

newsletter

LEGAL UPDATE | TURKEY

JUNE 2016

This newsletter aims to provide a brief outlook of the main legislative changes that occurred in Turkey in the course of March, April and May 2016. You can also find previous publications issued by our firm by visiting [our website](#).

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COMPETITION

Contributed by İklim Kelekçi

The Turkish Competition Board issued Block Exemption Communiqué no. 2016/5 on Research and Development Agreements ("Communiqué no.2016/5"), which replaces the Communiqué no. 2003/2 regulating the same subject matter. The Communiqué no. 2016/5 was published in the Official Gazette and entered into force on 16 March 2016.

The purpose of the Communiqué no. 2016/5 is, in accordance with the recent changes of the relevant European Union legislation, to exempt qualified research and development ("**R&D**") agreements from the application of Article 4 of the Law on Protection of Competition.

The main amendments may be summarized as follows:

- AN R&D agreement may benefit from the block exemption if it stipulates the joint use of the results and meets the market share thresholds.
- R&D agreements providing for the assignment or licensing of intellectual property rights to one or more parties or to a legal structure constituted by the parties for the purpose of conducting joint R&D, paid R&D or joint use of results, may also benefit from the block exemption provided that the assignment or licensing of intellectual property rights does not constitute the essential purpose and is directly associated with, and necessary for, the implementation of a relevant R&D agreement.

- Paid R&D concept is introduced, where one party performs the R&D activities and the other party finances such activities.
- An exemption period starting from the date of introduction of a product (subject to an R&D agreement) on the Turkish market is increased from five years to seven years.
- In the presence of one of the below listed restrictions in the R&D agreements, only the relevant restriction itself will be excluded from the scope of the block exemption, while the rest of the R&D agreement may still benefit from the block exemption:
 - restriction of the right to challenge the validity of an intellectual property right after completion of R&D; and
 - in the presence of a joint or paid R&D agreement, restriction of the right to produce the products or the right to grant licences to third parties for implementation of technologies subject to the R&D agreement (where the joint use of R&D results is not foreseen by the agreement).

It should be noted that R&D agreements signed before 16 March 2016 in compliance with the former Communiqué no. 2003/2 shall be aligned with the new conditions of the Communiqué no. 2016/5 before 16 April 2016 in order to remain in the scope of the block exemption. Otherwise, such R&D agreements cannot further benefit from the block exemption and may become non-compliant with the Competition Law no. 4054. In this case, an application to the Turkish Competition Board to obtain an individual exemption might be considered as an option, if relevant conditions are met.

EMPLOYMENT

Contributed by Ali Osman Ak and Safa Cenanoğlu

The Ministry of Labour and Social Security amended the Regulation on Application to Mediator and High Board of Arbitration in the scope of Collective Labour Agreements.

The amending Regulation was published in the Official Gazette and entered into force on 4 March 2016. Accordingly, the chairman of the High Board of Arbitration will be the longest working chairman among the chairmen of the Court of Cassation's chambers in charge of disputes arising from the Law on trade unions and collective agreements.

The Ministry of Labour and Social Security amended the Regulation on Duties, Authorities, Responsibilities and Trainings of Workplace Doctors and other Medical Personnel.

The amending Regulation was published in the Official Gazette and entered into force on 7 March 2016. The amendments made to the Regulation mainly relate to the certification process of workplace doctors and medical personnel.

The Law no. 6701 on Turkish Human Rights and Equality Institution ("Law no. 6701") was published in the Official Gazette and entered into force on 20 April 2016.

Pursuant to Article 3 of the Law no. 6701, each person may equally benefit from legal rights and freedoms. The Law no. 6701 forbids discrimination based on gender, ethnicity, nationality, skin colour, language, religion, philosophical or political opinion, wealth, birth, marital status, medical condition, disability or age. The Law no. 6701 stipulates nine types of discrimination, with mobbing listed as one of them with regard to employment law and also contains further provisions directly related to employment law issues. Please refer to our [Client Alert dated 6 May 2016](#) for further information in this respect.

The Omnibus Law no. 6704 ("Law no. 6704") was published in the Official Gazette and entered into force on 20 April 2016. Pursuant to Article 56 of the Labour Law No. 4857, as amended by the Law no. 6704, the annual paid leave days may now be used in as many parts as the parties agree (instead of a maximum of 3 parts), provided that the one of the parts is not less than 10 days.

