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Groundbreaking Changes to Electronic Sales

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Independent
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Groundbreaking Changes to Electronic Sales

The Regulation on Distance Contracts, which was long expected since the enactment of the Consumer Protection Law (Law), was published in the Official Gazette dated 27 November 2014. The Regulation sets out the principles of distance sale contracts including e-commerce.

The Regulation will enter into force within 3 months as of its publication date (i.e. 27 February 2015).

Some important changes introduced by the Regulation are as follows:

- MERSİS number of the seller will also be provided in the Preliminary Information Form. The Preliminary Information Form shall include the total price for each subscription period for fixed term subscription agreements.
- Preliminary information requirement has now divided into two steps: existing preliminary information form will be used as the first step, and as a second step, some of the information in the preliminary information form

will be presented one more time before the client approves the payment. This information and presentation methods may differ based on the type of the sale.

For instance, on internet-based sales in addition to the current Pre-Information form (i) basic qualifications of goods or services, (ii) price and expenses, (iii) information on right of withdrawal, (iv) information on whether the right of withdrawal cannot be exercised should be provided clearly and in advance of the assumption by the consumer of his payment obligation; and further, information on whether there is any limitation on delivery and which payment instruments are accepted, should be provided to the consumer before the customer places his order.



- Withdrawal period which is extended to 14 days by the Law is confirmed by the Regulation. The Regulation also sets out the principles for the commencement of the 14-days period, which depends on the method of service provision or delivery of goods.
- It is specified that the right of withdrawal can also be used with the form which is in the annex of the Regulation. Sellers and suppliers may publish this form on their websites as an option for the consumers to use their right of withdrawal.
- Seller or supplier is obliged to repay to the consumer all payments including delivery expenses, if any, within 14 days as of their receipt of the notice by the consumer that the right of withdrawal is exercised.
- Under the previous regulation, it was possible to extend the due date of the agreement by the seller or the supplier for 10 more days at most subject to written notification to the consumer; however, this additional time is provided by the Regulation.
- Although the obligation to inform the consumer of the impossibility of performance and repayment of the price along with the delivery of such documents within 10 days was regulated under the previous regulation, this time period is extended to 14 days by the Regulation and the consumer is required to be notified at the latest within 3 days upon the realization of the impossibility of performance.



- Intermediaries, who mediate to establish a distance contract by means of communication system built by such persons, are obliged to keep records of the transactions by the seller or the supplier for 3 years and obliged to provide such records upon demand.

The Turkish language text of the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2014/11/20141127-6.htm>

Finally, Istanbul's First Independent Arbitration Centre

Istanbul Arbitration Centre Law (No. 6570) was published in the Official Gazette on 29 November 2014 and it will come into effect as of 1 January 2015. The Law provides that Istanbul Arbitration Centre (Centre) be established in order to resolve international or domestic disputes by arbitration along with other alternative dispute resolution methods. The Law regulates the Centre's organization and functions.

As per the Law, rules and principles for the arbitration and other alternative dispute resolution methods will be determined by the Board of Directors of the Centre within 6 months upon formation of the same.

Turkish language text of the Law can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2014/11/20141129-1.htm>

New Responsibilities on the Sellers for Residential Units

Regulation on Prepaid Housing Unit Sales was published in the Official Gazette on 27 November 2014. The Regulation was drafted in line with the Consumer Protection Law No.6502.

The Regulation sets forth the principles for the prepaid housing unit sale agreements and imposes a number of responsibilities to the sellers. Housing units which are in the scope of the Regulation are independent condominiums that



are subject to the Law of Property Ownership (No. 634) and are sold to consumers by way of prepayment. Some of the important changes introduced by the Regulation are as follows:

The sellers are obliged to provide the consumers with a preliminary information form containing information set out in the Regulation at least one day prior to conducting a pre-paid sale contract with the consumers. Pre-paid sale contracts are required to be executed in a form of a promise to sell agreement before a notary public or a written agreement together with registration of the transfer of condominium easement in favor of the consumer.

One of the protective measures introduced within the Regulation is the security obligation of the sellers. As for the projects which contain more than 30 housing units, sellers shall fulfil at least one of the following: (i) insuring a construction completion insurance, (ii) providing a bank letter of guaranty, (iii) depositing the payments of consumers to an escrow account to be used under an allowance system or (iv) providing security with tied loan.

