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Data Protection Law: Long Awaited Provisions Entered into Force

Data Protection Law no.6698 was published in the Official Gazette on 7 April 2016 and it was stated that some provisions of Law will come into force six months later than the publication date of Law.

This provisions related to transfer of personal data, rights of data subject, application to Personal Data Protection Board, crimes and faults entered into effect on 7 October 2016.

Transfer of Personal Data

The following can be given as examples for transferring personal data; disclosing the information of customers or employees of a natural or legal person to advertising agencies or marketing companies or disclosing such data to third parties in order to obtain statistical data.

As the general principle, personal data cannot be transferred to third parties without explicit consent of the data subject according to Law. However, personal data may be transferred to third parties without obtaining an explicit consent under the conditions provided by Law.

Data that is described in the Law as “special categories of personal data” such as racial or ethnic origin, political opinions, religious, denominational or other beliefs, appearance, data regarding a person’s criminal convictions or security measures, membership of non-governmental organizations may be processed without explicit consent of data subject only for the cases which are allowed under the laws and in the event that adequate measures are taken.

Data regarding health or sexual life may be transferred without explicit consent of data subject, provided that it is processed by authorized institutions and organizations or individuals, allowed under the Law such as for the purposes of protection of public health. Under all circumstances, adequate measures have to be taken as prescribed by Personal Data Protection Board (**Board**).

Transfer of Personal Data to a Foreign Country

As the general principle, personal data shall not be transferred to a foreign country without the explicit consent of the data subject.

However, personal data may be transferred to a foreign country without obtaining an explicit consent under the conditions for processing of personal data without the explicit consent specified by Law, provided that adequate level of protection in transferred country is ensured.

If the foreign country is not able to ensure an adequate level of protection, the data may be transferred without explicit consent of data subject, only if a written commitment regarding adequate protection is obtained from data supervisors both in Turkey and the country to which the data is to be transferred and permission of the Board is obtained. Board is authorized to determine and declare whether a foreign country provides an adequate level of protection.

In addition to transfer of personal data, provisions of rights of data subject also entered into force. Accordingly, data subject has right to learn (i) whether his/her personal data is processed and (ii) the third parties to whom personal data have been transferred, (iii) the purpose of processing of data and (iv) whether data is used in accordance with their purpose, request rectification of his/her data, request compensation for the damages arising from unlawful processing of personal data.

Besides, data subject has right to request enforcement of this Law from the data supervisor. The data supervisor shall finalize this request within 30 days at the latest. In case the application is rejected or replied insufficiently, or not replied in due time the data subject may make a complaint to the Board. Board is entitled to conduct necessary inspections upon the complaint or ex-officio.



According to the Law, natural or legal persons who process personal data are obliged to register to the Data Supervisors Registry (**Registry**) which will be related to Ministry of Justice before processing personal data.

Cabir Bilirgen, Cengiz Paşaoğlu, Mehmet Niyazi Tanılır, Turan Arık and Yusuf Alataş have been appointed as members of the Board with a decision dated 05.10.2016, however the Registry has not been established yet.

Furthermore, provision regulating administrative fines from TRY 5,000 to TRY 1,000,000 in case of the breach of Law is also entered into force and it is determined that the sanctions included in Turkish Criminal Code (**TCK**) shall be applied as criminal sanctions. These sanctions are imprisonment sanctions from one year to six years depending on the type of the breach.

Turkish language text of the Law can be found at the following link:

<http://www.resmigazete.gov.tr/eskiler/2016/04/20160407-8.pdf>



Regulation on Renewable Energy Source Fields

Regulation on Renewable Energy Source Fields was published in the Official Gazette dated 9 October 2016 and entered into effect as of such date. Regulation on Principles and Procedures on Determination, Gradation, Protection and Use of Renewable Energy Source Fields Intended to Electric Energy Generation has abolished by this Regulation.

Purpose of this Regulation is efficient and productive use of renewable energy sources by way of establishment of the renewable energy source areas (**RESF**). RESF may be developed on real estates belonging to public or treasury or privately owned real estates. RESF are developed (i) by Renewable Energy General Directorate (**General Directorate**) or (ii) through connection capacity allocation competition. In the event that RESF are developed by General Directorate, technical and administrative works will be performed by General Directorate.

Competition regarding right to use RESF is published both in the Official Gazette and on the website of the General Directorate.

Legal persons producing domestically appurtenances designated by Ministry of Energy and Natural Sources (**Ministry**) and/or undertaking to use local products and legal persons that are already entitled to apply for primary license under the Electricity Market License Regulation may apply to the competition. Applications are evaluated by the Commission established by Ministry.

The Right to Use Agreement (**Agreement**) is executed with the legal person who is the winner of the competition. The legal person executed the Agreement is required to obtain a primary license and generation license for carrying out electricity power generation activities. In the event that the legal person fulfills the obligations specified under Electricity Market License Regulation within the primary license period, as it is specified in the tender specifications, and operates the factory built for the generation of electric power plants may apply to Energy Market Regulatory Authority to obtain the generation license. This generation license is granted for 30 (thirty) years.

Turkish language text of the Regulation can be found at the following link:

<http://www.resmigazete.gov.tr/eskiler/2016/10/20161009-1.htm>

Private Employment Office as a New Employment Method

The Regulation Regarding Establishment of Private Employment Offices (**Regulation**) was published in the Official Gazette dated 11 September 2016 and came into effect as of such date.

Some of the important provisions introduced by Law are as follows:

Private employment offices will be intermediary between employer and employee when business organizations have some “forced causes” to use this method. In the temporary working relationship, private employment offices may execute a “temporary employee providing contract” with an employer and transfer its employee.

Contracts regarding receiving money from employees for this service shall be invalid with the some exceptions like professional athletes, artists and general directors by this Regulation.

Rights and Obligations

The employer who employs temporary employee may give instructions to its employee in accordance with the contract. In return for this, these employees can benefit from the social services of the workplace same as the regular employees.

Supervision

The supervision of this method shall be conducted by ministry inspectors and in case of any contrariety of the regulation is determined administrative fine will be imposed to the private employment offices.

Turkish language text of the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2016/10/20161011-1.htm>

The Regulation Amending the Regulation Regarding Bank Cards and Credit Cards

The Regulation Amending the Regulation Regarding Bank Cards and Credit Cards (**Regulation**) was published in Official Gazette dated 27 September 2016 and entered into effect as of such date.

Prior to the Regulation’s entry into force, including installments for a certain sum of money following the good or service purchase or the postponement periods of the payments, the installment period of the goods and service purchase by credit cards shall not exceed 9 months, but this period increased to twelve months by Regulation. In the event that these payments are made by corporate credit cards, this installment period shall not exceed 12 months.

This period shall be applied as 4 months for the payments related to jewelry, 6 months for the payments related to electronical items and computer, 9 months for the payments related to airways, travel agents, transportation, accommodation, health and social services, medical product purchase, club and association disbursements and tax.

No installment shall be applied to the payments which are made by the credit card and related to telecommunication, food, nourishment, fuel, gift card, gift coupon and to the purchases which do not contain concrete goods or service, direct marketing as well as payments which are made abroad, alcoholic drink, cosmetic and office items .

Besides, the Regulation regulates that the current debt balances can be subject to installment, limited to 72 month by the request of card holders and the monthly installment amount shall be added to the minimum payment amount of the related month.

The Turkish Language of the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2016/09/20160927-1.htm>

For further information please contact us at contact@gokce.av.tr



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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