The Law no. 6715 amending Labour Law and Turkish Labour Institution Law ("Law no. 6715") was published in the Official Gazette and entered into force on 20 May 2016. The amendments offer employees of private employment agencies the possibility to be reemployed by a third party employer as a temporary employee, and introduce a remote working system in Turkish law. Please refer to our [Client Alert dated 14 June 2016](#) for further information in this respect.

The Ministry of Labour and Social Security amended the Regulation on Payment of Salaries, Bonuses, Premiums and Labour Rights via Bank Accounts. The amending Regulation was published in the Official Gazette and entered into force on 21 May 2016. Accordingly, the threshold of the minimum number of employees triggering the obligation for employers to pay salaries through bank accounts is decreased from 10 to 5 employees.

ENERGY

Contributed by Pınar Veziroğlu Dilek

Regulation Amending the Regulation on Electricity Market Connection and System Usage was published in the Official Gazette dated 23 March 2016. As a matter of principle, the power generation facilities falling within the scope of the Regulation on the Unlicensed Electricity Generation in the Electricity Market were not used to fall within the scope of the amended Regulation. This time, unlicensed electricity generation facilities for which development or new investments are required due to the insufficiency of their capacity of system usage in order to connect to the distribution system, as defined under Article 21 of the amending Regulation, has been included to the scope.

Regulation Amending the Regulation on Unlicensed Electricity Generation in the Electricity Market was published in the Official Gazette dated 23 March 2016. The amending Regulation has brought significant amendments, some of which may be listed as below:

- 1 MW of capacity at maximum can be allocated to the wind and solar energy generation facilities of a person or legal entity as well as to legal entities directly or indirectly controlled by the same, regardless of the number of consumption units. In other words, the unlicensed electricity generation facilities of the affiliated or group companies can be granted with up to 1 MW total capacity.
- The transfer of the shares of the unlicensed facility applicants is not allowed until completion of the provisional acceptance process. Failure to comply with this provision shall result in cancellation of the connection invitation letter of the unlicensed facility.
- The installed capacity of the unlicensed wind and solar generation facilities cannot exceed 30 times the connection capacity of the consumption unit related the generation facility.
- The generation facility to be installed cannot be connected to a distribution system located in another distribution zone.

- Air distance of the projects with up to 0.499 MW installed capacity cannot be more than 5 km from the grid whilst such distance is 10 km for the projects with more than 0.499 MW (up to 1 MW) installed capacity.
- A legal entity owning an unlicensed generation facility is entitled to merge with a fully-controlled direct subsidiary by way of absorption or with another legal entity owning an unlicensed generation facility together with its all assets and liabilities provided that the provisional acceptance process of the relevant generation facilities is completed. The same principle shall also apply to the demergers.

The Regulation furthermore extends the list of documents required for the connection applications.

For the unlicensed applicants who obtained a connection invitation letter before 23 March 2016, certain aspects of the new requirements will not apply such as distance to the grid, maximum installed capacity limit, ownership restrictions, 1 MW capacity limit for the affiliated/group companies.

Communiqué Amending the Communiqué on Unlicensed Electricity Generation in the Electricity Market was also published in the Official Gazette dated 23 March 2016 so as to be aligned with the amended Regulation on Unlicensed Electricity Generation in the Electricity Market. The Communiqué also provides that the lease agreements relating to the location where the generation facility will be installed on shall be concluded for at least two years.

The Decision of the Energy Market Regulatory Authority dated 30 March 2016 and numbered 6181 amended the Procedures and Principles regarding the Tariffs of the License Holder Legal Entities and Authorized Supply Companies. Accordingly, it has been decided that not only the consumers connected to the system with mid-voltage level but also all other consumers can benefit from the double-tariff. Furthermore, the restriction whereby system users were not allowed to request change of tariff classification more than 3 times in a year has been abolished.

The Decision of the Energy Market Regulatory Authority dated 30 March 2016 and numbered 6192-2 approved the tariff table to be applied as of 1 April 2016 (i) by the distribution companies to the users of the distribution system and (ii) by the authorized supply companies to the non-eligible consumers or eligible consumers who have not chosen their suppliers.

