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Preface to the December 2012 Issue

Changes in the Turkish legal market in 2012 have been geared towards growth in economic activity in Turkey, which successively fostered a surge in the number of investors, financial institutions and other market participants engaging in major transactions across the country. Coupled with the increase in cross-border and cross-cultural deals involving Turkey, the past year has witnessed to several significant legal developments, a clear indication of Turkey's efforts in adapting to the evolving legal expectations and vernacular observed in the legal community across the globe.

The inaugural edition of ELIG's Newsletter aims to canvass some of these significant developments of 2012 in the Turkish legal arena and lay out key take-aways for our readers. This quarter's issue, in particular, features an eclectic selection of work products from our lawyers: From electronic general assemblies in the new Turkish Commercial Law to the implications of "safe internet" on internet freedom in Turkey, from the impact of the new Turkish Code of Obligations on general service contracts in labor law matters to Turkey's score in the Transparency International's 2012 Corruption Perception Index, we hope this issue will provide our readers with an insightful guidance, reflecting key changes to the law and practice as observed in the Turkish legal landscape.

December 2012

Corporate Law

Recent Developments under the New Turkish Commercial Code: Electronic General Assemblies

The New Turkish Commercial Code ("**the New TCC**"), which entered into force on July 1, 2012, introduces new concepts for the general assemblies of joint stock companies. Pursuant to Article 1527 of the New TCC, joint stock companies are allowed to hold general assembly meetings in electronic environment.

Such electronic general assembly meeting system have been regulated under both Regulation on the General Assembly Meetings of Joint Stock Companies to be Held in Electronic Environment ("**Regulation**") and Communiqué on Electronic General Assembly System Implemented in General Assembly Meetings of Joint Stock Companies ("**Communique**").

The general assembly meetings to be held in electronic environment enables the shareholders to attend the general assembly meetings, vote, discuss, share their opinions through electronic general assembly system which shall be established for this purpose by the joint stock companies.

Principally, the articles of association of joint stock companies should be amended in order to allow companies to hold electronic general assemblies. Once such amendments are adopted by the general assembly of joint stock companies, joint stock companies are required to establish an electronic system where shareholders are allowed to use their rights mentioned in the Regulation and the Communiqué.

Although this system is an optional method for non-public companies, publicly traded companies (which are quoted on the stock exchange) are required to hold general assembly meetings in electronic environment through using the electronic system established by Central Registry Agency ("**CRA**").

As per Article 1527 of the New TCC, joint stock companies are obliged to present the necessary documents for accessing and inspecting the shareholders in the electronic general assembly system in accordance with the time limits indicated in the legislations.

Two days prior to the general assembly meeting, those shareholders who wish to attend the general assembly meetings in the electronic environment are required to notify their preference to the joint stock company by using the electronic general assembly system and are allowed to withdraw their preference of attending the general assembly meeting through electronic general assembly system until the day before the general assembly. However publicly traded companies are required to notify their preference to CRA until 9:00 pm of the day preceding the general assembly meeting. Identity information of proxies who would attend the general assembly meeting in the electronic environment shall also be registered in the electronic general assembly system.

Shareholders or their proxies attending the general assembly meetings are required to enter into electronic general assembly system using their secure electronic signature. Attendance in the electronic environment starts for an hour and continues until the last five minutes before the commencement of general assembly.

The list of participants using electronic general assembly system shall be received from the system and the general assembly meeting commences simultaneously both in electronic environment and physical environment. The ministry commissar monitors whether the provisions stated under legislations are fully satisfied.

Shareholders or their proxies shall submit their suggestions, opinion or votes regarding the agenda of the general assembly meeting electronically. The voting shall be conducted separately for each agenda item. Both the meeting minutes and list of participants of general assembly meeting (both in the physical and the electronic meeting) should be submitted to the ministry commissar.

