

Enhancing the justice system

Gün + Partners assesses the legal developments taking place in Turkey to increase the quality and speed of the country's judicial system.

Over the past year, several Turkish laws have been amended to help improve the country's investment environment and to make it easier for investors by increasing the quality and speed of the judicial system. The Law on the Amendment of Certain Laws for the Improvement of the Investment Environment No. 7099 introduced changes to regulations in the Turkish Commercial Code, Tax Procedure Law, Social Security and General Health Insurance Law, Property Law, Law on Municipal Revenues, Customs Law, amongst others.

Various reforms were recently made to laws surrounding dispute resolution to shorten the length of judicial proceedings. The most important included the Law on Amendments to the Enforcement and Bankruptcy Law and Other Laws (the "Amendment Law"), which was published in the Official Gazette 30361 and dated March 15, 2018. Several laws were amended including the Civil Procedural Code, Commercial Code and the Law on Notifications.

In the Civil Procedural Code, the submission deadline of an expert's report has been reduced to two months for cases where simplified rules of procedure are applicable. The extension period for the submission of an expert's report was also reduced to two months.

From now on, commercial cases under the value of TRY100.000 are subject to a simplified procedure whereby exchange of

the petitions phase is limited to one petition per party, unlike the written procedure where both parties are entitled to file two petitions when arguing their case.

With the Law on Notifications, the scope of those being subject to mandatory electronic notification has been expanded to all public institutions and organisations, public authorities, municipalities, village administrations, companies, cooperatives, associations, foundations, trade unions, professional associations, government business enterprises, publicly owned corporations, lawyers, notaries, experts, mediators and in-house lawyers. The Post and Telegraph Organisation is responsible for the operation of electronic notification transactions through the National Electronic Notification System. Formation of electronic notification addresses has also been regulated.

Important changes have also been made to the Labour Courts Act No. 7036, which were published in the Official Gazette 7036 and dated October 25, 2018 with the aim of easing the judiciary's workload and accelerating related cases. The most important change is that mediation is now mandatory for both employers and employees prior to initiating lawsuits (such as those relating to money claims, compensations arising from the Labour Act, employment agreements, collective bargaining agreements or reinstatement claims). Mandatory mediation has been

in place since January 1, 2018 with recent reports showing that 65 per cent of employment disputes have already been resolved through mediation. To accelerate the judicial process, judgements regarding certain claims arising out of employment relationship (such as reinstatement claims) can no longer be appealed before the Supreme Court and the parties can only apply to Regional Court of Appeal for the decisions rendered on such claims.

While the above amendments aim to make the Turkish judicial proceedings less burdensome and time-consuming, the Law on the Amendment of Certain Laws for the Improvement of the Investment Environment provides a better environment for investors so that investments can be carried out more quickly and at less cost.

As a result, there are also many novelties in the Turkish Commercial Code (“TCC”). Pursuant to the amendments made in article 40/2 of the TCC, every merchant undergoing a company transaction can now submit the business name together with a signature to the relevant Trade Registry. The signature specimen should be provided in the presence of a designated officer of the Trade Registry in a written statement. This amendment abolished the need to notarise the business name and the signature before Notary Publics prior to submission to the relevant Trade Registry.

Changes have been made to article 64 of the TCC in relation to the registration of joint stock companies and limited liability companies. The opening approvals of company books will now only be issued by directorates of the Trade Registry removing the need to obtain the authority from Notary Publics. If the company books are kept electronically, it is no longer necessary to seek the approval from the Notary Publics or directorates of the Trade Registry during the opening and closing process of general journal and board of directors’ resolution books.

Amendments have been made to articles 575, 585 and 587 of the TCC whereby approval from the Notary Publics for signatures of founders and articles of limited liability companies is no longer required. With these amendments, articles of associations only need to be signed by the founders in the presence of the designated officers of the directorates of the Trade Registry. As this amendment will only be applicable to limited liability companies,

the articles of association of joint stock companies can continue to be executed before Notary Publics or before the director or deputy director of the relevant Trade Registry.

A significant novelty has been introduced to article 585 of the TCC and again, relates to limited liability companies. The pre-condition of payment of at least ¼ of the undertaken capital prior to the company’s formation has been abolished.

To align the above changes and help speed up the process when setting up a company, further amendments have been made to the Tax Procedure Law and the Social Security and General Health Insurance Law. Accordingly, the opening approvals of company books kept physically by companies will be carried out by the relevant directorates of the Trade Registry during the formation process.

Finally, in accordance with the amendment made to the Social Security and General Health Insurance Law, the notification form should now be directly sent to the Social Security Institution (SSI) by the relevant Trade Registry when a company is being set up. The work-place registration can be done without any application to the SSI in person.

These amendments have certainly helped accelerate court proceedings dealing with disputes, eased the procedures when setting up and running a company, and have made legal expenditures much more cost-effective. These initiatives demonstrate the commitment by the Turkish governmental bodies to help improve and safeguard two highly of the many valued principles of business owners, namely, time and money. 🚀



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