

Gokce Attorney Partnership



The Fine Print

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In The Spotlight

New Principles on Commercial Titles

The Communiqué on Commercial Titles was published in the Official Gazette on 14 February 2014 and came into effect as of such date.

The Communiqué regulates the principles and procedures regarding commercial titles of companies and other merchants that commercial businesses.

The Communiqué regulates the following: (i) A commercial title may be freely determined provided that the words indicating the business subject and the company type are in Turkish; (ii) the phrases that appear in a commercial title cannot be untrue or of a nature that will cause a misunderstanding in third parties about the merchant's identity, as well as the scope, significance and financial state of its business; (iii) the phrases that appear in the commercial title cannot be against public order, national interests and morals, and cannot be determined in a manner that may harm cultural and historical values;

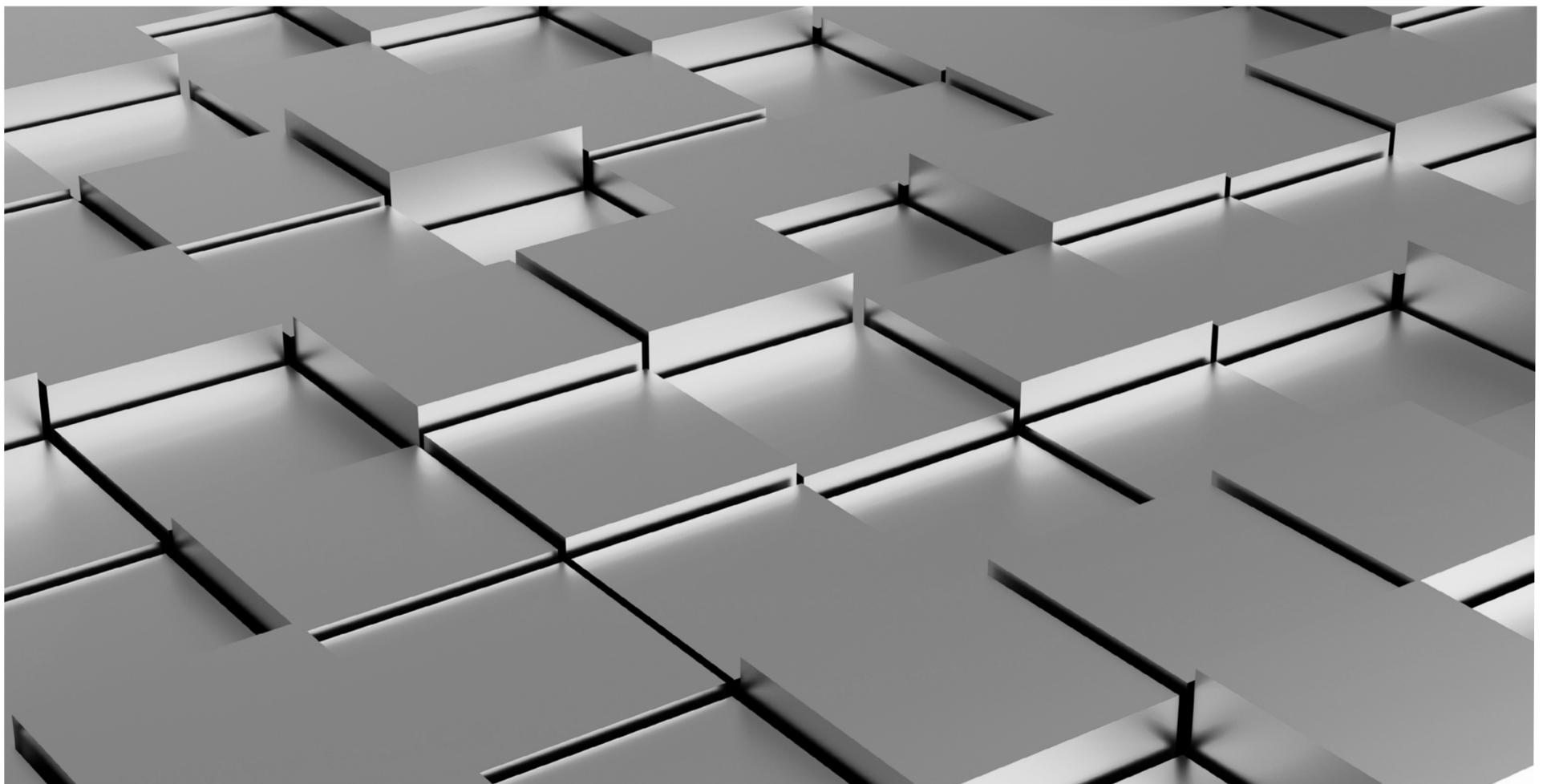
(iv) the words "Turk", "Turkey", "Republic" and "National" may be added to the commercial title provided to be simple, plain and complete and only with a decree of the Council of Ministers; (v) at least one -business subject must appear in the commercial title of joint stock and limited liability companies; the expressions that indicate the business subject cannot be shortened with an abbreviation; and the word "holding" should appear in the commercial title of joint stock companies that will be incorporated with the only main purpose to hold shares in other companies; (vi) officially-designated names of places may be used in commercial titles, and permission must be obtained from competent authorities for using names of countries in a commercial title; (vii) names or abbreviated names that relate to public institutions and establishments as well as other national and international entities cannot be used as an addition to commercial titles; (viii) a commercial title deleted from the trade registry may not be re-registered on account of another merchant unless five years pass from the date of publication in the Turkish Trade Registry Gazette of the announcement in relation to the deletion of such commercial title.