The Decision of the Energy Market Regulatory Authority dated 30 March 2016 and numbered 6193 approved the updated templates of (i) the Distribution System Usage Agreement, (ii) the Agreement for the Connection to the Distribution System by the Consumers, and (iii) the Agreement for the Connection to the Distribution System by the Legal Entities Carrying out Production Activities. It is also stated in the Decision that the general clauses of such Agreements shall be applicable to the connection or system usage agreements previously executed by and between the distribution companies and the users without need to sign a new agreement.

Regulation Amending the Regulation on Natural Gas Market License was published in the Official Gazette dated 31 March 2016. It extended the effective dates of Articles 21/7 and 28/17 of the Natural Gas Market License Regulation from 1 March to 31 December 2016. Said Articles provides that the information and industrial control systems of the transmission license holders and the distribution license holders required to install a ship's command shall be in

compliance with the information security management system standards defined in the relevant Regulation.

Regulation Amending the Technical Regulations to be applied to the Liquefied Petroleum Gases (LPG) Market was published in the Official Gazette dated 29 April 2016.

The Regulation includes the definitions of European Standards (EN) and International Organization for Standardization (ISO). Accordingly, the Regulation provides new technical principles and procedures for the LPG analysis in accordance with the European and International Standards.

The Regulation on Electricity Market Demand Estimates was published in the Official Gazette dated 7 May 2016.

It repealed the Regulation on Electricity Energy Demand Estimates published in the Official Gazette dated 4 April 2006. The new Regulation provides new procedures and principles to make, evaluate, update and approve the electricity demand estimates which will be applied not only to the distribution companies but also to the Turkish Electricity Transmission Company and suppliers in charge. Furthermore, the procedures and principles applying to the Organized Industrial Zones have been included in the Regulation.

The Regulation on Preparation and Implementation of the Purchase, Sale and Bidding Procedures of the Electricity Distribution Companies was published in the Official Gazette dated 25 May 2016.

The Regulation provides the principles for the construction, sale and service purchases within the scope of distribution activities as well as the purchase, sale and bidding procedures for the asset and service sales of the electricity distribution companies which are not subject to the Public Tender Law. By the Regulation, four different procedures have been accepted: (i) *open tender*, (ii) *tender upon invitation*, (iii) *direct supply*, and (iv) *out of scope purchase* and the methods of each have been detailed except for the out of scope purchases. The maximum amount for the works to be bound under one single agreement has been determined as TRY 20 million.

The Decision of the Energy Market Regulatory Authority dated 25 May 2016 and numbered 6298-2 confirmed the Primary Frequency Control Unit Service Rate proposed by the Turkish Electricity Transmission Company as 2.34 TRY/MWh for the 3rd quarter of the year 2016.

INSURANCE

Contributed by Arpat Şenocak and Ece Çakırel Eşkinat

The Financial Crime Investigations Board has issued General Communiqué no. 14 amending General Communiqué no. 5 on Simplified Measures for the Customer Recognition Principles according to the Regulation on Preventive Measures of Money Laundering and Financing Terrorism, published in the Official Gazette on 18 March 2016.

This new Regulation contains significant changes in favour of the distance sale of life insurance agreements. Please refer to our [Client Alert dated 23 March 2016](#) for further information in this respect.

The Communiqué no. 16/2016 on Health Insurance Contracts to be concluded for Residence Permit and Visa Applications ("Communiqué no. 16/2016") was published by the Undersecretariat of Treasury on 12 May 2016. The Communiqué no. 16/2016 sets out certain new provisions concerning insurance policies to be concluded for residence permit applications and its scope has been broadened by the adoption of new provisions on visa applications.

- **Provisions relating to residence permit applications**

The previous Communiqué no. 9/2014 (now abrogated) only referred to the general provisions of the Insurance Law for the conclusion of insurance policies, according to which risks located in Turkey must, as a matter of principle, be insured in Turkey (certain specific exclusions apply, not covering however the health insurance).

The new Communiqué no. 16/2016 offers some flexibility in this respect, allowing health insurance policies to be concluded outside Turkey where Turkish residence permit applications were made abroad, provided however that the policy contains minimum coverage limits and requirements set out under Communiqué no. 16/2016.

In this respect, insurance companies are required to revise the text of their standard policies in accordance with Communiqué no. 16/2016 within a maximum period of one year in order to replace the references to the former Communiqué with references to the new one.

- **Provisions relating to visa applications**

Communiqué no. 16/2016 also sets forth certain requirements and minimum coverage limits for travel health insurance policies entered into within the scope of visa applications.

