

Gokce Attorney Partnership



# The Fine Print

November 2013

Highlights of this issue

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You can find the Turkish language text of the Communiqué at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131009-15.htm>

## In The Spotlight

### New Communiqué on Principles relating to Venture Capitals

The Communiqué on Principles relating to Venture Capital Trusts was published in the Official Gazette of 9 October 2013. The provisions regarding total expense ratio, financial liability limit and reflections on these in the financial statements will come into effect as of 1 January 2014, and the other articles thereof came into effect as of the date of its publication.

The Communiqué provides the following: (i) the principles regarding minimum capital, free float and qualified investors are established; (ii) principles relating to the venture capital trusts (VCT), which are incorporated to make sales to qualified investors, are established (iii) VCTs are enabled to obtain structured financing with a mix of debt and equity financing called "mezzanine finance", (iv) VCTs are allowed to establish pledges and securities in favor of small and mid-sized businesses under certain percentages and conditions.

### Electricity Market License Regulation

The Electricity Market License Regulation that regulates preliminary licenses and licenses that must be obtained to operate in the electricity market as well as the main provisions regarding such licenses, the licensing procedures, and the rights and obligations of holders of preliminary licenses and licenses was published in the Official Gazette on 2 November 2013 and came into effect as of the same date.

The Electricity Market License Regulation published in Official Gazette numbered 24836 and dated 4 August 2002 was repealed by means of the Regulation; and, certain significant regulations, without prejudice to the exceptions under the Regulation, are outlined as follows:

(i) Legal entities, that wish to operate in the market, must obtain a separate license for each operation prior to launching their operations and in case such operations will be conducted in multiple facilities, for each facility; (ii) a license is

required to be obtained for generating, transmitting, distributing, wholesaling, retailing, importing, exporting, market-operating in the electricity market and the transfer of such licenses is forbidden; (iii) preliminary licenses to be issued under the Regulation cannot exceed twenty four months. When issuing a preliminary license, matters regarding the extension of such period up to thirty six months shall be regulated by a resolution of the Energy Market Regulatory Board depending on the application's type of source and installed output; (iv) the total electricity generation amount that any real or private-sector legal person can generate by the generation companies that he/it controls may not exceed twenty per cent of the total electricity generation amount of Turkey published for the previous year in accordance with the market restriction introduced by the Regulation; (v) licenses shall be issued for at least ten years and at most forty nine years considering the nature of the operation; (vi) Legal entities, subject to provisions of private law that will apply for a preliminary license to operate in the market, must be incorporated as a joint stock company or a limited liability company in accordance with the provisions of the Turkish Commercial Code No. 6102, in case of a joint stock company, all its shares other than those traded on the stock exchange in accordance with the capital market legislation must be registered shares; (vii) the scrutiny, inspection and monitoring



of the operations under the applicable legislation of legal entities that operate in the electricity market shall be performed by the Energy Market Regulatory Authority, and the procedures and rules of the monitoring by the Authority shall be established by the Board; (viii) if license-holding legal entities act in violation of the provisions of the applicable legislation, the sanctions stipulated under article 16 of the Electricity Market Law No. 6446 of 14/03/2013 shall be imposed according to the nature of the act.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/11/20131102-4.htm>

## Regulations regarding Vessels

Regulation amending the Regulation regarding General Audit and Documentation of Vessels and Regulation amending the Regulation regarding Application of International Safety Management Code to Turkish Flagged Ships and Charterers were published in the Official Gazette dated 30 October 2013.

As per the Regulation on General Vessel Audit, the following defects will be fined:

Technical conditions, safe manning, implementation with respect to environment and safety of the Turkish flagged ships shall comply with the Law. The ships which do not meet legal requirements will be ceased and desisted from operation until they comply with the regulations.

A fine at the amount of TL 5,000 per document will be imposed in the absence of necessary documents and

visas or in case of any misleading or untrue documentation of Turkish flagged ships operated in trans-boundary waters and foreign flagged ships operated within Turkish borders; and the ship will be ceased and desisted from operation until the defect is remedied.

Turkish competent authorities will take necessary actions in the case of any misleading or untrue documentation with respect to logs, record books, accounts, guidance, plans, balances, dispatch and safety data and projects, freight and port documents, sailing transmissions and maps of Turkish flagged ships operated in trans-boundary waters and foreign flagged ships operated within Turkish borders. If the situation constitutes risk to life safety in the sea and to the sea environment, a fine in the amount of TL 500 per document will be imposed.