The New Turkish Commercial Code: Some Take-Aways on the Developments in Corporate Law

The new TCC was passed on January 13, 2011 and took effect on July 1, 2012, except for the provisions related to the audit of companies and requirements to establish a web-site, which will not come in to force until July 1, 2013. The new TCC stipulates the following substantial changes on several issues that can be summarized as follows:

- Provides compliance with global corporate law practices by incorporating internationally accepted accounting standards in domestic legislation, bringing Turkish legislation in line with corresponding EU legislation, strengthening implementation of the pre-emptive rights, and enhancing use of technology by way of enabling companies to be incorporated through online applications and to participate to board and general assembly meetings by electronic means;

- Generates a better and more efficient corporate governance by granting flexibility to companies in terms of incorporation (enabling companies to be formed with one shareholder), engaging in commercial activities (abolishing the '*ultra vires*' doctrine), enabling the board of directors to be formed with one real person or legal entity director, abolishing the requirement for the board members to be shareholders of the company, allowing appointment of independent executives as board members and also by changing the voting and decision-making procedures, extending the 'piercing the corporate veil' doctrine by making it easier to reach the parent companies;

- Proposes structural changes in the procedures for merger by removing the restriction requiring that the merging companies must be the same kind (i.e both joint stock companies or limited liability companies) and allows different kinds of companies to merge, allows shareholders rejecting the merger to quit the company, introduces the concept of simplified merger for companies that are in the same group, and regulates the split of the companies for the first time;

- Prevents parent companies from abusing their power to control subsidiaries by granting the minority shareholders in subsidiaries option rights and embracing minority shareholders via the right to call the shareholders for general assembly meetings, request substitution of the auditor, challenge intra-group transactions and call for dissolution of the company if there is a just cause; on the other hand, it also establishes a 'minority squeeze-out' mechanism in favour of controlling shareholders in parent companies;

- Provides protection for capital and assets of the companies by requiring independent audit firms to be the auditors of the companies, and reinforces shareholder rights by granting any shareholder a right to request a special audit on a specific matter; and

- Brings fundamental changes in capitalisation of the company by allowing intellectual property rights to be contributed to the company, and capital augmentation in companies.

Despite the critics, the new TCC is accepted as a big step towards encouraging investment in Turkey by providing more efficient and reliable legal mechanisms.

Competition Law/Antitrust Law

Turkish Competition Authority to Release Draft Communiqué and Draft Guidelines for Public Consultation

One of the most noteworthy recent developments in Turkish competition law is the announcement for the public consultation of two significant secondary legislation instruments, namely the Draft Block Exemption Communique on Specialization Agreements ("**the Draft Communique**") and the draft Guidelines on Horizontal Cooperation ("**the Draft Guidelines**"). To date, the Competition Authority has already promulgated secondary legislation providing block exemptions for technology transfer agreements and research and development agreements. With the addition of the Draft Guidelines on Horizontal Cooperation and the Block Exemption Communique on Specialization Agreements, the body of secondary legislation concerning the crucial issue of collaborations between competitors will have grown considerably, with the welcome result that undertakings will be able to engage in pro-competitive collaborations while steering clear of the anti-competitive conduct prohibited by competition law. It is worthwhile to note that both the Draft Communique and the Draft Guidelines largely resemble their EU counterparts, which is in keeping with the past practice of the Competition Authority of paying close attention to the developments in EU competition law and seeking to retain the harmony between EU and Turkish competition law instruments.

The block exemption provided by the Draft Communique only applies in cases where aggregate market shares of the parties does not exceed 20% in any of the relevant markets, although there are grace periods for cases where agreements initially qualify for the exemption but later exceed the 20% threshold. The types of specialization agreements which are specifically covered are: (i) unilateral specialization agreements where one party undertakes to stop producing a particular product completely or in part and procure that product from a competing undertaking active in the same market, (ii) reciprocal specialization agreements whereby two or more undertakings active in the same product market undertake to completely or partially stop producing certain products, which are to be different products for each undertaking, and undertake to procure such products from designated counterparties, and (iii) joint production agreements whereby two or more undertakings active in the same product market, or attempting to enter the relevant market, undertake to produce certain products jointly. The exemption also extends to the licensing or intellectual property transfer agreements which are directly related to, or necessary for the functioning of the relevant specialization agreements. Furthermore, the exemption remains in effect even where the relevant agreements contain exclusive sale or exclusive purchase obligations, or where the parties also agree upon the joint distribution of the relevant products. On the other hand, the presence of the following elements causes the relevant agreements to fall outside the coverage of the block exemption: (i) maintenance of the sale price to third parties, with the exception of direct purchasers, in the case of joint production agreements, (ii) any sharing of territories or customers, or (iii) the limitation of production or sale amounts. That being said, mutual or one-sided specialization agreements may contain provisions regarding the relevant product volume, and for joint production agreements to set the production capacity or volume, or sale targets in the case of joint distribution.