Such policies may only be terminated if the visa is cancelled or upon provision of a new health insurance policy. In such events, policyholders must be reimbursed on a daily basis premium calculation.

- **Common provisions**

Regarding health insurance products contracted from a Turkish insurance company as part of both residence permit and visa applications, the Communiqué no. 16/2016 provides that premium payments can be paid in cash or in instalments, at the discretion of the insurance company. The Communiqué no. 16/2016 further provides that if the insurance company accepts the instalment payment option it shall be deemed to have waived its right to terminate the insurance policies on the ground of premium payment default.

Despite the fact that the English version of the insurance policy documentation may be delivered to the policyholder / insured, the policy and information form must expressly indicate that the Turkish version prevails in the event of dispute.

Policies contracted within the scope of the Communiqué no. 16/2016 must be issued online and in real time. The Insurance Information and Monitoring Centre ("IIMC") must make appropriate IT infrastructures available in this respect by 1 September 2016. Necessary information must also be provided by the IIMC to the Immigration Authority upon request.

A Sector Announcement no. 2016/7 on Portfolio Undertakings of Insurance and Reinsurance Brokers was published by the Undersecretariat of Treasury on 12 May 2016.

Referring to the relevant provisions of the Regulation on the Insurance and Reinsurance Brokers, the Undersecretariat of Treasury emphasizes that brokers must not concentrate their portfolio only on certain insurance companies and must rather comply with the diversification principle set out under the Regulation.

In this respect, brokers entering into a partnership agreement with insurance companies must avoid granting any undertakings in terms of size of portfolio, annual premium production targets or production forecasts. Any such partnership agreement not complying with these requirements must be amended as soon as possible.

INTELLECTUAL PROPERTY

Contributed by Esra Dündar Loiseau and Neşe İnanc

The Draft Industrial Property Law ("Draft Law") was submitted to the Grand National Assembly of Turkey on 6 April 2016. The Draft Law is currently in the agenda of the National Assembly. The Draft Law is expected to be enacted shortly.

The Draft Law includes revised provisions ensuring further compliance with the TRIPS agreement and The Hague Agreement Concerning the International Registration of Industrial Designs, as well as various EU directives and regulations regarding the protection of industrial property rights.

On the other hand, in recent years the Constitutional Court cancelled several articles of Decree Law no. 551 on the Protection of Patent Rights and of Decree Law no. 556 on the Protection of Trademark Rights, on grounds of Article 91/1 of the Turkish Constitution, which states that property rights cannot be regulated by decree laws other than in states of emergency or martial law. Accordingly, one of the major objectives of the Draft Law is to ensure that the area of industrial property is fully regulated by laws, thereby preventing the cancellation of further articles.

The Law no. 6698 on the Protection of Personal Data ("Law no. 6698") was published in the Official Gazette on 7 April 2016. The Law no. 6698 was in preparation stage for about 15 years, and is based primarily on the European Union Data Protection Directive no. 95/46/EC. The Law no. 6698 is the first framework legislation with respect to data protection in Turkey. The main purpose of the Law no. 6698 is to protect the rights and freedoms associated with personal data, to specify the conditions under which personal data may be processed and to take necessary precautions in this regard, to enlighten individuals with respect to their rights on the subject matter, and to create the Personal Data Protection Authority and the Personal Data Protection Board to supervise and regulate this field. Please refer to our [Client Alert dated 5 May 2016](#) for further information in this respect.

The project on "Harmonization of Visual Expression of Designs" was completed by the Turkish Patent Institute. The project aimed towards harmonizing trademark and design applications and building transparent and efficient systems between applicants and National Intellectual Property Offices, as part of several projects of the European Union Intellectual Property Office. In this respect, guidelines have been drafted with the purpose of creating common principles and practices beneficial to National Offices and applicants, with the major objective being the development of unified practices regarding applications and clarification of legal proceedings. Such guidelines came into force on 15 April 2016, and shall be referenced by 27 National Offices, including the Turkish Patent Institute.

TAX

Contributed by Bülent Özdirekcan and Zehra Akkırman Akçakaya

The Communiqué no. 9 amending the General Corporate Tax Communiqué no. 1 was published in the Official Gazette dated 4 March 2016 ("Communiqué no. 9"). The Communiqué no. 9 provides that when calculating corporate tax, 50% of the following amounts can be deducted from the company's profits, by taking into consideration the Central Bank's weighted annual average interest rate for commercial loans:

- In companies established before 1 July 2015, paid-in and issued share capital increase amounts registered with the Trade Registry following 1 July 2015, and
- In companies established after 1 July 2015, paid-in share capital amounts.

