penal institutions.

In addition to the foregoing, due to the COVID-19 pandemic, certain convicts have been granted with right to leave until May 31, 2020 and temporary provisions have been adopted on probation. According to Article 46 of the Law, convicts, who committed crimes before March 30, 2020 and who have demonstrated goodwill and situated at open penal institutions or juvenile detention centres, having three (3) or less years remaining until their conditional release, may be entitled to go on probation. First - degree murder, intentional injury, aggravated intentional injury, torture, crimes against sexual inviolability, violation of privacy, narcotic crimes and terror crimes are excluded from this provision’s scope and application.

Lastly, the duration, that the convicts shall spend in penal institutions in order to benefit the conditional release have been re-regulated in Article 48 of the Law. In this context, the rule of serving 2/3 of the total penalty in penal institutions to benefit from the conditional release provisions has been halved, and the rate has been reduced from 2/4 to 2/3 in terms of repeated crimes or organized crimes. First-degree murder, intentional injury, aggravated intentional injury, torture, crimes against sexual inviolability, terror crimes, violation of privacy, crimes of divulging state secrets, and espionage are excluded from this provision’s scope and application.



# Latest Amendments on Labour Law

Within the scope of the measures due to the COVID-19 pandemic, the Law on Reducing the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law on the Amendment of Certain Laws no. 7244 (“Law”) has been published in the Official Gazette numbered 31102 and dated April 17, 2020. According to Article 9, with which the Temporary Article 10 has been added into the Labor Law , any kinds of employment agreements shall not be terminated for three (3) months by the employer except for the terminations arising from the “employee’s behavior contrary to the rules of ethics and goodwill and similar cases” in paragraph (II) of Article 25 of the Labor Law. In this context, the employer may send an employee on unpaid leave in this three-months (3 months) period, and the fact that the employer sends an employee on unpaid leave does not give the employee the right to terminate employment agreement based on just cause. According to Article 7, with which the Temporary Article 24 has been added into the Unemployment Insurance Law , the employees who have been sent on unpaid leave under the Law, and who cannot benefit from the short-term working allowance, will receive a salary support amounting to 39.24 Turkish Liras per day from the unemployment fund. In case it is determined that the employee benefiting from the salary support has actually physically worked by the order of the employer while they were on unpaid leave, the employer will be fined an administrative fine equal to the minimum monthly gross salary valid on the violation date monthly per employee, and the paid salary support will be collected from the employer plus the legal interest accrued from the payment date of the salary support. Lastly, according to Article 8 with which the Temporary Article 25 has been added to the Unemployment Insurance Law, within the context of the applications for the short-term working allowances made by the employers, the short-term working allowances support will be paid to the employees with the employers’ declaration, without the need for waiting for the completion of the eligibility assessment. However, overpayments and improper payments made due to incorrect information and documents provided by employers will be collected from the employer, along with the interest that has arisen.

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## About Our Firm

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](http://www.kavlak.com.tr) for further information on our legal team and practice areas.

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