The Turkish flagged ships, which were audited and documented in order to be operated in trans-boundary waters, shall be maintained in accordance with all the



documents related to equipment and components within the periods stated under the documents. In case of any inconsistency with the documents, that document will be annulled and related persons will be fined with administrative fine in the amount of TL 1,000.

Without prior consent of the competent authorities, changes or amendments, which are contrary to content of the documents, cannot be made on the Turkish flagged ships which were audited and documented in order to be operated in trans-boundary waters. Intended purpose in the documents cannot be changed. In case of any unpermitted change, the related person will be fined in the amount between TL 5,000 and TL 50,000, and the ship will be ceased and desisted from operations until the defect is remedied. The same fine will be imposed on and precaution will be taken with respect to foreign flagged ships if the situation constitutes risk to life safety in the sea and to the sea environment.

Turkish flagged ships which were subject to measures by foreign administrations outside of Turkey will also be inspected by Turkish authorities and they will be ceased and desisted from operation until they meet the necessary requirements. If a Turkish flagged ship is seized outside of Turkey more than once in six months or more than twice in a year, the relevant conformity document will be temporarily suspended and a fine in the amount of TL 10,000 will be imposed on related persons. If the ship is seized more than twice in six months and more than thrice in a year, then its conformity certificate will be annulled and a fine in the amount of TL 50,000 will be imposed on related persons.

All related and authorized persons of the ships shall cooperate with the representatives and experts of the competent authorities. Ships under inspection cannot leave the port without consent of the authorized inspector of the competent authorities.

As per the Regulation on International Safety Management Code, the following defects will cause fines:

If it is determined upon the inspections that necessary trainings, practices, emergency action plans and other precautions are not duly settled; logs, books, lists and records are not maintained and necessary data and information are missing or untrue, the ship master will be punished for TL 1,000 and any defaulted authorized person will be punished for TL 5,000 administrative fine.

Companies which were audited and documented in order to operate vessels in trans-boundary waters shall maintain the conditions indicated under the documents within periods stated in the documents. Authorized person of the company shall promptly notify the competent authorities in case of any issue that might affect the validness of that document.

Upon occurrence of any issue that is not notified, the company will be fined in the amount between TL 5,000 – TL 50,000 and related documents will be temporarily suspended. The company will also be prohibited to operate ships until the defect is remedied.

Documentation or audit of the ships shall not be processed until the fines imposed as per the Regulations above are fully paid.

You can find the Turkish language text of the Regulations at the following link:

<http://www.resmigazete.gov.tr/>

[eskiler/2013/10/20131030-5.htm](http://www.resmigazete.gov.tr/eskiler/2013/10/20131030-5.htm)