The Draft Guidelines are generally organized around six main categories which are 1) Information Exchanges, 2) Research and Development Agreements, 3) Joint Production Agreements, 4) Joint Purchasing Agreements, 5) Commercialization Agreements, and 6) Standardization Agreements. With respect to each category, the Draft Guidelines contain sections generally outlining the anti-competitive concerns regarding the relevant type of cooperation, and then laying out the elements pertinent to Article 4 and Article 5 analyses. Each section then provides a few examples to help explain the legal analyses and provide guidance with respect to situations which tend to arise regularly.

A Selection of Important Merger Control Cases and Investigations of the Turkish Competition Board

- Merger Control Cases

In *Dardanel* decision (02.02.2012; 12-04/151-42), the Competition Board cleared the transaction for the acquisition by Yıldız Holding of Dardanel. The transaction concerned the market for canned fish and received unconditional clearance. Prior to the transaction, Yıldız Holding already owned Kerevitas in the same market and thus the Competition Board assessed as to whether the proposed transaction would create or strengthen a dominant position in the relevant market. The Competition Board cleared the transaction by majority. It took into account factors such as the increasingly-successful private label products. Three of the seven members of the Competition Board objected to the decision by stating that the transaction should have been taken to Phase II.

In *Paine & Partners* decision (11.10.2012; 12-51/1474-504), even if there is no horizontal or current vertical overlap between parties' activities, the Competition Board found the existence of potential vertical overlap between the buyer's activity in Australia and the target's Turkish activities sufficient to infer the existence of an affected market and granted unconditional clearance to the transaction.

- Investigations

A case that merited the Competition Board's scrutiny was the investigation that was conducted against eight undertakings active in the market for traffic signalization materials. In its *3M* decision (27.09.2012; 12-46/1409-461), upon evaluating the findings and defenses of the relevant parties, the Competition Board decided by majority to not impose an administrative monetary fine to any of the defendants. The decision is candidate to be a benchmark precedent on the Competition Board's approach to leniency enforcement. It remains to be seen if the Turkish Competition Board's reasoned decision will analyze the fundamental tenets of the Turkish leniency regime.

The Competition Board rendered its decision regarding two undertakings that are active in the sodium sulphate and raw salt by the decision of 03.05.2012 (numbered 12-24/711-199). The Competition Board had launched an investigation against Otuzbir Kimya ve Sanayi Türk Ltd. Şti. and Sodaş Sodyum Sanayi A.Ş. at the end of 2010 to see whether the relevant undertakings had violated Article 4 of Law No. 4054 by fixing prices and sharing customers in the sodium sulphate market in Turkey. Accordingly, the Competition Board decided that the relevant undertakings had fixed prices and shared customers for a duration of six years (i.e. from September 2005 until April 2011) and imposed administrative monetary fines on the relevant undertakings, and on an executive official who was deemed to have had a determining effect on the creation of the violation. The total amount imposed on the undertakings and the individuals turn out to be approximately 1 Million TL. This is the second time in the Competition Board's decisional practice where in addition to the undertakings an individual had to incur administrative monetary fines due his/her heavy involvement in the creation of a competition law violation. Therefore, it can be expected that the reasoned decision regarding the case will include useful clues for understanding the concept of "executives and employees of parties that had a determining effect on the creation of the violation."

The Competition Board has also recently concluded its investigation in the cement sector with its decision of 06.04.2012 (numbered 12-17/499-140). Following its investigation, which commenced at the end of 2010, regarding collusive behaviors in terms of pricing between 10 undertakings in the cement sector in Turkey, the Competition Board decided that the investigated undertakings had violated the Law No. 4054 and imposed total fines of approximately 23 million TL (approximately EUR 10 million). The relevant decision has once again showed that the chronic problem with respect to competition law related infringements within the cement sector are not easily to be cured.

The Competition Authority Has Released a Discussion Paper on Merger Control Thresholds

The Turkish Competition Authority opened the efficiency of the current global and local turnover threshold system to discussion.

On 31 August 2012, a discussion paper ("**Discussion Paper**") was published on the Competition Authority's official website. The Discussion Paper analyzes statistics of Competition Board decisions in 2010 and 2011 to draw conclusions as to whether the current turnover thresholds are adequate or are in need of an amendment.

