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Av. Gönenç Gürkaynak
Çitlenbik Sokak No: 12,
Yıldız Mahallesi
Beşiktaş 34349,
ISTANBUL, TURKEY

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Preface to the September 2018 Issue

In this issue, the Corporate Law section reviews and elaborates on the recent amendments concerning the Foreign Direct Investment Law. The amendments to the Foreign Direct Investment Law regulate that information concerning foreign companies' activities will, from now on, be provided under the Electronic Incentive Practices and Foreign Capital System.

The Competition Law section discusses, among other topics, the *JOTUN* and Duru decisions of the Competition Board, where a mutual assessment on resale price maintenance was provided. In addition, this section analyzes the concept of economic unity established through family links under the Turkish merger control regime.

The section on Internet Law elaborates on a recent Constitutional Court decision and includes an in-depth analysis of a public case concerning the requirement to exhaust all legal remedies with respect to access ban requests, and includes a comprehensive discussion on striking a balance between conflicting or contradictory rights.

On the Anti-Dumping Law front, we explore the implications of the notification made by Turkey to the World Trade Organization concerning the recent measures adopted by the United States and the developments and procedures leading up to the notification.

Finally, the White Collar Irregularities section discusses and illuminates the intricate details of the adoption of the Professional Standards of Ethics and Compliance Management.

This issue of the Legal Insights Quarterly newsletter addresses these and several other topical legal and practical developments, all of which we hope will provide useful guidance to our readers.

September 2018

Corporate Law

Amendments to the Regulation on the Implementation of the Foreign Direct Investment Law

I. Introduction

The Ministry of Trade (formerly known as the Ministry of Economy) (**"Ministry"**) published the Regulation Amending the Regulation on the Implementation of the Foreign Direct Investment Law (**"Regulation"**), in the Official Gazette on June 1, 2018. The Regulation amends the procedure for notifications to be made to the Ministry by foreign-capitalized companies and by branch offices of foreign companies (**"Companies"**).

As of the Regulation's publication date in the Official Gazette, hard copies of the information forms related to the Companies' (i) activities, (ii) share capital increases and decreases, and (iii) share transfers (collectively **"Information Forms"**) will no longer be sent to the General Directorate of Incentive Practices and Foreign Capital (**"General Directorate"**). Rather, the Companies are now required to provide such information through an online platform, namely the Electronic Incentive Practices and Foreign Capital System (**"Elektronik Teşvik Uygulama ve Yabancı Sermaye Bilgi Sistemi"** in Turkish, or **"E-TUYS"**).

II. Notification Procedure: Before and Now

Before the amendment came into effect, Companies were obliged to send hard copies of the Information Forms to the Ministry. Templates of the Information Forms were provided in the annexes of the Regulation on the Implementation of the Foreign Direct Investment Law.

From June 1, 2018, the following notifications are required to be made by users appointed by the Companies through E-TUYS:

1. Users must provide the required information on **"Investors," "Shareholders List,"** and **"Subsidiaries,"** if any, of the Companies, no later than one (1) month as of the date of their appointment.

2. Users shall fill in and file the Activity Information Form for Direct Foreign Investments, which relates to information on the annual activities of the Companies, annually and until the end of May.

3. In case there is a share capital increase or decrease, or if a share transfer occurs, users must update the "Shareholders List" within one (1) month as of its effective date.

4. Users shall complete the Share Capital Information Form for Direct Foreign Investments within one (1) month as of the payment date relating to the share capital increase(s) or share transfer(s).

III. Implementation of E-TUYS

E-TUYS is an online platform through which Companies will provide the foregoing information to the Ministry. In order to use this system, Companies must first register as a "user" by completing and presenting the necessary authorization documents detailed in the Regulation to the General Directorate. Following completion of the registration procedure, the new user will be able to carry out transactions in E-TUYS via his/her valid electronic signature.

The user may be either a foreign citizen or a Turkish citizen deemed suitable and appropriate by the Company. The Company may also authorize multiple users.

The duration of the user's authorization shall be limited to a specific time period to be determined by the company. However, if a user has been previously authorized, a time extension for the authorization may be requested from the General Directorate, instead of re-appointing the user. Should this be the case, authorization of said user will be temporarily suspended during the time period between the expiration of the user's original authorization and the approval of the time extension.

A Company may terminate the authorization of its user at any time by applying to the General Directorate. In order to apply for such termination or withdrawal of authorization, the Company must provide a notarized letter of dismissal to the General Directorate. The user may also resign from this duty by applying to the General Directorate and presenting the necessary documents. These documents must show that a written notification has been made by the user to the Company, either through a notary public or with a registered letter with return receipt.

In order to fulfill the foregoing informational obligations in a timely manner, affected Companies should complete the registration of their authorized users as soon as possible.

Banking and Finance Law

Import and Export of Capital in Turkey

I. General

The Central Bank of the Republic of Turkey (**"Central Bank"**) adopted a new Capital Movements Circular **("Circular")** on May 2, 2018, as per the Decree No. 32 and the Communiqué No. 2008-32/34. This Circular introduces general rules and principles regarding foreign capital imports into Turkey, capital exports from Turkey, as well as the utilization of foreign exchange loans. In this regard, the Circular discusses in specific detail, and thereby clarifies, the general requirements that are set forth in the Turkish Commercial Code No. 6102 (**"TCC"**) and which are applicable to foreign investors, regarding company incorporation, capital increases and share purchases, as well as capital export procedures.

This article aims to explain and illuminate the general requirements regarding the import of foreign capital into Turkey and the export of capital from Turkey.

II. Foreign Capital in Turkey and Capital Exports

Foreign investors are free to invest in Turkey by incorporating companies, by opening branches of existing companies, and through capital increases or share purchases, unless otherwise stipulated or prohibited by the Foreign Direct Investment Law No. 4875, international agreements or other relevant laws.

Under the TCC, before registration of a joint-stock company, 25% of the capital must be paid into a special account opened at a Turkish bank on behalf of the company to be incorporated, while the remaining 75% must be paid within two years as of the registration date of the company with the relevant trade registry. Upon submission of a letter issued by the relevant trade registry stating that the company has been duly registered, the bank shall return the amount paid by the shareholders to the company. Moreover, in case the registration process is not completed within three months following approval of the Articles of Association before a notary public or the signing of the same before the relevant trade registry, the bank must pay back the relevant capital amount to the shareholders. It should also be noted that the amount to be paid to the foreign shareholder(s) within this scope is not deemed to be a loan.

In joint-stock companies, capital increases may be carried out either through capital commitments or by using internal resources. Either current shareholders or other real persons or legal entities may participate in a capital increase. The rules that are in place regarding the payment of capital during the incorporation of a company are also applicable to any capital increases.

According to Article 6 of the Circular, the contribution of foreign exchange currencies to a company's capital and the capital increase process must all be completed within three months at the latest. Otherwise, such foreign exchange amounts are deemed to be contributions of receivables to the company's capital by foreign shareholder(s) and treated as loans obtained from abroad by the company itself. In such cases, foreign exchange amount(s) will be deemed as loans obtained from abroad and the relevant intermediary bank will be obliged to monitor whether they are in compliance with the general rules stipulated for foreign exchange loans under the Circular.

It is also possible for foreign investors to purchase, partly or wholly, the shares of current shareholders. In this case, the payment procedure will not be subject to the requirements stated above, and the purchase price paid by the foreign investor(s) will not be paid to the company's bank account.

However, share prices to be paid by foreign shareholders who reside outside Turkey must still be paid to Turkish banks, and such amounts may be paid either in Turkish Lira or in a foreign currency convertible to Turkish Lira Share prices paid from free zones are also considered (and treated) as foreign capital.

In order to incorporate companies abroad or in Turkish free zones, or to open new branches or purchase shares, Turkish residents may export capital in cash through banks and may also contribute capital to such companies in kind in accordance with applicable customs laws. Turkish residents are also able to establish liaison offices, representative offices, etc., outside of Turkey.

III. Conclusion

Foreign investors may invest in Turkey by incorporating a company, opening a new branch, or engaging in a capital increase or share purchase, unless otherwise stipulated in the applicable laws. It is important to note that foreign investors are not subject to special conditions or requirements in terms of share price payments. However, such amounts paid by foreign shareholders who reside outside Turkey may be deemed (and treated as) loans under certain circumstances, as specified in the Circular.

Capital Markets Law

Updates to the Communiqué on Real Estate Investment Funds

The Communiqué on Real Estate Investment Funds (III-52.3) (**"Communiqué"**) is mainly related to the (i) incorporation, operating principles, liquidation and termination provisions of real estate investment funds, (ii) issuance provisions of the participation units of real estate investment funds and their sales procedures for qualified investors, (iii) provisions as to issuance documents, and (iv) relevant disclosure processes for investors. The Capital Markets Board (**"CMB"**) has introduced certain amendments and updates to the Communiqué, which entered into force upon publication in the Official Gazette on June 30, 2018. This article summarizes the significant features of these amendments and updates, and explains the potential legal effects:

- **Definition of "Real estate investment":** As per Articles 3/(e) and 4/3(a) of the Communiqué, the scope of what is included in the definition of a "real estate investment" has been expanded. While the previous version of the relevant definition only referred to real estate and property rights, the broadened definition also comprises the following: (a) certain real estate projects, (b) capital markets instruments issued by real estate investment companies, (c) shares of joint-stock companies whose assets continuously consist of domestic real estate investments in the ratio of at least 75%, (d) real estate certificates, (e) other real estate investment funds' participation units, (f) receivables arising from forward sales of real estate assets that belong to any portfolio, and (g) value-added tax (VAT) receivables arising from real estate investments.