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131030-6.htm>

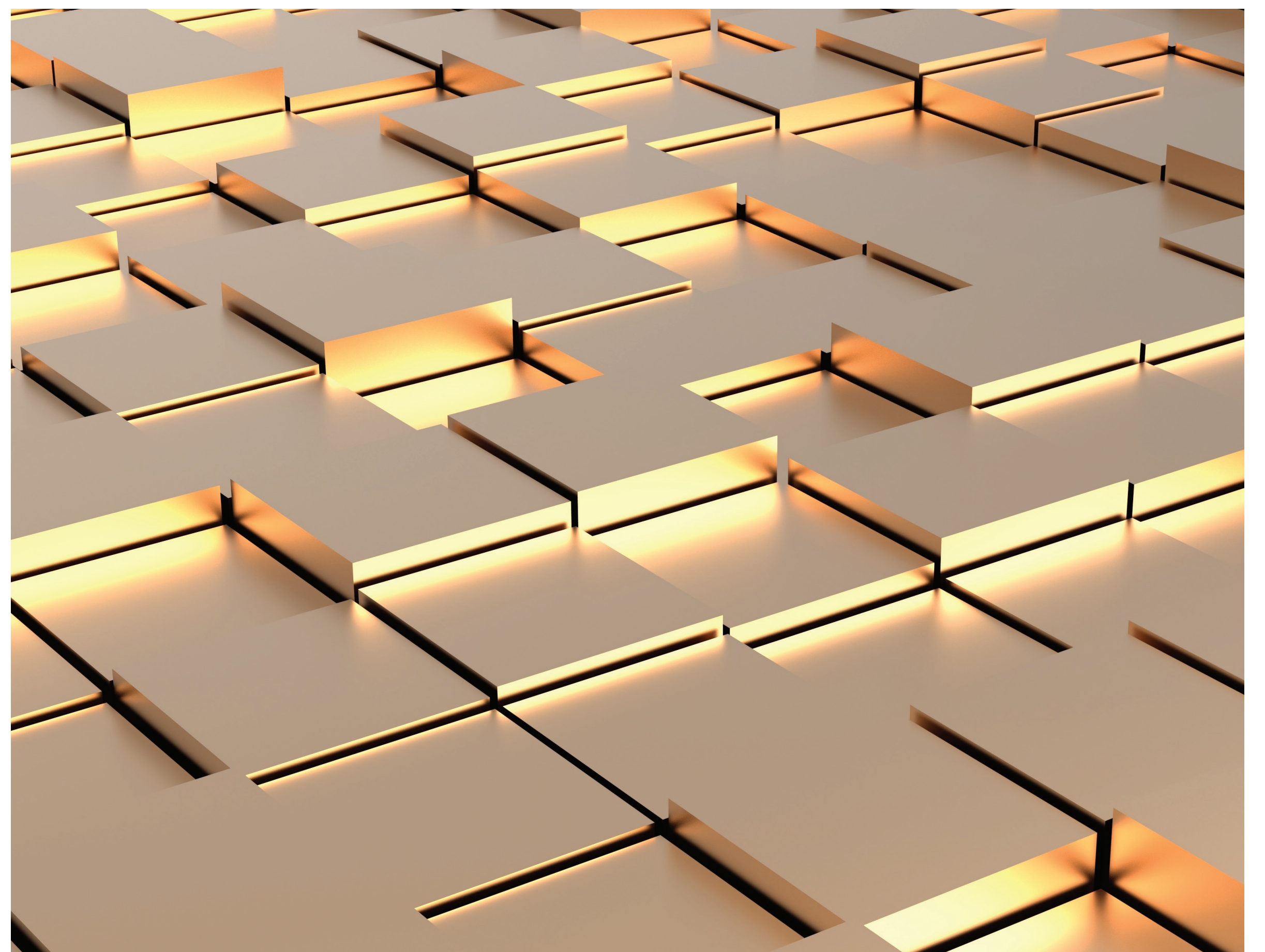
## Newsfeed

### Amendments to the Regulation on the Procedures and Principles for Employing Underage Workers

The Regulation Amending the Regulation on the Procedures and Principles for Employing Child and Young Workers was published in the Official Gazette and came into effect as of 25 October 2013. The Regulation provides that the child and youth workers, who are graduates of vocational and technical training schools and institutions and are at least 16 years old, can be employed for jobs that complies with their specializations and occupations without being subject to the restrictions specified under the appendices of the Regulation on the Procedures and Rules of Employing Child and Youth Workers. The main condition for such employment is that the health, safety and morals of youth workers are fully secured.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131025-2.htm>



## Regulation of Health and Safety in Construction Jobs

The Regulation of Health and Safety in Construction Jobs was published in the Official Gazette and came into effect as of 5 October 2013.

The Regulation establishes the following: (i) the minimum work health and safety requirements to be attained for construction jobs and (ii) obligations of employers and other persons, and the general principles of appointing health and safety coordinators as well as of the phases of project preparation.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131005-2.htm>

## New Regulation on Determining Authority for Collective Bargaining Contracts and Voting for a Strike

The Regulation on Determining Authority for Collective Bargaining Contracts and Voting for a Strike was published in the Official Gazette and came into effect as of 11 October 2013. The Regulation contains the procedures and rules in relation to the process of determining authority for collective bargaining contracts and voting for a strike.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131011-3.htm>

## Turkey participated in the Promotional Framework for Occupational Safety and Health Convention

Turkey's participation to the Promotional Framework for Occupational Safety and Health Convention No. 187 was accepted by the Council of Ministers' decree 2013/5356 of 23 August 2013. The Convention that the International Labor Organization put into effect on 20 February 2009 contains the principles in relation to promoting occupational safety and health.

You can find the Turkish language text of the Decree and the Convention at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131008-7.htm>



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## Regulation on Environmental Health Procedures to be Applied in the International Points of Entry

The Regulation on Environmental Health Procedures to be Applied in the International Points of Entry (Regulation) was published in the Official Gazette and came into effect 25 October 2013. The Regulation sets out the procedures and relating to the coordination of institutions and establishments appointed to conduct procedures for environmental health based on the minimum requirements set out by the International Health Regulations.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/11/20131103-1.htm>

