



***MONTHLY BULLETIN
JULY-AUGUST, 2019***

Our monthly law bulletin contains practical information for companies, amendments in our legislation, current case law and sectoral regulations.

We wish that our Monthly Bulletins will be beneficial to you.

I. Announcements

Last Days to the Registration to VERBIS

Pursuant to Article 16 of the Law on the Protection of the Personal Data No. 6698, real and legal persons process personal data must be registered to the Registry of Data Controllers (“VERBIS”). Data controllers who reside abroad shall be registered to the Registry till 30.09.2019. There are different panels on the website for Turkish and foreign data controllers. Guidelines of [Turkish Data Protection Authority](#)'s for registry will help you to complete your registration.

II. Amendments

The Law on the Amendments to the Land Registry Law and Certain Other Laws

The Law No. 7181 on the Amendments to the Land Registry Law and Certain Other Laws has been published in the Official Gazette numbered 30827 and dated 10.07.2019.

The amendment to Article 26 of the Land Registry Law stipulates that transferring of immovable properties, if the parties are resided in different land registry directorates or abroad, the authorized officials can take the will of the parties

separately to make to contracts. This amendment will enter into force on January 1, 2020.

Again, with the article added to the Land Registry Law, it is regulated that the owners of the shares and beneficiaries of personal rights, whose rights are affected negatively due to errors by the cadastral determination or the wrong transactions, will be notified. This notification will be concerning the reasons for the error and the status of the shares after the correction. If the parties give their consent to the correction within 30 days from the date of notification, the land registry will correct the error. If the parties do not consent within 30 days, the correction will be made ex officio and the relevant parties will be notified. This amendment will enter into force on January 1, 2020.

Lastly, Article 22 of the Land Registry Law requiring attaching photographs to the land registry was abolished to reduce bureaucracy and stationery.

While these amendments to the Land Registry Law made it easier to make contracts for transferring the immovable properties, they removed numerous bureaucratic obstacles and made it possible to act faster in the land registry.

The amendment made in article 8 of the Zoning Law No. 3194 regulates that agricultural lands cannot be used, planned for anything but agricultural purposes and cannot be determined as a settled area without obtaining legal permissions. This revision expands the scope of the protection of agricultural lands.



The Law on the Amendment to the Income Tax Law and Certain Laws

The Law No. 7186 on the Amendment to the Income Tax Law and Certain Laws (Omnibus Bill) has been published in the Official Gazette dated 19.07.2019 and numbered 30836 (Reiterated). The law includes regulations such as tax amnesty, financial restructuring of debts, amnesty on the special consumption tax for vehicles brought from abroad. Important topics can be listed under the following headings:

a) Tax Amnesty

- Article 2 of the Omnibus Law introduced a new tax amnesty entered into force on the date of publication. A New Tax Amnesty envisages the repatriation of foreign and local assets of real persons and legal entities. **The tax rate of the assets to be declared is 1%.**
- Assets covered by the new tax amnesty are money, foreign currencies, securities, gold, capital market instruments, and real assets.
- **On the other hand, the law regulates that the tax paid under this scope cannot be recorded as an expense and cannot be deducted from another tax.**

Tax amnesty is important for the registration of unregistered or foreign assets. Real and legal persons who will benefit from tax amnesty must declare their relevant assets by December 31, 2019.

b) Financial Restructuring

- **By the Omnibus Law, the provisions of financial restructuring have been added to the Banking Law No. 5411.** The law entering into force on the date of its publication, the relevant provisions will be applied for two years

from the effective date. The President is authorized to extend the term for another two years.

- The provisional article added to the Banking Law No. 5411 regulates the incentives and the opportunities to restructure to debts within the scope of the framework agreements for the companies in financial difficulties. To the extent of Financial Restructuring, exemptions on fees, stamp duty, banking and insurance transaction tax ("BITT"), and resource utilization support fund ("RUSF") has been introduced.
- In the financial structuring clauses, the creditors are; Turkish banks, leasing, finance and factoring companies, banks and financial institutions abroad who have given credits to borrowers, multilateral banks and institutions that have made direct investments in Turkey, the companies and the mutual funds established by these creditors for the collection of receivables.
- **The creditors are allowed to take necessary measures such as maturity extensions, additional loans, partial or complete reduction of the loan receivables, and converting the receivables into associates.**
- In accordance with the Regulation for the Restructuring of Debts Owed to the Financial Sector, it is important to have the ability to repay within a reasonable period for the debtors to be included in the scope of financial restructuring. The law regulates that the financial status of the debtors can be evaluated by independent audit institutions, institutions determined within the framework of agreements, or the organizations determined by the creditors if the debtor accepts.

The amendments present significant supports and new opportunities for the companies having financial difficulties in paying their debts, in the scope of restructuring of financial debt.

c) Amnesty for Vehicles of Which Special Consumption Tax Have not Been Paid

Per the provisional article added to the Anti-Smuggling Law No. 5697, amnesty has been brought for vehicles of which special consumption tax have not been paid in full or have never been paid. **Owners of vehicles that have not been subject to an investigation will be able to register their vehicles if they apply to the relevant customs administration until 31.12.2019 and pay 25% of the special consumption tax.** To benefit from the amnesty entering into force on the date of its publication, it is necessary to apply in the relevant period.