- **Eligibility for incorporation of real estate investment funds and allowed transactions:**
In accordance with Article 4/1 of the Communiqué, "real estate and venture capital portfolio management companies" are also permitted to establish and incorporate real estate investment funds.

Additionally, Article 4/3 of the Communiqué stipulates that real estate investment funds may consist of assets, rights and transactions, such as real estate investments, promissory agreements and domestic money markets. On the other hand, the Communiqué declares that loan participation notes can no longer be included within a real estate investment fund.

- **Disposal types over assets of real estate investment funds:**
As per the amended version of Article 5/2 of the Communiqué, certain disposal types over assets of real estate investment funds (*i.e.*, establishing pledges and providing guarantees) are no longer treated on a *numerus clausus* basis.

- **Obtaining portfolio management services:**
As another novelty, Article 7/2 of the Communiqué currently stipulates that founders of real estate investment funds may receive portfolio management services from "real estate and venture capital portfolio management companies" as well, in addition to portfolio management companies and real estate portfolio management companies.

- **Issuance of a real estate investment fund's participation units:**
As per Article 13/7 of the Communiqué, for the issuance of a real estate investment fund's participation units, the commencement date of the sale must be within three (3) months of the date that the certified issuance document is duly delivered by the founder. Otherwise, the founder must apply to the CMB within six (6) business days for liquidation of the unsold participation units of the fund.

Furthermore, according to Article 13/10 of the Communiqué, separate participation units may be generated within a real estate investment fund, by way of: (i) splitting the portfolio management fee and the marketing/sale allocation fee, or (ii) applying turnout commission to the fund. As per said Article, the turnout commission must be recorded as revenue to the fund.

Also, as per Article 13/11 of the Communiqué, if any investment agreements are discretionally signed with investors, those agreements must not include any provisions that are contrary to the real estate investment fund's bylaws and issuance documents.

- **Skipping the waiting period in case of material changes to a real estate investment fund's bylaws and/or issuance documents:**
According to the new provisions inserted into Article 14 of the Communiqué (as paragraph 6), if there are material changes within the scope of the real estate investment fund's bylaws and/or issuance documents, the thirty-day (30) waiting period for the changes to take legal effect may be waived, provided that the substance and content of the material changes have been approved in advance by all of the owners of the fund's participation units.

- **Liabilities of the founders of real estate investment funds:**
As per amended paragraphs 5, 8 and 9 of Article 16 of the Communiqué, the founders of real estate investment funds will no longer be liable for the following: (i) investor losses due to non-compliance with requirements concerning the procurement and safekeeping of the relevant documents, (ii) monitoring the

participation units before the Central Registration Agency on an owner basis, and (iii) obtaining and safeguarding transfer documentation for participation units.

Furthermore, in accordance with Article 16/10 of the Communiqué, the transfer of participation units between qualified investors may be subject to prior approval of the founder or director of the fund, or such transfers may be restricted, provided that the details of such approvals or restrictions have been explicitly declared and specified in the relevant informational documents related to the fund.

- **Establishment of usufructs:**
  Establishing usufructs was previously allowed for the following: (i) real estates that belonged to third parties (for usufructs in favor of real estate investment funds), or (ii) real estates that belonged to real estate investment funds (for usufructs in favor of third parties). With the amended version of Article 18/1 of the Communiqué, the establishment of usufructs over the foregoing types of real estate assets is no longer permitted.

- **Limitations on the portfolios of real estate investment funds:**
  As per Article 19/1(a) of the Communiqué, a real estate investment fund may invest in shares of joint-stock companies (whose assets consist continuously of domestic real estate investments in the ratio of at least 75%), provided that such investments comprise at most 20% of the total value of the fund. Previously, there was no limitation as to the location (i.e., that they must be domestic only) of the investments of the foregoing joint-stock companies.

  In addition, Article 19/1(b) of the Communiqué, which stipulated that "the *total of the real estate investments (each of which exceeds 20% of the total value of the real estate investment fund by itself) shall not exceed 60% of the total value of the real estate investment fund*" has been removed from the Communiqué.

- **Registration of certain real estate agreements with the Title Registry:**
  While real estate investment funds are required to register/annotate certain real estate agreements (*e.g.*, preliminary agreements to sell real estate, etc.) with the Title Registry, if İller Bankası A.Ş (a state-owned development and investment bank) or TOKİ (Turkey's government-backed housing agency) are parties to such agreements, then the foregoing registration phase will no longer be mandatory, in accordance with Article 20 of the Communiqué.

- **Loan limits:**
  According to Article 23 of the Communiqué, a real estate investment fund may use loan facilities or interest-free financing up to the ratio of 50% of its total fund value. In case of such use, 8the owners of the participation units must be duly informed with respect to the details of the loan facility or the interest-free financing agreement.

- **Real Estate Value Assessments:**
  As per the amended version of Article 28/1(f) of the Communiqué, year-end value assessments shall be made for all assets in the portfolios of real estate investment funds.

- **Disclosure through the Public Disclosure Platform (KAP):**
  According to the amended version of Article 35 of the Communiqué, real estate investment funds shall set up official websites on the Public Disclosure Platform (**"Kamuyu Aydınlatma Platformu"** or **"KAP"**), duly complete the summary and general information sections of their websites and duly disclose their bylaws, issuance documents, amendment texts (if any) and financial statements to the public

via the KAP. Real estate investment funds that were established before the effective date of the foregoing amendment (June 30, 2018) will be obliged to comply with the foregoing requirements by September 30, 2018, in accordance with Temporary Article 1 of the Communiqué.

Competition Law / Antitrust Law

A Closer Look at Resale Price Maintenance and Restrictions on Internet Sales: The JOTUN and Duru Cases

The Turkish Competition Board (**"Board"**) recently published its decisions in the *JOTUN*[1] and *Duru*[2] cases. These cases were highly significant for the Turkish competition law regime, as the Board assessed allegations concerning the practice of resale price maintenance (**"RPM"**).

In Duru, the RPM allegations revolved around the alleged practice of determining the shelf prices of retail chains and putting limitations / restrictions on their discount rates.

In JOTUN, the Board evaluated allegations that JOTUN had restricted the online sales of its authorized dealers through a prohibitive provision, in addition to its RPM practices.

In both decisions, the Board first provided an overview of the legal framework that applies to RPM allegations under the Turkish competition law regime. The Board characterized "indirect RPM" as: (i) setting the profit margin of the buyer, (ii) setting the maximum discount rate that may be applied to the recommended price, (iii) providing additional discounts to the buyer, as long as the buyer complies with the recommended prices, or (iv) delaying or suspending delivery of its products or terminating the agreement if the buyer fails to comply with the recommended prices.

Although JOTUN had informed the dealers of the purchase and sales prices for large-scale projects, there was no indication or proof that such communications had taken place with respect to its small-scale retail sales. The Board noted that JOTUN's conduct involved setting a maximum price that included a special discount rate for large-scale projects, rather than what could be described as clear-cut RPM practices. Therefore, the Board did not find a by-object restriction on the part of JOTUN. Thus, the Board proceeded to engage in an "effects analysis" and compared the resale prices offered by various dealers of JOTUN's products. The Board ultimately determined that the dealers' resale prices differed not only from each other but also from JOTUN's recommended price list price. The Board therefore concluded that JOTUN had not determined the resale prices of its retail products.

In Duru, the Board considered whether Duru and its retailers had been in contact with each other for the purpose of (i) determining shelf prices, (ii) engaging in price negotiations, and (iii) deciding the timing and schedules of discount campaigns. The resale points asserted that Duru had not intervened in their resale prices, which were shaped and determined by effective competition at the retail level.

In its decision, the Board first provided an overview of the relevant sector, and analyzed market data regarding production, import and export levels as well. In its analysis, the Board considered various factors, such as (i) whether the relevant market was competitive, (ii) intra-brand competition, (iii) market concentration, (iv) the market power of the undertaking that allegedly engaged in RPM practices and the market positions of its competitors, (vi) whether there was buyer power and compliance with the prices recommended by the supplier, and (vii) whether the supplier implemented monitoring and/or enforcement mechanisms to ensure compliance with the recommended prices.

The Board ultimately determined that the relevant market did not exhibit high levels of

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[1] The Board's decision numbered 18-05/74-40 and dated February 15, 2018.

[2] The Board's decision numbered 18-07/112-59 and dated March 8, 2018.

market concentration, given that (i) Duru had a low market share, and (ii) the HHI level (*i.e.*, the Herfindahl-Hirschman index, which is a commonly accepted measure of market concentration) was below 1,000.

Regarding the competitive landscape of the relevant market, the Board emphasized that the competitive pressures generated by the discount stores and other chain stores was particularly significant due to their competitive prices. The Board also determined there were a significant number of undertakings that were active in the market as suppliers and/or resellers. The Board further observed that, even though Duru's products were generally more expensive than its competitors', customers still preferred them due to their high quality. The Board also considered responses received from interviewed retailers, who indicated that (i) Duru was not in a position to determine their resale prices, and (ii) they established their own shelf prices according to their own profit/loss calculations. The Board therefore concluded that Duru was not in a position to exercise RPM with respect to its retailers.

Nevertheless, the Board acknowledged and reiterated certain possible negative effects that might arise from an RPM practice in the market. The Board enumerated several potential negative effects, such as (i) an increase in product prices, (ii) a decrease in pressure that could be applied by sales points to their suppliers in terms of reducing prices, (iii) steering consumers to products for which the resale prices had already been fixed, and (iv) preventing undertakings from entering the downstream market with lower costs and prices. The Board finally resolved that these potential negative effects were not possible in this particular case, considering the competitive landscape of the relevant market.