## New Regulation on Private Health Insurance

The Regulation on Private Health Insurance was published in the Official Gazette dated 23 October 2013. The provisions of the Regulation will come into effect after 6 months from the date of

its publication except for the provision in relation to operating in the private health insurance sector, which will come into effect 1 year from the date of its publication. Some of the amendments introduced by the Regulation are as follows: (i) The insurance companies are obliged to inform those who wish to take out private health insurance about matters likely to affect the decision to enter into a policy; (ii) No arrangements may be made in disfavor of an insured for whom a lifetime insurance renewal guarantee is provided. For instance, no additional premiums may be collected from the insured, the insurance coverage may not be narrowed; (iii) If the policy expires and no new policy is executed, the inpatient treatment coverage agreed by the insurer shall continue to apply provided that it should not exceed the period, which cannot be less than 10 days, specified in the private conditions and the coverage limit.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131023-1.htm>

## New Communiqué on Foreign Capital Market Instruments and Depository Receipts

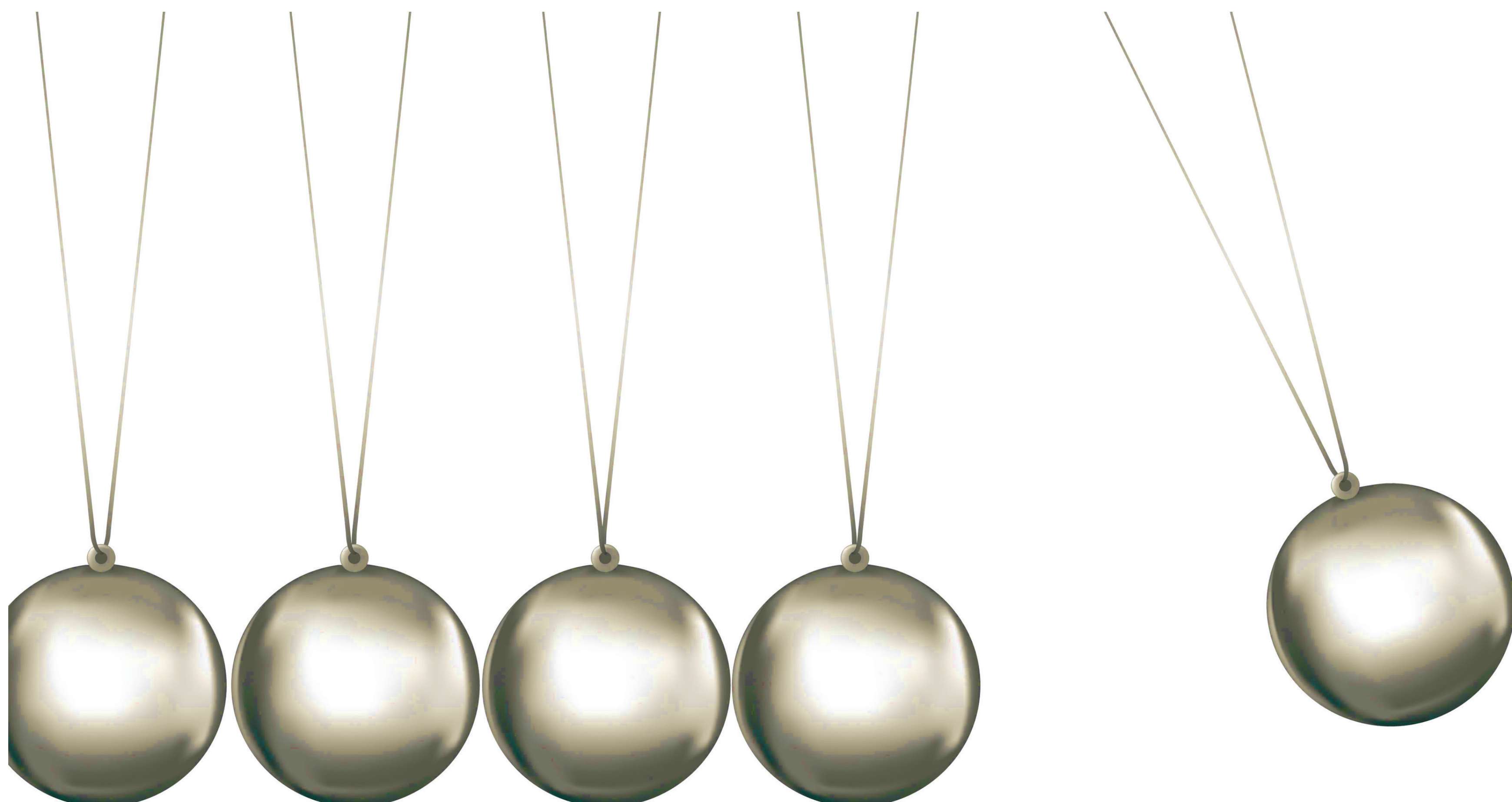
The Communiqué on Foreign Capital Market Instruments and Depository Receipts as well as Foreign Investment

Fund Shares was published in the Official Gazette of 23 October 2013. Effective date of the provisions of the Communiqué differ as date of its publication, the financial year after 31 December 2013, 1 July 2014.

