

DÜNDAR · SIR | LAW FIRM

LEGAL UPDATES – QUARTERLY 2022-III

I. Electronic Commerce Law:

Significant amendments is made to the Law on the Regulation of Electronic Commerce No. 6563. The purpose of these amendments is to ensure healthy growth in the electronic commerce sector, whose market share is constantly expanding, to prevent unfair competition and to provide market players to perform their activities in a healthy way.

The amendments contain very comprehensive regulations on the following subjects, which we will summarize under five headings. Therefore the amendments:

- (i) Made new definitions regarding e-commerce and determined the scope of new regulations,
- (ii) Granted new authorities to Ministry of Trade regarding regulating e-commerce environment,
- (iii) Imposed significant obligations to the actors in e-commerce environment and regulated relations between them,
- (iv) Set our fines and sanctions in case of violations of the new regulations and
- (v) Introduced a transitional period for adaptation of all these new legal regimes.

Certain significant amendments are as below:

- Intermediary service providers are not liable for the unlawful acts committed by their service providers. However, when an unlawful act occurs, the intermediary service provider must immediately remove the unlawful act from publication and notify the relevant institutions and organizations.
- E-commerce service providers with a net transaction volume of more than 10 billion liras and a transaction volume of more than 100 thousand transactions excluding cancellations and returns within a year shall be obliged to obtain a license from the Ministry of Trade as from January 1, 2025.

- Unfair commercial practice defined as when the intermediary service provider significantly disrupts the commercial activities of the service provider, reduces its ability to make reasonable decisions or forces it to take certain decisions, causing it to be a party to a commercial relationship to which it would not normally be a party.

It is noteworthy to state that most of the amendments shall be implemented as from January 1, 2023.

II. Retail – Shopping Malls:

Regulation on Shopping Malls has been amended as below:

- Definitions of “common income, common expense and management expense” have been included in the regulation.
- Expenses such as advertising, marketing and consultancy expenses, which do not fall within the scope of common expense and undocumented expenses cannot be requested from the enterprises.
- Management expenses are included in the scope of common expenses.
- Common expenses shall be distributed according to ratio of the sales areas of the retail enterprises in the shopping mall to total sales area of the shopping mall.
- Common incomes shall be used to cover common expenses of the year when collected. The portion exceeding the total of common expenses shall be used to cover the common expenses of next year provided that the collection of common income in a calendar year is higher than total of common expenses.
- The deduction shall be made until the end of February following the year when the advance belongs provided that an advance is received for common expenses.

Please note that these amendments have been heavily criticized by many shopping mall managements and that Council of Shopping Centers has filed an annulment lawsuit against the amendments.

III. Real Estate Law:

Certain rules on acquisition of real estate in Türkiye by foreigners are revised as below:

- Foreigners are obliged to make transactions in foreign currencies to purchase real estate.
- The bank shall issue a document named “Foreign Currency Purchase Certificate” for foreign real persons to be submitted to the land registry in return for the deposit of the real estate price in FX to the bank before the sale of the real estate and sale of this amount by the bank. It is obligatory to submit the Foreign Currency Purchase Certificate to the land registry for the purchase of the real estate.
- Foreign real persons residing abroad shall only be able to use loans in foreign currency to finance their real estate purchases in Türkiye.

IV. Competition Law:

The Turkish Competition Board has initiated an investigation against Arabam.com, Vava Cars, Araba Sepeti, and Letgo regarding the purchase and sale of second-hand cars through online platforms. The investigation is on the allegation that they had an agreement between these undertakings on concerted practices or that restricts competition.

V. Aviation Law:

New amendment has been made to Regulation on Airports/Airfields Ground Services (SHY-22) on passenger transportation to airports. Organizations providing public transportation services are exempted from approval of the Ministry of Transport and Infrastructure with the new addition.

Prior to the amendment, an operation of transportation between the provinces and districts, city centers, city terminal and/or terminals in the vicinity of the airport/airfield had been carried out with Ministry’s approval. However, organizations authorized to provide public transportation services on the above-mentioned routes according to relevant

legislation, are not required to obtain the Ministry’s approval anymore through this new amendment.

Accordingly, organizations willing to provide public transportation services to airports may carry out this service by receiving permission from relevant municipalities.

VI. Tax Law:

Two significant changes have been introduced within the scope of the tax legislation.

- a) Regarding collection of public receivables, the monthly delay interest rate is increased to 2.5% from 1.6%, and the annual default interest rate is also increased to 24% from 15%.
- b) A new Asset Peace is introduced. Money, gold, foreign currency, securities, and other capital market instruments (i) held abroad by real or legal persons or (ii) held in Türkiye by income or corporate taxpayers but not included in the legal book records; are within the scope of Asset Peace.
 - For assets located abroad, notifications shall be made until 31.03.2023:
 - (i) 1% for notifications made up until 30.09.2022,
 - (ii) 2% for notifications made up to and including 31.12.2022,
 - (iii) 3% for notifications made up to and including 31.03.2023, shall be applied.
 - In case the declared assets are kept in the accounts for at least 1 (one) year after transferred/deposited to the banks or intermediary institutions in Türkiye tax shall be applied at 0%.
 - The tax rate is applied at 3% for the assets in Türkiye but not recognized in the statutory books, regardless of the declaration date.

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