The Board also compared the actual resale prices of the sales points with Duru's recommended prices, and concluded that the sales points generally did not follow Duru's recommended prices; instead, they followed and matched their competitors' relatively low prices due to the existence of fierce price competition in the market.

Factoring in all the aspects and circumstances of the case, including (i) the competitive structure of the relevant market, (ii) intra-brand competition, (iii) the competitive pressure of retail chains, (iv) the existence of products that were sold at nearly half off compared to the prices in discount markets, (v) Duru's low market share, (vi) low concentration level in the market, (vii) the fact that retailers often priced their products below the recommended prices, and (viii) the absence of any evidence regarding any enforcement or monitoring mechanisms for the implementation of the recommended prices set by Duru, the Board ultimately declined to initiate a full-fledged investigation against Duru.

In JOTUN, in addition to its RPM analysis, the Board also assessed allegations that JOTUN had restricted online sales by its authorized dealers. To that end, the Board reviewed JOTUN's previous and current dealership agreements. As a result of its examination, the Board found that the current dealership agreement included a provision which restricted the online sales of JOTUN's products.

In its analysis, the Board first pointed out that internet sales have been growing in Turkey and throughout the world in recent years. The Board noted that this growth trend has persisted because such sales reduce customers' search costs and lower undertakings' distribution costs, in addition to providing a wider geographic range for products and enabling access to more consumers. The Board also referred to the European Commission's (**"Commission"**) recent actions, emphasizing that the Commission has already issued a sector report on e-commerce. In this context, the decision articulated and observed that restraints concerning prices, prohibitions against online sales, restrictions concerning price comparison tools and the exclusion of online sellers from distribution networks are becoming rather widespread in the e-commerce context. The decision further underlined the Commission's perspective with respect to distribution agreements, which focuses on the fundamental view that the freedom of dealers to conduct their sales via the internet should not be restricted.

Furthermore, the Board referred to the Commission's Vertical Agreements Block Exemption Regulation (**"EU Regulation"**), its Guidelines on Vertical Restraints (**"EU Guidelines"**), as well as several precedents of EU courts. In this regard, the Board emphasized that, according to the EU Vertical Guidelines, distribution agreements that do not entail hardcore restrictions and do not exceed the relevant market share threshold would be exempted from the application of Article 101 of the Treaty on the Functioning of the European Union (**"TFEU"**). Nonetheless, restrictions of active/passive sales to the end users by a supplier that operates a selective distribution system would be regarded and treated as a hardcore restriction, in accordance with the EU Regulation. The EU Guidelines assert that the direct restriction of passive sales (or any other conduct that would produce the same results) would be deemed as a restriction of competition. According to the EU Guidelines, besides the direct restrictions imposed on passive sales, the following types of behavior are prohibited within the scope of the rules against the indirect restriction of passive sales:

- Restriction of a customer's access to a website, when the customer is determined to be located within the territory of another exclusive distributor, or the redirection of such a customer to the supplier's or distributor's website;
- Cancelling a customer's order if it is determined from the customer's credit card information that the customer is not located in the exclusive territory;
- Restriction of the percentage of total sales that can be conducted via the internet; and
- Determination of the resale price of the distributor for products that will be sold through the internet by a comparison with the sales prices of traditional sales channels.

In accordance with the EU Guidelines, for such restrictions to benefit from the protective cloak of an individual exemption, there must an objective reason for the product to be sold physically (*i.e.*, offline). In this context, the Board referred to the French Competition Authority's *Pierre Fabre* decision[3], where it was concluded that the investigated undertaking (which was a self-care and cosmetics firm) had implemented restrictions against online sales for anticompetitive purposes, and thus the restrictions in question were not granted an individual exemption. The European Court of Justice (**"ECJ"**), in its appellate review, noted that the restriction on internet sales did not provide a product-specific objective justification or reason, and therefore could have competition-restrictive purposes. The Board observed that the defenses concerning products subject to the agreement in that case, namely the argument that use of the relevant products required expert guidance and recommendations and that, consequently, internet sales would damage the brand image, had not been accepted by the ECJ.

The Board highlighted the fact that the Commission's approach toward restrictions on internet sales focuses on the existence (or absence) of an objective legitimate justification, which must be based on the particular characteristics of the product, and that the prohibition against internet sales is fundamentally limited to (and can only be justified for) prescription medicines and other products that may be prohibited from being sold online in consideration of public bans

[3] Pierre Fabre Dermo-Cosmetique SAS [C-439/09].

(*e.g.*, illicit and illegal products). Therefore, if an internet sales restriction is imposed on a particular product and the restriction cannot be objectively justified by offering product-specific reasons, this would be regarded and deemed as competition-restrictive behavior by the investigated undertaking.

In its analysis, the Board finally referred to the *Coty* decision of the ECJ[4], where the internet sales restriction for online platforms had been evaluated. In that case, the Court had determined that, considering the specific characteristics of the products in question, there had been no passive sales restriction. In other words, the ECJ decided that, in order to protect the brand image of luxury products, restrictions related to sales conducted via third-party online platforms could be imposed on the distributors.

In the context of Turkish competition law legislation, the Board noted that internet sales are primarily categorized as "passive sales," as per paragraph 24 of the Guidelines on Vertical Agreements, and therefore, restrictions on such sales would be deemed and evaluated as restrictions on passive sales. In this context, the Board also declared that, although a supplier can prohibit sales to unauthorized distributors within the scope of selective distribution systems, it cannot restrict active or passive sales to end users at the retail level. Accordingly, the Board indicated that, although JOTUN had established a selective distribution system, any provisions restricting the online sales of authorized distributors would cause the vertical agreement to fall out of the scope of Communiqué No. 2002/2. In this respect, the Board assessed that prohibiting online sales in their entirety would constitute a disproportionate measure for the purpose of restricting or preventing sales to unauthorized distributors, and thus, such a measure would not benefit from an individual exemption. The Board also noted that JOTUN could have adopted and implemented less restrictive arrangements in order to prevent its distributors from conducting sales to unauthorized distributors (for instance, imposing limits on customers' purchase amounts for internet sales, which could also be applied to physical sales points under certain conditions).

Accordingly, the Board ultimately concluded that JOTUN had not determined the resale prices of its retail products. However, in the *Duru* decision, the Board resolved to send an opinion letter to Duru, pursuant to Article 9 of the Law No. 4054, stating that Duru should indicate in its price lists that the relevant prices are either maximum or recommended sales prices, and must cease any conduct that may lead to the determination of shelf prices and discount rates, or that may be associated with fixing resale prices by any other means. In its *JOTUN* decision, regarding the restriction of internet sales, the Board decided not to initiate a full-fledged investigation, because JOTUN's market power was found to be limited (and thus the effects of the foregoing restriction would also be limited). However, as per Article 9 of the Law No. 4054, the Board indicated that JOTUN should amend its dealership agreements in order to remove the prohibition against passive sales, in particular the restriction against internet sales, and cease all of its conduct and activities on this front.

No Room for Competition Within the Family —Family Links Under the Turkish Merger Control Regime: The Turkish Competition Board Unconditionally Approved the Transaction Concerning the Acquisition of Sole Control over Mavi by the Akarlılar Family

The Turkish Competition Authority (**"Authority"**) announced, on its official website, the Board's reasoned decision granting unconditional approval to the transaction concerning the indirect acquisition of negative sole control over Mavi Giyim Sanayi ve Ticaret A.Ş. (**"Mavi"**) by the Akarlılar Family (which consists of Fatma

[4] Coty Germany GmbH v Parfümerie Akzente GmbH [C-230/16].

Elif Akarlılar, Seyhan Akarlılar and Hayriye Fethiye Akarlılar).[5] In its decision, the Board primarily assessed whether separate undertakings controlled by different members of the same family could be deemed as part of a single economic unit under the Turkish merger control regime. In this respect, this decision can be seen as one of the most illuminating and informative decisions on this issue, in which the Board reflected on and refined its settled practice on the concept of "single economic unit" by evaluating the notions of "common interests" and "family links."

In terms of the assessment of whether the transaction in question would require a mandatory merger control filing before the Authority, the Board primarily evaluated whether there would be a lasting change in the control structure of Mavi after the completion of the transaction. To that end, the Board referred to paragraph 40 of the Guidelines on Cases Considered as a Merger or Acquisition and the Concept of Control (**"Guidelines on Control"**), and declared that sole control could be established in two general situations: (i) when the undertaking acquiring control enjoys the right to determine the strategic commercial decisions of another undertaking, and (ii) when the party acquiring control would be the sole undertaking that would possess the right to veto the strategic commercial decisions of another undertaking, even though it does not have the power, on its own, to impose such decisions ("negative sole control"). As per the information provided within the merger control filing, the Board determined that the control structure of Mavi prior to the transaction had been based on and subject to shifting alliances, given that the company was not under the joint control of a group of shareholders or solely controlled by a single shareholder. The Board further concluded that Mavi would be under the negative sole control of the Akarlılar Family after the transaction was completed, given that they would be the only shareholders possessing veto rights.

In order to determine whether the transaction would be subject to a mandatory merger control filing before the Authority, the turnovers of the undertakings that were involved in the transaction had to be calculated. In this respect, the Board first assessed whether Erak Giyim Sanayi ve Ticaret A.Ş. (**"Erak"**), which was controlled solely by Sait Akarlılar (who is the husband of Hayriye Fethiye Akarlılar and the father of Fatma Elif Akarlılar and Seyhan Akarlılar and also the founder of Mavi), could be deemed as part of a single economic unit with the Akarlılar Family. Although the parties suggested that Sait Akarlılar should be deemed and treated as a separate entity from the Akarlılar Family, due to the fact that he was not part of the control structure of Mavi, the Board chose to thoroughly assess the notions of "family links" and "common interests" before coming to a decision.