According to the current threshold system, the Competition Board's approval is required for transactions where;

- Total turnovers of the transaction parties in Turkey exceed 100 million TL, and turnovers of at least two of the transaction parties in Turkey each exceed 30 million TL, or

- Global turnover of one of the transaction parties exceeds 500 million TL, and at least one of the remaining transaction parties has a turnover in Turkey exceeding 5 million TL.

According to the Discussion Paper, (i) 60% of the notified transactions exceeded the global turnover thresholds only, and (ii) only 17% of the same exceeded the local turnover threshold in 2011. In 25% of the transactions that exceeded only the global turnover in 2011, either the acquirer or the target did not have local turnover in Turkey.

In the light of this data, the Discussion Paper finds the global turnover prong to be the main reason for the high numbers of merger control filings and the resulting heavy workload of the Competition Authority. Consequently, the Turkish Competition Authority signals that it may gear up for an amendment to the turnover thresholds after the public consultation on the Discussion Paper.

Mergers & Acquisitions

M&A Framework under Turkish Law

In the absence of specific legislation governing M&A activities under Turkish legislation, the Turkish Code of Obligations and the Turkish Commercial Code form the legal foundation for transactions concerning non-listed companies. General provisions of the Turkish Code of Obligations in relation to sale and purchase contracts, ordinary partnerships, independent undertakings and guarantees as well as remedies in the event of defaults are the basis of the obligations and liabilities of the parties to an M&A transaction. On the other hand, the provisions of the Turkish Commercial Code relating to transfer of shares and corporate governance govern technical aspects of the transactions.

Cyberspace Law/Internet Law

The Impact of "Safe Internet" on Internet Freedom in Turkey

It has been over a year since safe Internet was launched in Turkey with the decision of the Information Technologies and Communication Board, with the agenda item Procedures and Principles Regarding Safe Internet ("**the Decision**"). The testing phase for Safe Internet Service was carried out from August 22, 2011 until November 22, 2011, and the period when the Decision took effect started with the termination of the testing phase on November 22, 2011.

The decision implemented different user profiles for Internet subscribers in Turkey besides the standard, namely the family profile and child profile; which can be chosen by users who want to filter out certain contents they do not want to encounter. It is important to point out that the Decision had no effect on existing subscribers who did not request safe internet service and they would continue to be provided with the same services without any change (Article 5 of the Decision).

Whereas operators are obliged to build the infrastructure required for providing safe Internet service, the content of these profiles are determined by the Safe Internet Service Working Board ("**the Working Board**").

In principle, the system works as follows: the Working Board creates lists of websites and classifies them according to their compatibility in regard to the user profiles; for example social media networks are restricted in the child profile but optional for the family profile. Both profiles filter out contents such as gambling, sexual abuse of children, drugs, prostitution, obscenity, racism, terror, violence, malicious software. If a website is categorized under any of these it will not be viewed by the subscribers of safe Internet service. Both users and owners of websites can object to the Authority regarding these classifications (article 10/5 of the Decision). Some of these content categories are also existent in Law No. 5651 and are reasons for content removal.

As above mentioned this system is on a voluntary-basis and a subscriber can leave these profiles at will and return to using the standard profile. Whether the system works as intended is a topic for another discussion, it is possible to say that safe internet might still be considered another instrument of censorship, as there is only one board to decide on which content and to what extent the filtering will be implemented, and the content categories that could be filtered out are not limited with the ones explained above.

Turkish authorities also work in harmony with international authorities on this matter. As a recent development, in relation to safe Internet, the Family Online Safety Institute (FOSI), which is an international and non-profit organization working towards safer Internet for children and their families, has attended the Internet Board's meeting and gave a speech about safety measures.

Despite the heavy criticism and fears towards censorship, aside from the general problems Turkish Internet users face in regard to Internet freedom, it is possible to state that the Decision has not created a palpable effect on Internet freedom thus far.

Data Privacy Law

Several Ruminations on the Draft Turkish Data Privacy Law

The European Commission has recently released its proposal to amend and reform the data protection legislation framework. The proposed new legal framework consists of (i) a proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("**Proposed Regulation**"), which will replace the current Data Protection Directive 95/46/EC, and (ii) a proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data. The Proposed Regulation introduces increased enforcement powers, sanctions, a specific notification period for breaches and new concepts such as binding corporate rules.