III. Decisions

Validity of the Penal Clause on Early Unjust Terminations: the Decision of Unification of Judgments of the Court of Cassation dated 08.04.2019, numbered 2019/1

The Court of Cassation's decision has been published in the Official Gazette dated 18.07.2019, numbered 30835. The decision is related to the penal clause in the employment contracts which are made for a definite term but deemed as an indefinite term because they do not meet the objective conditions. These objective conditions are as follows: the necessity of a certain period to finish the job, the aim of completing a certain job, the emergence of certain occasions such as the necessity of a substitute for the employee assigned to pregnancy leave.

The penal clause is important for both the employer and the employee to ensure the continuity of the contract. The penal clause

is aimed to prevent the parties from unjust termination before the designated period. **In its decision, the General Assembly stated that even if the fixed-term contracts do not meet the objective conditions, the validity of the penal clause should be evaluated separately.**

In the justification of the decision, it is stated that it is possible to invalidate one part of the contract and to maintain the validity of the other parts per article 27/2 of the Turkish Code of Obligations. Consequently, The General Assembly on the Unification of Judgments of the Court of Cassation decided that the penal clause will remain valid only for the stipulated period.



New Decisions by Turkish Data Protection Authority

The Personal Data Protection Board ("Board") has published the summaries of five significant decisions on its website on 17.07.2019. Decisions as briefly:

- **Sending Personal Information to a Different Person's Phone Number:** The decision dated 31.05.2019, numbered 2019/166

The board investigated a complaint claiming that a text message about another person's personal information has been sent to her phone number.

It was understood that the personal information sent belonged to the complainant's nephew and that the nephew owed it to a group of companies. Due to the processing of the complainant's phone number without any of the conditions stipulated in Law on Protection of Personal Data ("LPPD") and the sending of the information of another person to complainant's phone, the Board decided an

administrative fine of TRY 50,000 on the lawyer, who is the data controller.

- **Biometric Personal Data Processed by Fitness Centers:** The decision dated 31.05.2019, numbered 2019/165

Although it is possible to control the entrance and exit of the people who want to benefit from the services in the sports club in different ways, palm prints, a biometric data, is processed by the fitness center. On the subject of explicit consent, the Board indicated, members cannot benefit from the services provided by the fitness center unless they give their explicit consent. In this regard, explicit consents are preconditions for receiving services. Therefore, it is not possible to say that members give their explicit consents freely.

Because the processing is incompatible with the principle of being related, limited and proportional to the purpose for which data are processed, the Board decided a fine of TRY 20,000 and urgent cessation of biometric data processing.

- **Sending SMS for advertising purposes:** The decision dated 31.05.2019, numbered 2019/162

The complainant has received text messages for commercial purposes even though she had not given her explicit consent. Then she has contacted the data controller but did not receive a response in the stipulated time. At last, the complainant has applied to the Board because she did not know how and where his personal data was obtained.

In its investigation, the Board decided to impose an administrative fine of TRY 50,000 on the data controller because of not taking the technical and administrative measures to ensure the necessary security conditions to prevent unlawful process and access of personal data.

- **Sending Multiple Messages with the Same Content:** The decision dated 31.05.2019, numbered 2019/159

The Board indicated that the messages received from an asset management company are within the scope of Article 5 of LPPD and in compliance with banking legislation. Therefore, this activity does not require explicit consent. However, the Board decided that the sending SMS with the same content more than once is an abuse of the right and imposed an administrative fine of TRY 20,000 on the Data Controller.

- **Using E-Mail Services (Gmail) for Corporate E-Mail Addresses:** The decision dated 31.05.2019, numbered 2019/157

The decision highlighted that e-mails sent and received by Google's e-mail service are kept in data centers in different regions of the world. That means personal data will be transferred abroad. The Board stressed that the data controller should carry out this process following the provisions of Article 9 of the LLPD titled "Transfer of personal data abroad."

In line with this decision, the explicit consent of the person concerned must be obtained to use these foreign e-mail services. However, when we look at the related article, it will be seen that explicit consent will not be enough. According to the list of countries -which ensure an adequate level of protection, a distinction must be made for some countries. If the data controllers will work with companies whose servers are located in unsafe countries, they should sign a commitment with that service supplier and submit to the Board for approval. The list of approved countries has not been rendered yet by the Board.

IV. News

Turkey signed UN Commercial Mediation Deal

Turkey signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention. The Convention has been prepared by the United Nations Commission on International Trade Law (UNCITRAL). The UN General Assembly adopted the convention in December last year. 47 countries signed the Convention on 7 August 2019.

The Convention has been prepared with the aim of strengthening the certainty of international business transactions and ensuring legal uniformity. The Convention provides for a standardized framework for execution of arbitration decisions with international elements and international mediation agreements, within signatory states.



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