In this respect, the Board stated that, in order to determine whether different undertakings could be considered as parts of the same economic unit, the following factors must be evaluated: (i) the presence of economic relationships and family links between natural persons and/or groups, (ii) the roots of such economic relationships along with their nature, characteristics and extent, (iii) independent activities of the undertakings in question, if any, and (iv) whether there are common interests between the undertakings in question. To that end, the Board stated that, in terms of the relationships between natural persons, the notion of "common interests" relates to the elimination of the motivation to compete with one other, rather than to the concept of control.

In its assessment, the Board referred to its *Bilkom*[6] and *Altıparmak Gıda*[7] decisions, in

[5] The Board's decision numbered 18-07/121-65 and dated March 8, 2018.

[6] The Board's decision numbered 01-03/10-3 and dated January 9, 2001.

[7] The Board's decision numbered 10-27/393-146 and dated March 31, 2010.

which companies owned by siblings had been deemed as parts of the same economic unit on the grounds that, within such relationships, common interests are strengthened by family links. In its *Altıparmak Gıda* decision, the Board had also stated that the fact that the companies controlled by siblings were conducting their activities in the same relevant product market supported the finding of a commonality of interests between those siblings. Furthermore, the Board also referred to its *Misbis* decision,[8] where it had argued that an undertaking that was jointly controlled by five siblings who each held an equal number of shares should be considered as part of a single economic unit with an undertaking that was solely controlled by one of those siblings.

After comprehensively evaluating the principles on the commonality of interests and family links, the Board concluded that, for the case at hand, the existence of strong family links was plainly indicated by the facts presented in the case file. In this respect, by taking into consideration (i) the fact that Sait Akarlılar was a long-time shareholder of Mavi, along with other members of the Akarlılar Family, and (ii) the fact that Erak, which was solely controlled by Sait Akarlılar, was an active producer in the relevant product market (in which Mavi was active as a retailer), the Board finally concluded that Erak should be deemed as part of the same economic unit with the Akarlılar Family within the meaning of the Turkish merger control regime, given that an economic commonality of interests beyond family links existed between members of the Akarlılar Family. Therefore, the transaction was found to be subject to a mandatory merger control filing, in accordance with Article 7 of the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board.

In terms of the assessment of the potential overlaps between the activities of the parties, the Board determined that Mavi was active in retail sales, wholesale activities and e-commerce activities for denim/jean textile products, and that the Akarlılar Family (through Erak) was active in the production of ready-to-wear textiles and provided denim / jean products to numerous undertakings, including Mavi. Accordingly, the Board found that there was a vertical relationship between the activities of Mavi and Erak. Having said that, the Board also concluded that the market shares of the parties were significantly low and that the sector in which the parties were active was highly competitive. Accordingly, the Board decided to grant an unconditional approval to the acquisition of sole control over Mavi by the Akarlılar Family.

Exclusivity Practices Examined in the Two-Sided Market of Cinema Screen Advertising: The Board Rejected the Exclusivity Allegations against Mars due to a Lack of Evidence

The Board published its reasoned decision[9] on the preliminary investigation launched against Mars Sinema Turizm ve Sportif Tesisler İşletmeciliği A.Ş. (***"Mars"***), a company active in the areas of movie screening services, movie distribution services and cinema screen advertising services, in order to determine whether Mars had abused its market position by offering special prices and implementing discounts to certain media agencies and advertisers, subject to the condition that those agencies and advertisers spend their entire cinema advertising budgets in Mars's own movie theaters.

In its evaluation of the relevant product market, the Board first provided general background information on the dynamics of the media promotion and marketing services markets in

[8] The Board's decision numbered 07-85/1039-401 and dated November 8, 2007.

[9] The Board's decision numbered 18-03/35-22 and dated January 18, 2018.

Turkey. The Board observed that the most significant characteristic of media platforms is that these platforms operate as two-sided markets. Accordingly, the Board noted that undertakings operating in the fields of print and visual media compete not only at the audience level (*i.e.*, pursuing high circulation numbers or ratings), but also compete on the advertisers' side of the market. The Board then evaluated whether different media channels can be considered as substitutes for each other. In this regard, the Board asserted that, similar to other advertising channels, the demand structure in terms of cinemas is affected by a wide variety of factors. Accordingly, the Board held that advertisers or advertising agencies planning to use cinema screen advertising services take numerous parameters into consideration, such as the audience profile for a specific movie (*i.e.*, age, gender, income, etc.) or the location of a particular cinema. In light of these characteristics, the Board determined that this advertising channel did constitute an alternative to traditional media channels (such as television, outdoor advertising and newspaper) for advertisers aiming to reach their target audiences.

The Board then assessed the share of the cinema screen advertising channels in the overall market for general advertising channels. In this regard, the Board focused on the relative amounts of advertising expenditures for various advertising channels, and noted that cinema screen advertising's share in the advertising market was quite low (approx. 1% of total expenditures), and observed that television, print publications and digital channels were the principal alternatives preferred by advertisers. In this regard, the Board referred to its previous decisions involving the advertising sector and declared that while advertisers may choose to employ diverse advertising channels to achieve specific purposes, different advertising channels may also function as complementary to each other in certain instances. Consequently, even though the Board acknowledged it would be difficult to make distinctions between these various advertising channels in terms of defining the relevant product market, it ultimately opted to define the relevant product market in the present case as "cinema screen advertising." Furthermore, the Board defined the relevant geographic market as "Turkey," considering the fact that all the advertisers, advertising agencies and media planning and buying agencies in this market operated on a nationwide scale.

The Board proceeded to evaluate the complainant's allegations under the category of "exclusivity practices." The Board first noted that such practices may be assessed within the scope of provisions concerning anticompetitive agreements (Article 4) and unilateral conducts (Article 6) under the Law No. 4054. The Board then referred to the Commission's established approach toward exclusivity agreements and concluded that the Commission also evaluates such practices both in the context of anticompetitive agreements and unilateral conducts. Furthermore, the Board observed that the Commission provides similar analyses in its assessments of exclusivity practices under these categories, even though it generally tends to evaluate the agreements concluded by dominant undertakings within the scope of Article 102 of the TFEU. As for the Board's own precedents involving exclusivity practices, it referred to its earlier decisions in which exclusivity practices had been evaluated either under Article 4 or Article 6 of the Law No. 4054. Moreover, the Board stated that there were also several decisions in which it had assessed exclusivity practices within the scope of both Article 4 and Article 6. In this regard, the Board declared that, so long as it does not lead to the investigated undertaking being penalized twice for the same conduct, initiating an investigation regarding the same practice within the scope of both Article 4 and Article 6 would not violate the *"ne bis in idem"* principle (*i.e.*, the prohibition against double jeopardy). Consequently, the Board concluded that exclusivity practices may be evaluated within the scope of both Article 4 and Article 6, and the main factors that must be appraised on this front are (i) the market power of the relevant undertaking, and (ii) the possible restrictive effects that may be caused by the exclusivity agreements under scrutiny, due to the market power of the undertaking.

Following this line of reasoning, the Board first assessed Mars's market power in the relevant product market. At the outset, the Board underlined the duopolistic structure of the market for cinema screen advertising agency services, in which only Mars and Istanbul Medya are active in Turkey. Accordingly, the Board evaluated Mars and Istanbul Medya's market shares on the basis of their revenue and the duration of their advertisements. As a result of its evaluations on this front, the Board concluded that Mars's market share had been consistently higher than Istanbul Medya's market share in the previous three years. Moreover, given that Mars is a vertically-integrated undertaking in the cinema industry, where it operates movie theaters under the *Cinemaximum* brand, the Board made an assessment with respect to the position/market power of Mars's movie theaters in the relevant sector as well. In this regard, the Board found that Mars's movie theaters comprised 38% of the total number of movie theaters in Turkey.

Furthermore, the Board also examined whether advertisers and advertising agencies were able to exert any pressure or have any effect on Mars's business practices. The Board relied on statements that had been obtained from various undertakings in the sector, in which the relevant undertakings declared that cinema screen advertising was not a top priority for them among various advertising channels due to (i) its limited share in general advertising expenditures, and (ii) periodic fluctuations in demand in this particular advertising channel. Considering these fundamental characteristics of cinema screen advertising, the Board concluded that Mars was not in a position to fully exercise its market power on advertisers and advertising agencies. However, by considering Mars's firmly high market share and the leading position of Cinemaximum movie theaters in the movie screening sector, the Board nevertheless concluded that Mars possessed significant market power in the relevant market.

In its evaluation on whether Mars had engaged in exclusivity practices, the Board referred specifically to a piece of evidence that had been obtained during the on-site inspection of Mars's premises, which clearly stated that "exclusivity agreements will not be made in writing." That said, the Board also noted that no other finding had been produced (beyond this single piece of evidence) which would indicate that Mars had engaged in exclusivity practices in the relevant market. Moreover, the Board also assessed the agreements that had been concluded between Mars and advertisers and advertising agencies. In this regard, the Board concluded that the relevant agreements did not contain any exclusivity provisions. Consequently, the Board ultimately decided not to initiate a full-fledged investigation against Mars due to a lack of evidence supporting the exclusivity allegations.

Abuse of Dominance Allegations Examined Against Çiçek Sepeti, a Leading Online Retail Florist: No Evidence Found for Predatory Pricing, Raising Rivals' Costs or Sham Litigation

On June 13, 2018, the Board announced its reasoned decision[10] regarding the alleged abusive practices of Çiçek Sepeti İnternet Hizmetleri A.Ş. (**"Çiçek Sepeti"**).

