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MARKET NEWS

The Ministry of Labor and Social Security issued approximately 87.000 work permits to the foreigners out of approximately 100.000 applications in 2017. Amongst the work permits, the Syrian nationals secured the top spot with 20.970 permits. Syrian nationals were followed by the nationals of Georgia, Kirghizstan, Ukraine, China, Turkmenistan, India, Uzbekistan, Azerbaijan, Russia, Germany, UK, USA, Italy and France respectively.

The Personal Data Protection Board decided that all public and private entities must take technical and administrative measures to ensure that the personal data privacy of persons receiving services in the open counters, desks and service points of such public and private entities are adequately protected in its resolution dated 21.12.2017 and numbered 2017/62.

The gross minimum wage is determined as TRY 2.029,50 as of 01.01.2018. The total cost of the gross minimum wage to the employer is TRY 2.384,66 which includes the social security and insurance payments.

The Central Bank of Turkey announces the annual default interest rate as 10,75% to be effective as of 01.01.2018. The parties to a “commercial sale and purchase of goods and services” may agree on the default interest rate for the deferred payment. If the commercial contract does not include a mutually agreed default interest rate, then the annual default interest rate of 10,75% will automatically apply.

Social Security Institution issued a circular relating to the determination of employees’ social security registration on 25.01.2018. According to such circular, if a notification (of any kind) is served by the officials of the Turkish Postal Services to the employee in the workplace of an employer, the Social Security Institution will consider such employee working in that workplace and will make the official filings accordingly even if such employee is not registered by the employer with the Social Security Institution. Hence, the Turkish Postal Service records will be considered by the Social Security Institution to determine the employee-employer relationship.

CHANGE IN LAW

The Amendment Law for Improvement on Investment Environment (No.7099) was published on 10.03.2018 to facilitate and accelerate the incorporation procedure of joint stock companies and limited companies. Hence, the incorporation procedure, the authentication of signature, signature declaration and legalization of commercial books will be conducted by the Trade Registry Offices to centralize and facilitate all the incorporation process.

Amendments to the Electricity Market Licensing Regulation was published in the Official Gazette on 15.12.2017. The amendments relate to new exceptions for share transfers during the preliminary license period and new procedural rules for share transfers during the license period as well as matters related to data protection measures to be implemented by the license holder company.

Data Controllers Registry Regulation was published in the Official Gazette on 30.12.2017. Accordingly, the data controllers (i.e. companies, foundations, associations or real persons) engaging in processing of personal data in accordance with the Turkish Personal Data Protection Law No. 6698 must be registered with this specific public platform within the prescribed timeline.

Decree of the Cabinet of Ministers No. 2018/11185 amending the Decree No.32 on the Protection of the Value of Turkish Currency was published in the Official Gazette on 25.01.2018. The Decree provides for restrictions on the utilization of foreign currency loans. Accordingly, save for certain exceptions, persons located in Turkey who do not have foreign currency income will not be able to obtain loans in foreign currency as of 02.05.2018.

The resolution of the Energy Market Regulatory Board was published in the Official Gazette on 02.02.2018. The resolution relates to the Principles and Procedures concerning the Allocation of Immovable Property by the Energy Market Regulatory Authority. Accordingly, expropriation, easement rights, leasing and transfer of the immovable property to the pre-license or definitive license holders will be carried out pursuant to these principles and procedures.

The Communique on Monitoring of the Transactions Affecting the Foreign Currency Positioning was published in the Official Gazette on 17.02.2018. Accordingly, the persons utilizing loans in the amount of USD 15 million or above will be obliged to notify the Central Bank of Turkey and must appoint an independent auditor.

The Amendment Law for Improvement on Investment Environment (No.7099) which was published on 10.03.2018 has abolished the postponement of bankruptcy and made major amendments on concordatum. Hence, the postponement of bankruptcy has been replaced by a more sound concordatum procedure.

ARTICLE ON "MANDATORY MEDIATION IN EMPLOYMENT DISPUTES"

In recent years, mediation as a dispute resolution method has been increasingly preferred due to many advantages in terms of cost and time efficiency, objectivity and confidentiality. Approximately 10.000 disputes are filed under mandatory mediation proceedings relating to employment disputes, out of which 7.100 cases have been settled with success since 01.01.2018.

The Law on Labor Courts ("LLC") (Law No:7036) entered into force on 25.10.2017 by introducing a revolutionary change in Turkish legislation and practice of labor disputes. According to Article 3 of the LLC, it is mandatory to apply to mediation before filing a lawsuit on the grounds of receivable and compensation claims arising from the law, individual or collective labor contracts or reemployment claims. Therefore, parties to an employment dispute are required as of 01.01.2018 to apply for a settlement through mandatory mediation before filing any lawsuit for payment of severance and/or notice, overtime pay and annual leave pay, compensation for bad faith damages, compensation for discrimination, trade union compensation and wage.

If a lawsuit is filed without applying to the mediation, the court must dismiss the lawsuit on procedural grounds in accordance with Article 115 of the Law on Civil Procedure due to absence of fulfilling a pre-condition. However, application to mediation is not a pre-condition in disputes relating to material or immaterial indemnity claims arising from a disability due to work accident and indemnity for deprivation arising from death of an employee.

According to Article 3 of the LLC, the mediation process should be concluded within three weeks from the assignment of the mediator, however, by taking into account the course of events, the mediator may extend this period for one week only. Mediation allows disputing parties to reach an agreement, thanks to the participation of a neutral third party, called the mediator.

In contrast to litigation and arbitration, the mediator has no authoritative power over the parties and he/she cannot impose a decision on the parties.

The aim of the above-mentioned change in law is to ease the judiciary's workload and accelerate the settlement process of employment disputes by participation of a neutral third party, called the mediator. In contrast to litigation and arbitration, the mediator has no authoritative power over the parties and cannot impose a decision on the parties. To this end, the decision proposed by the mediation is not binding on the parties since the mediation should only facilitate that parties can reach an amicable solution by an agreement. Accordingly, mandatory mediation still remains to be observed whether it will have the desired effect over the judicial system of Turkey.

SUPREME COURT DECISION ON "CHOICE OF ENGLISH COURTS IN COMMERCIAL CONTRACTS"

11th Civil Law Chamber of the Supreme Court ruled in its decision dated 28.10.2015 that a mere reference to "the English Courts" in a commercial contract as the competent jurisdiction would not be sufficiently clear to be enforced under Turkish Law. Therefore, although the Supreme Court took a less strict approach in previous case law (such as upholding the choice of "Romanian Courts" and "Swiss Courts"), parties to agreements with a Turkish element –who are willing to agree on the jurisdiction of a foreign court– are strongly advised to name such courts as clear and precise as possible such as "the High Court of Justice of England and Wales in London" in order to minimize the risk of being unexpectedly subject to jurisdiction of the Turkish Courts despite the choice of foreign courts in the contract.



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