As is known, Turkey does not have a fully-fledged law governing the privacy of personal data. The protection of personal data is ensured mostly by the Turkish Criminal Code instead of a special data protection law. However, Turkish legislators are currently in the process of establishing legislation specifically for data privacy. Given the tendency of the Turkish legislators to adopt foreign legislation, the legislation to be enacted in Turkey would most likely be taken or at least be influenced from the legislation in the EU, and thus, some of the requirements and provisions under the Proposed Regulation might similarly be adopted and be attempted to be implemented in Turkey too, in the near future. To that end, Turkey would highly likely have a difficult time in embracing certain concepts and institutions detailed under the Regulation, as it is not familiar with the majority of them.

For instance, the Regulation brings about new sanctions where the companies risk up to EUR 1 million or up to 2 percent of their global annual turnovers in case of non-compliance with certain requirements. As per the current applicable law in Turkey, sanctions imposed on real persons for violating the protection of personal data by recording or disseminating them illegally is imprisonment, whereas the sanction for legal entities for the violation of the same is specific safety measures. In this respect, one might say that the punishment under Turkish law is either too harsh for individuals or not an appropriate disincentive for legal entities. Therefore, at a first glance, the sanctions introduced by the Proposedc Regulation (up to 0.5 percent, 1 percent and 2 percent of annual worldwide turnover for intentionally or negligently failing comply with the Regulation) might be considered as useful and an incentive for companies to comply with the legislation. However, considering the provisions of this Proposed Regulation, which, among others, suggest that sanctions might be imposed even if in case of a first and non-intentional non-compliance with the Regulation (in case the company does not meet the criteria set forth in Article 79(3)) and the other administrative sanctions and fines introduced with this Proposed Regulation, and also considering the fact that the Turkish companies were not ever held liable for compliance with data privacy rules this specific, the burden of paying fines would be too harsh for Turkish companies.

Another concept brought by the EU Regulation is the establishment of several bodies (such as the controller, the processor, the data protection officer and supervisory authority), which would all be separately liable for different aspects of data protection. Currently, none of these bodies are mandatory by law for establishment in Turkey. Similarly, Turkey does not have a separate supervisory authority which specifically deals with data privacy and protection. The draft law pending before the Turkish Parliament introduces a Board of Protection of Data and Organization which will be liable and competent to ensure the compliance of persons and entities with the legislation in force. However, this draft law is not enacted yet and Turkish companies are not even familiar with the concept. Therefore, even if a similar draft to the EU Regulation is to be adopted in Turkey, it is highly likely that the legislator would omit the establishment of several liable bodies, such as the controller and the processor, and would focus on the establishment of one two authorities liable from ensuring compliance from all aspects.

The Proposed Regulation further requires the notification of a personal data breach to the supervisory authority within a time frame of 24 hours. This might come as a problem due to the shortness in the time limit and the difficulty in evaluating the breaches considering the fact that thousands of breaches might be received per day. Therefore, one might suggest that either the time limit should be as to allow the companies a second thought and a more concrete analysis, or the definition of "breach" be stricter as to relieve the burden of the supervisory board to some extent.

Dispute Resolution

The Highest-Recorded Damages Case in Turkish Adjudication Proceedings

In a case involving a leading company in the electronic appliances sector, a litigation was brought against another globally known company relating to the termination of the distribution agreement. This case qualifies as one of the most significant contemporary litigation cases in Turkey with the highest recorded damage claim amounting to 170,842,999 TL based on pecuniary damages, loss of profit and portfolio compensation borne from the unjust termination of a distribution agreement.

Employment Law

A Look at General Service Contracts through the Lens of the new Turkish Code of Obligations

The new Turkish Code of Obligations numbered 6098 ("**TCO**"), which came into force on July 1, 2012, introduced significant developments and approaches in terms of General Service Contracts. On that sense, despite the fact that Labor Law numbered 4875 ("**Labor Law**") is of a *lex specialis* nature, TCO's provisions shall be applied in case there are no explicit provisions stipulated under the Labor Law. Therefore, the following explanations provide an account of some of the significant changes observed under the in Labor Law as having been the effect of TCO.

Penalty Clause: By virtue of Article 420 of TCO, a penalty clause which is exclusively stipulated against the employee in the employment agreement would be deemed null and void. Although the very same conclusion may be derived from High Court of Appeals' precedents, such legislation is the embodiment of that conclusion in TCO.