Upon Çiçek Satış A.Ş.'s (**"Çiçek Satış"** or **"Complainant"**) complaint, the Board initiated a preliminary investigation against Çiçek Sepeti, an online retailer active in the sale of flowers, edible flowers (*bonnyfood*)

[10] The Board's decision numbered 18-07/111-58 and dated March 8, 2018.

and gifts (*bonnygift*). The Complainant alleged that Çiçek Sepeti had abused its dominant position in the online flower sales market and had obstructed and hindered its competitors' activities by way of: (i) applying predatory prices, (ii) spending significant amounts on advertising (and thus raising its rivals' marketing costs), and (iii) initiating unfair lawsuits against its rivals. In its assessment, the Board first defined the relevant product market as "online flower sales" and determined that Çiçek Sepeti held significant market power in the relevant market. Thus, the Board concluded that Çiçek Sepeti may be presumed to be in a dominant position in the relevant market, based on (i) the low potential/possibility of Çiçek Sepeti's rivals to establish competitive constraints, (ii) the entry barriers caused by the network effects in the market, and (iii) Çiçek Sepeti's wide distribution network.

The Board's detailed assessments on each of the Complainant's allegations as set forth below:

(I) Predatory Pricing
After conducting a price-cost analysis for the products in question, the Board observed that Çiçek Sepeti (i) did not sell products below cost, even when all of its costs were taken into account, and (ii) incurred losses only in "advertisement products" or "marketing products." Therefore, the Board decided that the sales periods and the volume of these products were not sufficient to establish an anticompetitive foreclosure in the context of identifying a predatory pricing behavior.

(II) Spending Significant Amounts on Advertising and Marketing Expenses (and thus Raising its Rivals' Costs)
The Board noted that Çiçek Sepeti's advertisement costs had increased (in terms of total value) between 2015 and 2017, which is the time period that was subject to the preliminary investigation. However, the Board also observed that the ratio of these costs to Çiçek Sepeti's total sales had decreased compared to previous years. It was stated that this was a result of the positive impact of Çiçek Sepeti's strategy of decreasing its prices according to the (fluctuating) level of demand in the relevant market, which is considered by the Board as a factor indicating the absence of consumer welfare in the present case. Accordingly, the Board rejected the Complainant's allegation on this matter and concluded that Çiçek Sepeti's advertising and marketing policies had not led to market foreclosure or a decrease in consumer welfare.

(III) Initiating Unfair Lawsuits Against its Rivals (Sham Litigation)
The Board found that Çiçek Sepeti had frequently taken legal action regarding brand right violations and unfair competition claims against its rivals, who had allegedly exploited and misused Çiçek Sepeti's trademarks in the Google Adwords program. In this regard, the Board determined that the lawsuits initiated by Çiçek Sepeti had been aimed solely at protecting its own brand rights and that there was no evidence to indicate that Çiçek Sepeti had initiated these lawsuits for the purpose of obstructing or impeding its rivals' activities.

After the preliminary investigation phase, the Board decided that there was no evidence of an Article 6 violation, and decided not to initiate a full-fledged investigation against Çiçek Sepeti.

Employment Law

Court of Appeals Decided Not to Unify the Judgments on Whether a Receivable Lawsuit in Employment Law Can Be Filed with an Unspecified Amount

As per Article 107 of the Code of Civil Procedure No. 6100 (**"CCP"**), a plaintiff is entitled to initiate a lawsuit with a minimum amount to be increased thereafter, if the total amount of the claim cannot be precisely determined at the beginning of the lawsuit. The preamble of the CCP indicates that the rationale behind this regulation seeks to avoid the potential risk of exorbitant litigation expenses, subject to *pro rata* calculation, which may be imposed on the plaintiff at the conclusion of the litigation. Following the Court of Appeals' numerous decisions, all of which had pointed in different doctrinal directions, the Court of Appeals 1st Board of Presidency eventually urged that, due to the proliferation of contradictory opinions on this issue, a single unifying decision that would bind all civil courts should be provided, and thus sent the file to the Court of Appeals Grand General Board (**"Board"**).

As per the Law on the Court of Appeals No. 2797, the Board is the authorized body in charge of unifying judgments in order to reconcile conflicting opinions expressed in decisions of the various chambers of the Court of Appeals with respect to the same question. Such unifying judgments are final; they cannot be appealed or objected to. Within this framework, the Board observed that several contradictory decisions had been issued by the Court of Appeals on the question of whether lawsuits concerning employee receivables can be filed with a request for an unspecified amount.[11]

Since the subject of the request for the unification of judgments related to the issue of employee receivables, theBoard first defined what an "employee receivable" is. In this context, the Board declared that each receivable request made by an employee who works under an employment agreement, as per the Labor Law No. 4857 (**"Labor Law"**), shall be deemed as an "employee receivable."

The Board categorized employee receivables as follows: (i) receivables arising from the dismissal of an employee, which might be requested following the termination of an employment agreement, and (ii) other receivables, which do not pertain to the termination of an employment agreement.

For item (i) above, which includes severance payments, notice payments and annual leave payments, the amount of the employee receivable can be mutually decided upon by the parties to the employment agreement, and therefore, the amount of each of the aforementioned payment items is determinable. However, for receivables that fall under item (ii) above, which include unpaid wages, overtime payments, weekend wages, and accrued vacation time payments,the circumstances are quite different. Such receivables should be considered receivables with unspecified amounts, if they are determined at the sole discretion of the presiding judge, based on the statements of witnesses and on the evidence submitted by the parties during the course of litigation.

Consequently, the Board decided that there are various types of employee receivables, and that they exhibit different characteristics. Furthermore, even if certain employee receivables could be considered as belonging to the same category and carrying the same characteristics, they cannot always be pre-classified as "specified" or "unspecified" in terms of their amount. Therefore, the Board ruled that courts should determine whether the receivable in question is specified or unspecified on a case-by-case basis, and declared that a receivable cannot be classified as specified or unspecified merely on the basis of its type. Taking all of these considerations into account, the Board finally ruled that it was not necessary to unify the judgments on this matter, on the grounds that unifying the judgments would not serve the goal of establishing an abstract, comprehensive and normative legal structure when unifying judgments.

Litigation

Unfair Competition Claims for Sale of Certain Products Below Purchase Price

As a general principle, an enterprise has the right under Turkish law to freely determine the prices of its products and services. In other

[11] Decision of the Board dated December 15, 2017and numbered 2016/6 E. and 2017/5 K., which was published in the Official Gazette on June 29, 2018.

words, there is no rule under the Turkish competition law regime that would require enterprises to set a minimum price for their goods and services. In principle, even selling products at a price lower than the purchase price would not be deemed as engaging in unfair competition under Turkish competition law. However, there is one exception to this rule, the details of which are explained below.

Article 55(1)(a)(6) of the Turkish Commercial Code No. 6102 (**"TCC"**) provides that, under certain circumstances, *"offering certain goods, business products or activities for sale below their purchase price"* might constitute an act of unfair competition. There are four conditions that must be cumulatively met in order for such pricing to be labeled and treated as "unfair competition." These conditions are as follows:

(i) Pricing must apply only to certain goods, business products or activities: This condition requires that only certain goods, business products or activities must be offered for sale below their purchase price. Therefore, if all goods, products or activities are offered for sale below their purchase prices, then this condition will not be satisfied, and thus such a pricing strategy cannot be considered as an act of unfair competition.

(ii) The goods or services must be offered for sale below their purchase price more than once: Pursuant to this condition, the sale in question must occur below the purchase price (*i.e.*, below the cost of the relevant product to the seller). Moreover, the product or service must be offered for sale below the purchase price more than once. In other words, if such a transaction only happens once, this condition will not be met, and the practice in question cannot be deemed to constitute an act of unfair competition.

(iii) Such offers must be specifically emphasized in advertisements: Pursuant to this condition, the offering of certain goods, business products or activities below their purchase prices must be specifically highlighted in advertisements or announcements. If there is no such advertisement emphasizing the fact that the product or service is being offered for sale below its purchase price, then this condition will not be fulfilled, and the pricing practice cannot be considered as an act of unfair competition.

(iv) Customers must be misled about the seller's and its competitors' capabilities: This condition can only be fulfilled if the seller offering products or services for sale at prices lower than the purchase price creates the impression that, in general, it sells goods and services at prices that are lower than its competitors' prices. What this means is that, under the influence of this deceptive impression, consumers must be misled into thinking that they are buying "all" of the seller's products at lower prices, not just "certain" products. It is quite difficult to prove consumers have been misled in practice, which is why Article 55(1)(a)(6) of the TCC introduces a presumption in favor of the existence of misleading circumstances. According to this presumption, "*if the sales price is below the purchase price of similar goods, business products or activities in similar quantities, there exists a misleading practice*." With that said, it must be noted that it is surely always possible for the seller to prove that it does not mislead consumers. For instance if the seller's advertisements bear remarks that would reasonably make a consumer understand that not all products are sold at low prices but just the indicated ones, then the seller could claim that there is no misleading of consumers. Moreover, if the seller can prove that its "real" purchase price is lower than the "presumed" purchase price (and, accordingly, that its selling price is higher than its purchase price), this provision cannot be applied at all, and such pricing practices cannot be deemed to constitute acts of unfair competition.

Unless all four of these conditions are cumulatively met in any given case, there will be no restrictions on lowering prices from the perspective of the Turkish competition law regime. At this point, it must also be noted that the abovementioned conditions all bear subjective elements that are somewhat open to interpretation (for instance, "*misleading customers by creating the impression that all products are sold at lower prices*" and "*unduly and specifically emphasizing low price offerings in advertisements*" are both quite subjective conditions). Therefore, it would be prudent to assess each case in which a product/service is offered for sale at a price lower than its purchase price according to its own specific facts and circumstances, in consideration of these conditions.