The Regulation also regulates required form, term and content of the prepaid sale contracts.

The Turkish language text of the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2014/11/20141127-7.htm>

Changes to the Consumer Arbitration Committees

The Regulation on the Consumer Arbitration Committee was published in the Official Gazette and entered into effect on 27 November 2014. The Regulation was drafted in line with the Consumer Protection Law No. 6502 (CPL). The Regulation sets out the establishment and working principles and procedures of Consumer Arbitration Committees.

Similar to the previous law and previous regulation, the CPL and the Regulation set monetary ceiling limits relating to the disputes for determining the powers of the Consumer Arbitration Committees for resolving disputes.

The Turkish language text of the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2014/11/20141127-8.htm>

New Regulation on Environment Impact Assessment Report

Regulation on Environment Impact Assessment Report was published in the Official Gazette on 25 November 2014 to be effective as of such date. By means of the Regulation, scope for requirement of the environment Assessment Report (CED Report) is limited to a number of industries. The Regulation also introduced technical amendments on CED Report preparation process. As



per the Regulation, CED Report application file, CED Report and project introduction files will not be directly prepared and submitted by the applicants and these transactions will be carried out through authorized entities. Monitoring and reporting activities will also carried out by these entities. The Regulation also amended a number of terms regarding CED Report process. Within this scope, duration for submitting CED Report to the Ministry of Environment and Urbanization was increased to 1.5 years upon provision of the special format by the Ministry.

Turkish language text of the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2014/11/20141125-1.htm>

International Labor Organization's Safety and Health in Construction Convention (C167) and Safety and Health in Mines Convention (C176) are ratified

Law Ratifying the Safety and Health in Construction Convention

(C167) was published in the Official Gazette on 20 November 2014 to be effective as of such date. C167 was signed by the parties during the 75th International Conference of International Labor Organization in 1988, Geneva.

Law Ratifying the Safety and Health in Construction Convention (C176) was published in the Official Gazette on 12 December 2014 to be effective as of such date. C176 was signed by the parties during the 82th General Session of International Labor Organization in 1995, Geneva.

Turkish language text of the Law Ratifying the Safety and Health in Construction Convention (C167) can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2014/11/20141129-2.htm>

Turkish language text of the Law Ratifying Safety and Health in Mines Convention can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2014/12/20141212-32.htm>



Recent Competition Board Decisions

- With its decision dated 11 December 2012 and numbered 14-50/886-404, the Competition Board has approved that Limak Dogalgaz Elektrik Uretim A.S. be commonly controlled by way of transfer of 25% of its shares by Limak Yatirim Enerji Uretim Isletme Hizmetleri ve Insaat A.S. to InfraKan Holding S.a.r.l.
- With its decision dated 3 December 2012 and numbered 14-47/863-393, the Competition Board has approved that the control of İstanbul Sabiha Gokcen Uluslararası Havalimani Yatirim Yapim ve Isletme A.S. and LGM Havalimani Isletmeleri Ticaret ve Turizm A.S., which are currently

under the common control of Limak Insaat ve Sanayi Ticaret A.S., Limak Yatirim Enerji Uretim Isletme Hizmetleri ve Insaat A.S. and Malaysia Airports Holdings Berhad, be transferred to Malaysia Airports Cities Sdn Bhd by Malaysia Airports Holdings Berhad.

- With its decision dated 3 December 2012, the Competition Board has approved that Gama Energy be changed as Gama Holding and International Finance Corporation Joint Venture by way of transfer of its 30% shareholding to IFC Global Infrastructure Fund, which is under the common control of International Finance Corporation and International Finance Corporation.

Brief Reminder Regarding Closing Certificate of Commercial Books

Under the Turkish Commercial Code and the Communiqué on Commercial Books; the closing certification of (i) the Board of Directors Resolution Book is required to be made by the Notary until the end of the first month of the subsequent fiscal year (e.g. for companies whose fiscal years end on 31st December, the deadline is 31st January), (ii) the Day Book is required to be made by the Notary until the end of the sixth month of the year. Please be reminded that if the commercial books are kept in electronic form, notary certification will not be required.

Answers. Not theories.

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About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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