Save for entities operating in finance, banking and insurance sectors and public economic enterprises, this tax incentive is available for all companies meeting the conditions.

Nevertheless, share capital increases deriving from the following events shall be excluded from this incentive calculation:

- Asset transfers to companies other than cash,
- Mergers, demergers or transfers of companies,
- Addition of equity capital items that already exist in the balance sheet,
- Loans or debts subscribed by shareholders or parties related to the shareholders within the framework of Article 12 of the Corporate Tax Law,
- Non-cash contributions to the company's share capital such as stock certificates, bonds and notes, and
- Offsetting items under the balance sheet.

Furthermore, companies having (i) more than 25% passive income and (ii) a net asset value with over 50% of long term securities and shares of affiliates and subsidiaries, are not eligible for the tax incentive.

Last but not least, the tax incentive shall be taken as 0% for the calculation of the following:

- Capital injected in other companies as share capital or as a loan,
- Capital corresponding to the land and premises investments, and
- Capital decrease in companies that decreased their share capital between 9 March 2015 and 1 July 2015.

The General Communiqué no. 291 on Income Tax regarding the Taxation of CPI Indexed Annuity Government Bonds was published in the Official Gazette on 21 April 2016 ("Communiqué no. 291"). The Communiqué clarifies the determination of the withholding tax basis applicable to the gains made by holdings and through sale of CPI indexed annuity government bonds, which provide a predictable net income without being affected by inflation rate changes, within the framework of Temporary Article 67 of the Income Tax Law.

The annual income insurance agreements to be executed within the framework of the Annual Income Insurance Regulation (published in the Official Gazette on 1 April 2015) transform the savings of the natural persons made through their active business life into a regular additional income and protect people's such additional incomes from changes in the inflation rate by increasing them at the rate of CPI at the beginning of each calendar year, at the least. Thus, the real periodical payments of the bonds maintain their value without being affected by inflation rate changes over the years.

The Communiqué no. 291 clarifies the following matters regarding taxation of such CPI-indexed annuity government bonds:

- Taxation shall only affect the interest payments of the CPI-indexed annuity government bonds,
- The clean price (which contains the inflation difference on CPI-indexed annuity government bonds) shall be calculated by taking into consideration cumulated interest including the inflation, and

- The premium payment amount to be made per coupon shall be calculated by dividing the difference between the clean price and the principal amount paid at the purchase date of the bond by the number of coupon. If the result of such calculated rate is negative, it shall be taken as 0 (zero).

The General Communiqué no. 90 on Expenditures Tax was published in the Official Gazette on 29 March 2016. Pursuant to this new Communiqué, the loans obtained for the financing of new manufacturing machinery and equipment by companies holding an industrial registry certificate shall be exempted from banking and insurance transactions tax as from 29 March 2016.

The General Communiqué no. 3 amending the General Communiqué no. 1 on Free Zones Law was published in the Official Gazette on 26 April 2016 ("Communiqué no. 3"). According to the Descriptive Information Note no. 3 published by the Revenues Administration on the same date, the Communiqué no. 3 enables:

- the export of software electronically via Internet,
- salaries paid to employees of such companies to be exempted from income tax provided that the following conditions are cumulatively met:
 - the software shall be exported to customers located abroad,
 - the customers shall benefit from the software abroad,
 - the invoices shall be issued for customers located abroad,
 - the invoices shall evidence that foreign currency earned as the result of such export activity is brought to Turkey.

The General Communiqué no. 292 on Income Tax was published in the Official Gazette on 5 May 2016 ("Communiqué no. 292"). TRY 75,000 of the revenue generated over three taxation periods by full taxpayer natural persons, under the age of 29, who are subject to income tax (due to commercial, agricultural or professional activity) for the first time as of 10 February 2016, will be exempt from income tax if the start of work is notified to the relevant tax authority in due time, the relevant young entrepreneur works in person at his/her own job, or has management responsibilities and meets other conditions set forth under the Law no. 6663.

Furthermore, young entrepreneurs operating through establishment of ordinary partnerships or private companies can benefit from such exemption if each of them meets the aforementioned conditions. The exemption shall not apply to young entrepreneurs joining an existing partnership or professional activity.

In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this newsletter 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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