The High Court of Appeals has applied Article 55(1)(a)(6) of the TCC in two recent cases in which the plaintiffs claimed that the defendants had been selling baguettes at below-cost prices. In the first case, the local court ruled that the defendant's activities constituted an act of unfair competition and declared that its activities must be prohibited, as the defendant had been selling baguettes at a price that was significantly lower than the per-unit cost. With its decision dated October 4, 2017 (numbered 2016/2803 E. and 2017/5044 K.), the 11th Civil Chamber of the High Court of Appeals affirmed the local court's decision, as it also concluded that the defendant had continuously engaged in the practice of selling its products at prices that were lower than their costs. However, a dissenting opinion was also published in this decision, and the dissent argued that the local court's decision should have been overturned, as it had failed to duly examine whether the four *sine qua non* conditions of Article 55(1)(a)(6) of the TCC had been cumulatively met in this specific case.

Almost five months later, on February 28, 2018, the 11th Civil Chamber of the High Court of Appeals rendered another decision in a case that was factually very similar to the one discussed above. In that case, the defendant had been giving one free baguette to all customers who bought two baguettes. The local court concluded that, although the per-unit price charged by the defendant had been lower than the per-unit cost of a baguette, the defendant's activities constituted a *promotion*, which is a legally sanctioned and acceptable sales method, and that consequently, there was no unfair competition in this case. With its decision dated February 28, 2018 (numbered 2016/7703 E. and 2018/1505 K.), after explaining the four mandatory and cumulative conditions of Article 55(1)(a)(6) of the TCC, the 11th Civil Chamber of the High Court of Appeals overturned the local court's decision by emphasizing that the local court had merely determined the sales price and cost, but had failed to examine whether the four *sine qua non* conditions of Article 55(1)(a)(6) of the TCC had been cumulatively satisfied in this specific case.

To sum up, the sale of certain products below their purchase prices may sometimes be considered and punished as an act of unfair competition under Article 55(1)(a)(6) of the TCC, but only if the four conditions specified in the provisions are cumulatively met. Therefore, it is possible to conclude that the application of Article 55(1)(a)(6) of the TCC is not so simple or uncomplicated in practice. Recent case law also suggests that the High Court of Appeals is very strict in its decisional practice of applying the statutory rules and evaluating the fulfillment of the four conditions discussed above.

Data Protection Law

The Technical and Organizational Measures Set Forth Under Turkish Data Protection Law in Light of the Data Protection Board's Recent Principle Decision

The Personal Data Protection Board (**"Board"**) published a principle decision (No. 2018/63) on the prevention of processing of personal data beyond its purpose (**"Decision"**) in the Official Gazette of July 4, 2018.

The Decision states that the Board received complaints regarding the processing of personal data by individuals who had access to the complainants' personal data, and who exceeded the means of their authorization and processed personal data outside of its intended purpose. The Decision further states that such data processing, exceeding the limits of authorizations by individuals who have access to personal data, or sharing personal data with third parties violates Article [12] of the Law on the Protection of Personal Data (**"DP Law"**), and that data controllers should be informed of the need to employ all necessary technical and administrative measures to ensure the appropriate security standards are implemented to prohibit and prevent such actions.

In other words, under Article 12/1 of the DP Law, data controllers are required to take all necessary technical and organizational measures to provide an appropriate level of security in order to (a) prevent the unlawful processing of personal data, (b) block unlawful access to personal data, and (c) properly safeguard and protect personal data. The Board has also published a separate Personal Data Security Guidance (**"Guidance"**)[12] explaining the specifics of these measures.

In the Guidance, the proposed organizational measures include the following: (i) determining current risks and threats, (ii) training employees, (iii) carrying out awareness/alertness drills, (iv) establishing personal data security policies and procedures, (v) minimizing the usage of personal data, and (vi) managing the organization's relationships with data processors. With regards to the suggested technical measures, the Guidance recommends the following: (i) cyber security measures that employ one or more cyber security programs, (ii) strong firewalls, (iii) continual updating of security tools, (iv) limiting access to systems that contain personal data, (v) regular security tests of the relevant systems, (vi) maintaining log records of all users, (vii) taking physical security measures in order to protect data centers containing personal data and backups of personal data. The Guidance also underlines that storing personal data on cloud facilities (*i.e.*, on the servers of other companies) might also create security vulnerabilities and weaknesses.

Article 32 of the General Data Protection Regulation (**"GDPR"**) states that appropriate technical and organizational measures must be taken in order to ensure that the requirements of the GDPR are fulfilled. Furthermore, unlike the DP Law, the GDPR provides concrete examples of such appropriate security measures and procedures, such as *"the pseudonymisation and encryption of personal data," "the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services," "the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident,"* and *"a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing."*

Additionally, regarding a recent data breach incident, the UK Information Commissioner's Office (**"ICO"**) has also made an important declaration, which is in line with the Decision of the Board. In its declaration, the ICO declared that "*organizations have a legal duty to ensure that people's personal information is held securely. We have been made aware of an issue concerning (the platform) and will be making enquiries*."[13] The ruling of the ICO is related to a very recent case, which occurred after the GDPR had come into force, and the ICO's ruling might play an important role in

[12] See Personal Data Security Guidance, Personal Data Protection Board, available at https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/7512d0d4-f345-41cb-bc5b-8d5cf125e3a1.pdf

[13] See https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/06/ico-response-to-ticketmaster-cyber-incident/

shaping the future of this field. Although the DP Law is not based directly on the GDPR, the ICO's ruling in this case might serve as a valuable example and provide beneficial guidance for regulators and judges in future incidents that occur in the Turkish jurisdiction.

Internet Law

The Constitutional Court's Decision on the Requirement to Exhaust All Legal Remedies with Respect to Access Ban Requests

The owner of a modeling agency (**"Applicant"**) applied to the Constitutional Court[14] regarding the Istanbul 3rd Criminal Judgeship of Peace's decision (**"Decision"**), which had affirmed the Istanbul 2nd Criminal Judgeship of Peace's ruling rejecting the Applicant's request for the access ban of certain search engine results. The results in question were related to specific news articles about the Applicant's involvement in the death of one of the models working at the agency from a drug overdose, as well as the death of the Applicant's husband from the same cause. In the individual application petition, the Applicant argued that, by rejecting the access ban of these contents, her rights (i) to privacy, (ii) to the protection of her dignity and reputation, and (iii) to a fair trial had all been violated.

In order to provide a brief background: In 2004, a model who was working for the Applicant's modeling agency died from a drug overdose. The incident became the topic of numerous news articles on the internet and in print. The news articles in question included many details about the incident, as well as information about the suspects who had provided drugs to the model and about the prosecutor's investigation. One of these articles stated that the Applicant had testified as a witness in the case, while another article mentioned that her husband had also died from a drug overdose.

[14] Constitutional Court Decision with the Application Number 2014/19685, available at http://www.resmigazete.gov.tr/eskiler/2018/05/20180517-10.pdf

As mentioned above, following the order of the Istanbul 2nd Criminal Judgeship of Peace, which had rejected the Applicant's access ban request, the Applicant applied to the Istanbul 3rd Criminal Judgeship of Peace to overturn this order. When the Istanbul 3rd Criminal Judgeship of Peace affirmed the Istanbul 2nd Criminal Judgeship of Peace's ruling, the Applicant exhausted all of her ordinary legal remedies. Subsequently, the Applicant appealed her case to the Constitutional Court.

In its analysis of the case, the Constitutional Court first referred to Article 9 of the Law No. 5651 on the Regulation of Broadcasts via the Internet and the Prevention of Crimes Committed through Such Broadcasts ("**Law No. 5651**"), which is entitled "Removal of Content from Broadcasts and Access Bans." The Court also referred to the relevant provisions of the European Convention on Human Rights (**"Convention"**) by citing the Constitutional Court's *Ali Kidik* decision (No. 2014/5552). The Constitutional Court drew attention to the importance of freedom of expression in a democratic society and emphasized the significance of the internet as a tool to achieve and advance this freedom by referring to relevant precedents of the Constitutional Court, and also declared that the access ban of websites (or of specific news articles contained therein) interfered with the right to freedom of expression.

In its Decision, the Constitutional Court also stated that access ban requests should only be granted if they are absolutely required, as a result of a judicial evaluation that also takes into account that such online content is easily accessible and might interfere with the rights to privacy of individuals.

The Constitutional Court further noted that there are other alternative legal measures (promulgated under both criminal and civil laws) that could be applicable in such cases. For example, the Decision states that Articles 24 and 25 of the Turkish Civil Code could be utilized to prevent the violation of personal rights, and also reiterates that interim measures could be requested from the courts in an urgent case, which are regulated under Article 389 (and following) of the Turkish Criminal Code. The Constitutional Court underlined in its Decision that an applicant may seek judicial relief and refer the case to criminal proceedings if the act is deemed to be a crime. According to Article 223/6 of the Criminal Procedure Law, a judge may rule on and grant interim measures if a defendant is convicted, and such measures may include the access ban of the online content.

In the case at hand, the Constitutional Court observed that the news articles in question had been published in 2004 and that the Applicant had only requested the access ban a decade later, in 2014. Thus, the Court concluded that the Applicant had failed to demonstrate the necessity of an urgent measure, such as an access ban, a decade after the original news articles had been published.

The Constitutional Court further stated that the access ban procedure under Turkish law makes it difficult to maintain a balance between conflicting rights, as judges must evaluate access ban requests solely on the basis of the information and documents presented by the complainants, without collecting any further evidence or hearing any defenses, whereas the complainant has other effective mechanisms for relief. The Constitutional Court also noted that an access ban decision based on the Law No. 5651 should only be granted in urgent cases arising from a "*prima facie violation*," where the violation is apparent without the need for a detailed examination, such as when nude photos or videos of an individual are published online. According to the Constitutional Court, an individual applicant may seek judicial relief from civil or criminal courts, since these courts also have the power to grant decisions with regards to the access ban of online content, and because the decision of a judgeship of peace does not establish that the dispute has been fully and finally adjudicated, considering that remedies may still be sought in civil or criminal courts.