Release Letter: Article 420 of the TCO specifically regulates the conditions of a release letter which is recognized to be valid. As derived from the relevant article, the release letter (i) shall be signed at least one month as of the termination date of the employment agreement, (ii) shall also be executed in written form, and (iii) shall precisely and separately indicate each payment item to be made due to the termination of employment relation as the aforementioned payment must be made in full via wire transfer. Accordingly, failure to meet such conditions will result in the release letter to be deemed as null and void. On that note, TCO further stipulates that, the release letter which fails to meet the conditions mentioned in (i) and (ii) merely serves as a receipt limited to the amount that is stated to be wired to the employee's bank account in the letter.

Non-Compete Clause: A general rule regarding the "non-compete" clauses' definition, valid scope and the sanctions introduced in connection with the breach of such clause was formerly derived from the High Court of Appeals' precedents, whereas currently Articles 444, 445, 446 and 447 of the TCO embody the definition and specific scope of a valid "non-compete" clause along with the claims which may be set forth in case of such clause's breach. Pursuant to those provisions, the employee's non-competition obligation shall be applicable provided that the employee undertakes such obligation in writing. Furthermore, in case it is unlikely that an employee may obtain information regarding the business secrets, customer data or performed business transactions considering his/her position, the non-compete clause shall be deemed null and void. As per Article 446 of the TCO, a "non-compete" clause shall not bear contra bona fide restrictions in terms of geographical area, time and scope of business which will eventually result in endangering the economic welfare of the employee and in any case cannot exceed two years in terms of the duration of the clause. In the light of the foregoing, it is fair to say that such legislation clarified the admissibility criteria of a "non-compete" clause.

Amendments Introduced by Law on Trade Unions and Collective Labor Agreements numbered 6356 ("**Collective Labor Law**"): Collective Labor Law came into force on November 7, 2012. Collective Labor Law decreased the number of work fields from 28 to 20 and also a defined a new concept of Group Collective Agreement. Additionally, certain provisions stipulated under the trade union section of the relevant law serve as exceptions to the general rules introduced by Labor Law. For instance, Article 25 of Collective Labor Law stipulates that an employee is entitled to demand for trade union compensation amounting to at least one year-salary provided that his/her employment agreement has been terminated due to his/her involvement in any trade union or any reason based on trade unions regardless of the fact that the employee is reemployed or has not initiated a lawsuit for re-employment. Moreover, as per Article 23, the directors of the trade-union may request for severance pay even when they terminate the employment agreement unilaterally.

Intellectual Property Law

Parallel Imports in Turkey

Exhaustion of a right within the context of intellectual property law is defined as the consummation of the rights arising from goods once the goods are circulated into the market with the owner's consent. Once goods are circulated into the market by or with the owner's consent, the owner can no longer control the distribution of those goods. The owner, in other words, has exhausted his distribution rights once he places the goods into the market.

Although the institution is called the "exhaustion" of a right, the owner of the right still benefits from the outcomes arising from the right. The owner of the IP right can no longer prevent a third party from distributing goods carrying the same trademark for the same goods. That being said, the owner retains the absolute right to produce, transfer, pledge, and use the IP rights as well as to grant a license to a third party. Although the owner of the IP rights can no longer prevent a third party from distributing goods carrying the same trademark for the same goods, the owner could still intervene in the distribution process if he detects that the goods are subject to a negative impact by a third party.

In Turkey, exhaustion of a right is conditioned upon three requirements; the goods pertaining to the IP rights must be: (i) protected by legislation; (ii) circulated in a specific geographic area; and (iii) circulated with the consent of the IP right's owner/holder.

i. The Goods must be protected by Legislation:

The goods must be protected by legislation through specific regulations in order to use the rights and benefits deriving from them.

ii. Specific Geographic Area:

Turkey adheres to the national exhaustion system; it does this through the Law on Intellectual Property, the Decree Law on the Protection of Trademarks and the Decree Law on the Protection of Patent Rights.

iii. The consent of the IP right's owner:

The owner must consent for the goods to be circulated into the market. Therefore, to fulfill this consent requirement, either the IP rights' owner or a third party to whom the owner has given explicit permission must place the goods into the market.

The importance of establishing the exhaustion of the right arises when potential and/or current importers want to circulate the same goods into that specific market. This has caused heated debate on a topic called parallel import.