Some of the provisions adopted by Communiqué are as follows: (i) banks or brokerage firms with broad powers based in Turkey can be fund representative; (ii) the shares of foreign investment funds of the rights holders must be tracked in the accounts to be opened in the representative's name with Turkish Central Registry Agency; (iii) the net asset value of the foreign investment fund must be at least 10,000,000 Euros or equivalent and the total market value of the shares to be sold in Turkey must have a total monetary value of at least 2,000,000 Euros or equivalent and at least three years must have passed since the date of offering for sale abroad are introduced as of the date of filing; (vii) the obligations for informing the public are regulated again and the scope thereof is widened.

You can find the Turkish language text of the Communiqué at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/10/20131023-5.htm>



## New Regulation on Capital Preservation and Revolving Capital Buffers

The Regulation on Capital Preservation and Revolving Capital Buffers (Regulation) was published in the Official Gazette dated 5 November 2013 and will come into effect on 1 January 2014.

The purpose of the Regulation is to regulate the procedures and rules in relation to (i) the calculation of the sum of additional core capital that banks must maintain as capital preservation buffer and revolving capital buffer as well as (ii) actions to be executed and measures to be taken in case the additional core capital requirement cannot be met.

A transition period will be applicable until 1 January 2019 for the minimum rates of capital preservation buffer, meaning the sum of additional core capital expected to be maintained in order to prevent the inadequacy of net worth in line with the regulations for capital adequacy due to losses likely to be encountered, in the event that banks' economic and financial indicators deteriorate. The capital preservation buffer will be 0% in 2014 and 2015, 0.625% in 2016, 1.25% in 2017, 1.875% in 2018.

The sum of profit distribution will be calculated by multiplying the maximum profit distribution rate with the sum of profit available for distribution. The procedures and rules in relation to the coverage and calculation of the sum of profit available for distribution will be established by the Banking Regulation and Supervision Board.

Banks, subject to the limitation on profit distribution, shall within one month following the reporting of the maximum rate of profit distribution submit a capital preservation plan aimed to meet the additional core capital requirement approved by the board of directors of the bank to the Agency.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/11/20131105-17.htm>

## New Regulation on Measuring and Evaluating Leverage Ratio of Banks

The Regulation on Measuring and Evaluating Leverage Ratio of Banks (Regulation) was published in the Official Gazette on 5 November 2013 with most of its provisions coming into effect on 1 November 2014.

The leverage ratio will be calculated by dividing the base capital to the total risk amount, and the consolidated leverage ratio will be calculated by dividing the consolidated base capital

to the consolidated total risk amount. The quarterly simple arithmetic average as of March, June, September and December of the leverage ratios calculated on a monthly basis must meet and maintain 3% at minimum.

The total risk amount consists of the total sum of the risk amounts of on-balance-sheet assets, off-balance-sheet transactions, derivative financial instruments as well as loan derivatives and financing transactions secured with securities or commodities.

The tables in the Regulation for the leverage ratio and the consolidated leverage ratio must be filled out within thirty days following the calculation period, and then forwarded to the Banking Regulation and Supervision Agency.

If either of the leverage ratio and the consolidated leverage ratio drops below the minimum percentage, the minimum percentages must be met within a period to be determined by the Banking Regulation and Supervision Agency not in excess of six months from the calculation period.

You can find the Turkish language text of the Regulation at the following link:

<http://www.resmigazete.gov.tr/eskiler/2013/11/20131105-16.htm>

## Regulation of Service Quality Regarding Electricity Distribution and Retailing

The Regulation Amending the Regulation of Service Quality Regarding Electricity Distribution and Retailing was published in the Official Gazette dated 9 October 2013 and came into effect as of such date.

The expression "retailing company" referred to in the Regulation was changed to "supplier in charge".

## Privatization

The Presidency of the Privatization Administration resolved, with its resolution numbered 2013/157 and dated 4 October 2013, that the operating right for a term of 30 years of the Salıpazarı Port Site owned by Türkiye Denizcilik İşletmeleri A.Ş. be transferred to Doğu Holding A.Ş., highest bidder with a price of US\$ 702,000,000.



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## *Answers. Not theories.*

Gokce Attorney Partnership

### **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](http://www.gokce.av.tr) for further information on our legal staff and expertise.

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