As a result of the foregoing considerations, the Constitutional Court concluded that the Applicant had not exhausted all the legal remedies available before applying to the Constitutional Court, since the case had not been brought before a civil or criminal court, both which have the power to grant more effective remedies with regards to the harm claimed by the Applicant. Therefore, the Court rejected the individual application.

Telecommunications Law

ICTA's Decision Amending the Principles and Procedures on the Use of Calling Line Identification

The Information and Communication Technologies Authority (**"ICTA"**) rendered a board decision amending the Principles and Procedures on the Use of Calling Line Identification (**"PPCLI"**) on April 12, 2018. The aim of the PPCLI is to set out the rules and procedures regarding the use of Caller Line Identification (**"CLI"**) by electronic communications service operators. The PPCLI did not include any information as to calls that were directed by an emergency call center to another residential area. According to Article 7(A), which was added by the ICTA's decision, these calls are left out of the scope of the PPCLI as an exception.

Article 7(A) indicates that the CLI to be used for these emergency calls will be determined by the Ministry of Internal Affairs.

Due to rising consumer complaints related to fraudulent calls and messages in Turkey, the ICTA decided in 2016 that there was a need to establish the principles and procedures that would enable it to prevent CLI manipulation. Therefore, the ICTA made an amendment to the Authorization Regulation Regarding the Electronic Communications Sector and issued the PPCLI. The ICTA first required all GSM operators to create the necessary infrastructure and then ordered operators to comply with the rules set out by the PPCLI. The PPCLI was structured and regulated in such a way as to be applicable to all uses of Calling Line Identification by electronic communications service operators, except for calls originating and terminating outside Turkey. Under this regulation, a specific number is assigned to the subscriber by the operator as a CLI in the "caller number" field inside the Call Detail Records (**"CDR"**) and signaling information. It is essential that this number is used as the CLI that is conveyed to the party receiving the call. The operator will not allow users to change the CLI that has been determined by the operator and displayed to the receiver of the call.

As mentioned above, the PPCLI applies only to calls originating from Turkey. According to Article 5 of the PPCLI, if the CLI is left blank or is displayed in an incomplete format or includes alphanumerical characters for calls originating within Turkey, these calls shall be blocked by the operators. On the other hand, according to the PPCLI, calls originating from other countries should be blocked by the operators if they use numbers within the scope of the Turkish national numbering plan (*i.e.*, all numbers allocated to Turkish operators, administrations and emergency services in Turkey) as their CLI. Subsections 2 and 3 of Article 6 of the PPCLI also dictate that if the CLI is left blank or includes alphanumerical characters (*e.g.*, letters) for calls originating from outside Turkey, these calls must be blocked by the operators as well.

Apart from the foregoing, the PPCLI also provides an exception with respect to messaging services, such as SMS and MMS. In terms of these services, the PPCLI allows operators to use alphanumerical sender identifications as CLI upon the subscriber's written request. In that case, a number will be assigned to the subscriber in accordance with the applicable legislation. CDRs must include the number assigned to the subscriber in the "calling number" field, and the alphanumerical sender identification must be shown in the "displayed number" field. The number assigned to the subscriber and the sender identification shall be provided to the ICTA by the operators as "subscriber registry information," as stated in Article 7(1) of the PPCLI. This requirement is also applicable to calls originating in Turkey where the sender wishes to use an alphanumerical sender identification (*i.e.*, custom sender ID).

The PPCLI imposes an obligation on the operators to take all the necessary and 28 appropriate measures to ensure that an alphanumerical CLI (i) is not erroneous or misleading, and (ii) does not include a statement or term that does not identify the sender. In this context, operators are also required to (i) obtain certain documents listed in the PPCLI attesting to the ownership and/or legality of use regarding the CLI employed, depending on its type (*e.g.*, identification card, trade registry, company name, trademark name, domain name, official documentation from a governmental institution or public organization, etc.), and (ii) provide these to the ICTA if and when requested, as stipulated in Article 7(2) of the PPCLI. It should be noted that this obligation is not a registration obligation. Rather, this is an obligation on the operators to retain and preserve information and documents regarding the identity of the sender, as listed in Article 7(2) of the PPCLI, to be submitted to the ICTA, if and when requested.

The ICTA is entitled to take all the necessary measures in case of the operators' failure to comply with these principles and procedures, and it has issued administrative monetary fines to the operators for failing to comply with the PPCLI several times in the past.

E-Commerce Law

E-Export Strategy and Action Plan of the Ministry of Trade (2018-2020) Is Published in the Official Gazette

The Turkish High Planning Council has decided to accept the "**e-Export Strategy and Action Plan (2018-2020)**" (**"Plan"**), which was prepared by the Ministry of Trade (formerly known as the Ministry of Economy) (**"Ministry"**), with its decision numbered 2018/1 and dated January 31, 2018. This decision was published in the Official Gazette on February 6, 2018.

The primary aim and vision of the Plan is presented as raising awareness of e-exports throughout Turkey, taking into consideration its global economic potential. Within this framework, the Ministry of Trade brought together the relevant sector players and public institutions in order to develop a wide-ranging plan regarding the following: (i) regulation infrastructure, (ii) payment systems, (iii) logistics operations, and (iv) customs operations. With respect to the territorial analysis of global developments, geographic and cultural proximity, and market saturation, the authors of the Plan carefully examined and took inspiration from the payment preferences and customs procedures of leading countries and governmental organizations (including those from China, the United States of America, European Union, Germany, the United Arab Emirates, and Azerbaijan).

Taking into account the practices and efforts undertaken so far to extend e-commerce in Turkey (which started in 1997 and are still growing), the Plan encapsulates the general view of the sector by considering the Informatics Industry Association's ("Bilişim Sanayicileri Derneği" or **"TÜBİSAD"**) study on the e-commerce market which is produced on 2016. According to this study, the market size of the e-commerce industry in Turkey is 24.7 billion Turkish Liras for the year 2015. Additionally, according to the estimations made by the Interbank Card Center ("Bankalararası Kart Merkezi" or "BKM"), Turkey ranks 14th among countries with the highest number of internet users, with 46.2 million users in 2016. Thus, it was declared that participation in e-commerce is expanding due to the widespread internet infrastructure throughout Turkey, as well as the increase in link speeds and the growth of mobile phone usage.

As indicated in the Plan, the applicable legislations and the regulatory framework regarding e-commerce activities in Turkey include the following: (i) the Law No. 6563 on Electronic Commerce and its secondary legislations, (ii) the Data Protection Law No. 6698, the Consumer Protection Law No. 6502, (iii) the Law No. 6493 on Payment Services, Electronic Money and Payment Systems and Electronic Money Institutions, (iv) the Law No. 5651 on the Regulation of Broadcasts via the Internet and the Prevention of Crimes Committed through Such Broadcasts. Substantively, it is safe to say that there is already a functioning and effective legal framework with respect to e-commerce activities in Turkey.

In order to fulfill the aim and vision of the Plan, the Ministry has designated the following strategic aims:

- Enhancing logistical capacity;
- Enhancing customs procedures pursuant to the requirements of cross-border e-commerce;
- Enabling product security and auditing capabilities with respect to cross-border e-commerce;
- Enhancing the global competitiveness of domestic firms that carry out e-export activities;
- Increasing the number of Turkish firms that carry out e-export activities;
- Ensuring that micro entrepreneurs develop into e-exporters;
- Participating in international collaborations aimed at enhancing e-export activities.

The Plan elaborates on each individual strategy by describing its rationale, necessary actions, responsible and relevant institutions, performance indicators, implementation steps which will be executed between the years 2018 and 2020. and providing a description. From a legal standpoint, the proposed actions that must be taken to implement the abovementioned strategies include: (i) enhancing legal infrastructures that will protect consumer rights with respect to products that are sold through e-commerce, (ii) providing trust seals to service providers and intermediary service providers for e-export activities, and (iii) establishing a website that catalogues the legal and administrative regulations of different countries in order to provide useful information about various marketplaces. With the objectives of the Plan in mind, it is expected that Turkey will implement certain legal arrangements in the forthcoming years.

Real Estate Law

Recent Developments on Zoning Peace

Zoning peace has become a hot topic in Turkey given that many citizens do not have proprietorship certificates for their homes which leads to problems when trying to connect to water, electricity and natural gas services. A new law on procedures and principles of issuing building registration certificates for residential and non-residential buildings came into effect and was published in the Official Gazette on June 6, 2018.

Zoning peace is the process for which building registration certificates (**"Certificate" or "Certificates"**) will be issued for buildings which were built without licenses and which lack proprietorship certificates. Although the Certificates will not be equivalent to proprietorship certificates, citizens who acquire a Certificate will be able to connect to water, electricity and natural gas services.

The Certificate will be issued for buildings built before December 31, 2017. Applications can be made up until October 31, 2018 and the registration fee must be paid by December 31, 2018. It is at the discretion of the Council of Ministers to extend the application and registration fee deadline by up to one year. Applications for the Certificate can be made electronically through e-Devlet (the "e-Government Gateway" which provides access to various public services electronically from a single point) as well as by submitting the relevant forms to the Ministry of Environment and Urbanization (**"Ministry"**) through the institutions authorized by the Ministry in person. Only one Certificate will be issued for each building. The registration fee will be calculated based on the land's property tax value and the approximate building costs.