Parallel import emerges when goods produced under the protection of a trademark, patent or copyright are first placed legitimately (with the consent of the IP right's owner) into the market in a country abroad, but are then subsequently imported to another country and circulated in the market without authorization from the IP right's local holder/owner. The trademarked goods must be original and must have been circulated into the imported country's market to establish a parallel import.

An IP right's holder/owner can only prevent the sale of the original imported goods before he has exhausted this right by putting the goods for sale on the market for the first time. However, once the first sale of the goods occurs, the IP right's owner no longer has the right to stop the importer from selling the goods in the same market.

It is crucial to mention that the importer of the parallel imported goods must establish service stations to comply with the current obligations on after-sale services of the industrial devices. This is due to legislation that requires after-sale service stations to be implemented and the importer of the products to render the services.

White-Collar Irregularities

Turkey's Progress in the Battle against Corruption: Transparency International's 2012 Corruption Perception Index

The pervasiveness of white-collar irregularities, particularly corruption, in the business community has increased over the past decade at an insurmountable pace. Transparency International's long-awaited 2012 Corruption Perceptions Index (the "**2012 Index**"), which was released on December 5, 2012, has scored 176 countries and territories from 0 (highly corrupt) to 100 (very clean) based on perceived levels of public sector corruption (previously the methodology of scoring was based on a scale of 10). The 2012 Index reports that two-thirds of ranked countries score less than 50, the same result as that which was reached in the Transparency International's 2011 Corruption Perception Index. The result suggests that levels of bribery, abuse of power, and secret dealings are still perceived to be very high in most countries.

The Transparency International's Corruption Perceptions Index uses data from 17 surveys that look at factors such as enforcement of anti-corruption laws, access to information and conflicts of interest. The index ranks countries and territories based on how corrupt their public sector is perceived to be. It is a composite index – a combination of polls – drawing on corruption-related data collected by a variety of reputable institutions. In the 2012 Index, Denmark, New Zealand and Finland rank first, with scores of 90, whereas Afghanistan, Somalia and North Korea, are last, with scores of 8.

A comparative assessment of the 2011 Index and the 2012 Index strikingly reveals that developed countries that are ranked higher on the 2011 Index have regressed in 2012, whereas Turkey, as an emerging market economy, has climbed up the ladder from a ranking of 61 in the 2011 Index, with a score of 4.2, to the current ranking of 54, with a score of 49. Among the BRIC economies, Brazil has scored 43 with a rank of 69; China scored 39 with a rank of 80; India and Russia scored 36 and 28, with a rank of 94 and 133, respectively. The Arab spring countries have also scored poorly. Overall, the 2012 Index reveals that the European Union and Western Europe have been perceived the least corrupt, whereas Eastern Europe and Central Asia are perceived the most corrupt regions, followed by sub-Saharan Africa.

Turkey's improving score in 2012 may be a result of the rapid increase of regulatory reforms the Turkish anti-corruption legislative framework has witnessed over the past couple of years. Among these initiatives has been the project on "Ethics for the Prevention of Corruption in Turkey", which was funded by the European Union and the Council of Europe between December 1, 2007 and November 30, 2009. Among the aims of the project included supporting the implementation of the Code of Ethics across the Turkish public administration in line with GRECO recommendations; developing codes of ethics for other categories of officials of holders of public office; developing systems of monitoring the effectiveness of prevention and other anti-corruption methods; and ensuring and enhancing the coordination of anti-corruption measures. "The Action Plan for Increasing Transparency and Strengthening the Struggle against Corruption 2010-2014", another anti-corruption strategy the government has endorsed, enumerates a catalogue of initiatives subdivided in preventive measures, enforcement, and increasing social awareness. While Turkish authorities have not chosen to make one single (specialized) institution accountable for coordinating this action plan or to report independently on its progress, a periodic review and evaluation of the initiatives taken to implement the measures planned under the action plan may already be yielding their fruits. The notable amendments made in July 2012 to the core bribery provisions stipulated under Turkish criminal law is one very recent example of how these efforts are materializing in combating corruption at a national as well as an international level.

In the backdrop of a growing sense of urgency to step up anti-bribery enforcement across the globe, the results of the 2012 Index all in all underscore the need for a comprehensive reform in those countries scoring low on the index, and show that simple changes in leadership and political culture are not sufficient. Turkey's improvement in its perceived corruption level may well be a hopeful sign for emerging market economies in combating corruption in both public and private spheres.

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