The Certificate can be used as follows:
(i) to temporarily subscribe to water, electricity and natural gas services,
(ii) to revoke demolishment decisions and outstanding administrative fines,
(iii) to complete deficient work of the certificated sections of buildings under constructions as the Certificate can also be issued for the completed sections of buildings under construction,
(iv) to conduct basic repair and alteration works.

Business licenses shall be granted to buildings with the Certificate without requiring an occupancy permit.

If the buildings for which the Certificates are issued are on public premises, such premises would be transferred to the Ministry which would then, upon request of the Certificate holder, sell the premises to the holder based on market value.

The Certificate may not be issued for (i) areas indicated under the Bosphorus Law No. 2960 as within the Bosphorus coast line and preview area, (ii) areas indicated in the same law as within the Istanbul Historical Peninsula, (iii) the historical area defined under the Law No. 6546 on Establishment of Directorate of

Canakkale Wars Gelibolu Historical Area, (iv) premises subject to the private property of third parties, and (v) public premises which are designated for social purposes and allocated to relevant institutions accordingly. If the Ministry determines the Certificate is issued for the buildings at the foregoing areas, the Certificate would be cancelled and the rights assigned by the Certificate would be divested. The registration fee would not be refunded and a criminal complaint would be filed against the applicant.

According to Article 9 of the new law on zoning peace, which regulates the validity period for the Certificate, the Certificate will be valid until the building is reconstructed or urban transformation begins. The same Article also indicates that the earthquake resistance of the building is the property owner's responsibility.

Officials from the Ministry emphasize that the new regulation is not a zoning amnesty but instead a zoning peace. Ministry officials have further indicated that the zoning peace does not legalize illegally acquired land and buildings built without licenses. Officials also stated that the new laws do not allow people to reconstruct illegally acquired buildings.[15] This also appears to be the case based on the section of the new law which states the Certificate will be only valid until the building is reconstructed. Generally, officials explained zoning peace as an effort to allow people who have been living in their homes for many years without proprietorship certificates to obtain a legal document enabling them to receive necessary utilities and make necessary renovations to their homes in a legal manner.

The new regulation attracted wide interest from the general public. According to figures announced by the Ministry in July 2018, more than 2.5 million applications have already been made. Certificates have been issued for more than a 130,000 buildings and more than 650 million Turkish lira have been collected as registration fees.[16]

While the zoning peace appears to have been positively received by a large portion of the general public, there have been certain criticisms directed at the new regulation. Some warn that although the regulation is presented as zoning peace, it is in fact a way for unregistered buildings to be legalized. Moreover, others point out the risk associated with the section of the regulation which states the earthquake resistance of properties will be the property owner's responsibility. Zoning peace is also criticized by some for enabling buildings to be registered which have not been supervised or inspected by the state and may not be earthquake resistant or compliant with safety standards [17].

The long term impact of the new law on zoning peace and the criticism directed at it will prove itself in time. Meanwhile, those who own unregistered buildings may apply for the Certificate up until October 31, 2018, and the registration fee must be paid by December 31, 2018.

Anti-Dumping Law

Turkey's Notification to the World Trade Organization on the United States' Recent Measures

Recently, the United States of America imposed an additional 25% tariff on imports of steel and an additional 10% tariff on imports of aluminum originating from all exporter countries (initially excluding Canada, Mexico, Australia, Argentina, Brazil, South Korea and the European Union),[18] on the grounds of

[15] https://www.emlaktasondakika.com/haber/genel/neden-imar-affi-degil-imar-barisi/136489

[16] http://imarbarisi.csb.gov.tr/bakan-kurum-imar-barisi-son-verileri-acikladi-haber-229095

[17] https://www.sozcu.com.tr/2018/ekonomi/anayasaya-aykiri-imar-barisi-sutlucede-coktu-2545414/

[18] On June 1, 2018, the United States imposed a 25% tariff on imports of steel, and a 10% tariff on aluminum, on the European Union, Canada, and Mexico.

national security through two proclamations signed by President Donald Trump on March 23, 2018. These extra customs duties were imposed pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (**"Act"**). According to the opinion of the Secretary of Commerce, these additional duties were necessary because the amount and circumstances of steel products imported into the United States threatened to impair the country's national security. The Secretary advised the President that the current levels of imported steel products and the global excess capacity for producing steel were weakening the domestic United States economy, resulting in the persistent threat of further shutdowns of domestic steel production facilities.

Section 232 of the Act authorizes the President of the U. S. to adjust the imports of goods from other countries, if the President deems the quantities or circumstances of imports pose a threat to national security. Under Section 232 of the Act, the Secretary of Commerce may initiate an investigation on his own authority, or an interested party may request an investigation be launched through an application, and the findings must be reported to the President within 270 days as of the date of the initiation of the investigation. If the President formally concurs with the report within 90 days, his executive authority under Section 232 allows him to amend or restrict the imports as necessary.

Turkey made a consultation request to the United States in relation to the additional duties, pursuant to Article 12.3 of the World Trade Organization's (**"WTO"**) Safeguards Agreement (**"Agreement"**). Article 12.3 sets forth and regulates the obligation of a WTO member proposing to apply or extend a safeguard measure to provide adequate opportunity for prior consultations with WTO members who have a substantial interest in the proposed measure as exporters of the product concerned, with a view to review the information, exchange views on the measure and reach an understanding on potential ways to achieve the objective set out in Article 8(1) of the Agreement. Accordingly, Article 8(1) of the Agreement sets out the objective of maintaining a substantially equivalent level of concessions and other obligations under the General Agreement on Tariffs and Trade (**"GATT"**).

The United States rejected Turkey's consultation request, declaring that the measures in question were not imposed based on the Agreement, and stating that, consequently, there was no basis to conduct consultations with respect to the measures under the Agreement. On May 22, 2018, Turkey notified the WTO's Council for Trade in Goods, which is responsible for the operation and implementation of GATT, that it would impose substantially equivalent additional duties on 22 goods included in the Annex to its Notification, by way of exercising its legal rights under Article 8(2) of the Agreement. The relevant Article regulates that, in the event the parties cannot reach an agreement within 30 days, exporting members who are affected by the safeguard measure will be free to suspend the application of substantially equivalent concessions or other obligations under GATT to the trade of the member applying the safeguard measure (in this case, the United States), the suspension of which the Council for Trade in Goods does not disapprove.

Indeed, the Turkish Council of Ministers decided to implement the abovementioned duties against imports from the United States as of June 21, 2018. The decision was published in the Official Gazette on June 25, 2018. The duties under consideration are worth approximately 266.5 million US Dollars, according to the Turkish Ministry of Trade (formerly, the Turkish Ministry of Economy).

White Collar Irregularities
Professional Standards of Ethics and Compliance Management

On June 9, 2018, the Professional Standards of Ethics and Compliance Management (**"Standards"**) was published in the Official Gazette and came into legal force the same day. The Standards were drafted by the Ethics and Reputation Society (**"Society"**) and submitted to the approval of the Professional Competency Board (**"Board"**). The Society is an association assigned and designated by the Board in accordance with the Professional Competency Board Law No. 5544, the Regulation on the Preparation of National Professional Standards and National Competencies and the Regulation on the Establishment, Duties, Working Procedures and Principles of the Sector Committees of the Professional Competency Board.

The first part of the Standards focuses on the definition of the profession and on the applicable legislation regarding the profession of Ethics and Compliance Management. Ethics and Compliance Managers (**"Managers"**) are defined as officers coordinating the preparation and implementation of ethics and compliance programs in a given company in line with the applicable legislation, as well as the relevant service procedures, quality requirements, risk management priorities and ethical principles. Managers are authorized and responsible for determining the roles and responsibilities of other employees for the implementation of the ethics and compliance program within the company, as well as preparing the policies and procedures regarding the program and structuring the communication mechanisms. These Managers carry out informational "awareness trainings" with regard to the implementation of an ethics and compliance program within the company, follow up on violations and notifications, and ensure the proper and necessary monitoring, reporting and updating of the program. The Occupational Health and Safety Law No. 6331, the Law No. 6502 on the Protection of the Consumer, the Turkish Commercial Code No. 6102 and the Turkish Criminal Code No. 5237 are listed among other laws and legislations that are relevant and applicable to the profession.

The third part of the Standards sets out the Managers' duties, related activities and performance indexes. In other words, this section regulates the details of the specific duties presented in the job definition, such as the preparation of the ethics and compliance program in Code C and the implementation of the program in Code D.

The Society also arranges and coordinates a certification program, which is prepared in accordance with global ethics and compliance standards, for those who aspire to qualify as Ethics and Compliance Managers in both Turkish and foreign companies. In general, legal advisers, lawyers, managers looking to specialize in ethics and compliance issues, internal audit employees and auditors, employees of human resources and corporate communications departments, sales and marketing specialists and senior managers and board members choose to participate in the certification program. The instructors, who comprise academics and businesspeople from various professional backgrounds, inform and educate the participants on various topics, such as corporate ethics risk mapping, how to implement and apply labor and criminal law provisions to intra-company ethical violations, how to structure, constitute and evaluate an ethics and compliance program, issues relating to notification and internal investigation mechanisms, and white collar irregularities.

With the completion of the third certification program on June 9, 2018, 65 people have now qualified as "Corporate Ethics and Certification Managers". Applications for pre-registration for the fourth term of the certification program are available on the Society's website at http://www.teid.org/ and the first session for the new program will start on October 6.

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ELİG
GÜRKAYNAK
Attorneys at Law

Çitlenbik Sokak No: 12 Yıldız Mah. Beşiktaş 34349, Istanbul / TURKEY
Tel: +90 212 327 17 24 • Fax: +90 212 327 17 25
www.elig.com