Further, in the Communiqué, it is regulated that (i) a commercial title cannot be registered without making the addition necessary to distinguish it from another title previously registered at any registry in Turkey; (ii) a commercial title,

which has an addition to a commercial title with the same first expression that indicates the addition and business subject under article 46 of the Turkish Commercial Code, that is the same as the commercial title previously registered, cannot be registered without making an addition; (iii) a commercial title that has the same addition as the addition of a previously registered commercial title but has a different first expression that indicates the business subject that comes after the addition may be registered without making an addition; and (iv) a commercial title that has only a different company type from a previously-registered commercial title cannot be registered without making a distinguishing addition.

The provisions of the Trade Registry Regulation will be taken as a basis for matters other than the matters regulated under the Communiqué. In addition to these matters those whose application for registration is rejected according to the Communiqué may file an objection against such rejection decision within 8 days with the commercial court of first instance in charge of hearing commercial lawsuits where the trade registry is located.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/02/20140214-6.htm>



Newsfeed

Changes to the Requirement by Financing Companies to Set Aside Reserves

The Regulation Amending the Regulation on Accounting Practices and Financial Statements of Leasing, Factoring and Financing Companies was published in the Official Gazette on 7 February 2014 and came into effect as of such date.

As per temporary article no. 1 that was newly introduced to the Regulation, financing companies' obligation to set aside general reserves at the rate of 8% over the loans for certain consumer loans other than real estate loans will not apply to motor vehicle loans made available before 24 December 2013.

The Turkish language text of the Regulation can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/02/20140207-15.htm>

Reserves to be Set Aside by Banks

The Regulation Amending the Regulation on the Procedures and Rules for Establishing the Nature of Loans and Other Receivables by Banks and Reserves to Be Set Aside for the Same was published in the Official Gazette on 7 February 2014 and came into effect as of such date to be applicable as of 1 January 2014.

The following dates are extended by the Regulation from 31 December 2013 to 31 December 2014:

- period for enforcing the provisions of temporary article no.5 of the Regulation regulating loans and other receivables made available to real persons and legal entities domiciled in Libya as well as real persons and legal entities that have operations in Libya and/or operations directed toward Libya by banks,
- period for enforcing the provisions of temporary article no.6 of the Regulation regulating loans and other receivables made available by banks for use in the maritime industry, and
- period for enforcing the provisions of temporary article no.7 of the Regulation regulating loans and other receivables made available by banks to real persons

and legal entities domiciled in Syria and real persons and legal entities that have operations in Syria and/or directed toward Syria

The Turkish language text of the Regulation can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/02/20140207-14.htm>

Electricity Market License Regulation

The Regulation Amending the Electricity Market License Regulation was published in the Official Gazette on 28 January 2014 and came into effect as of such date. Temporary article no.13 titled access to system and rights of system use is repealed.

The Turkish language text of the Regulation can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140128-31.htm>

Implementation Regulation for Turkish Petroleum Law

The Implementation Regulation for the Turkish Petroleum Law was published in



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the Official Gazette on 22 January 2014 and came into effect as of such date to be applicable from 11 December 2013.

The purpose of the Regulation is to regulate the principles and procedures regarding the implementation of the Turkish Petroleum Law dated 30 May 2013 and numbered 6491.

The Regulation covers the principles and procedures with respect to petroleum exploration and exploitation license,

exploration permission procedures; duties, powers, rights and obligations, applications, licensing, registration and announcement, reports, gathering, archiving and marketing field data, transferring of petroleum rights, securities, government shares, right of use, removing facilities, taxation, economic valuables, capital and profit transfer, import and export of materials, notifications to the General Directorate, financial adequacy, work and investment program evaluation criteria, examining and auditing operations and other matters related to enforcing the Law.

The Turkish language text of the Regulation can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140122-9.htm>

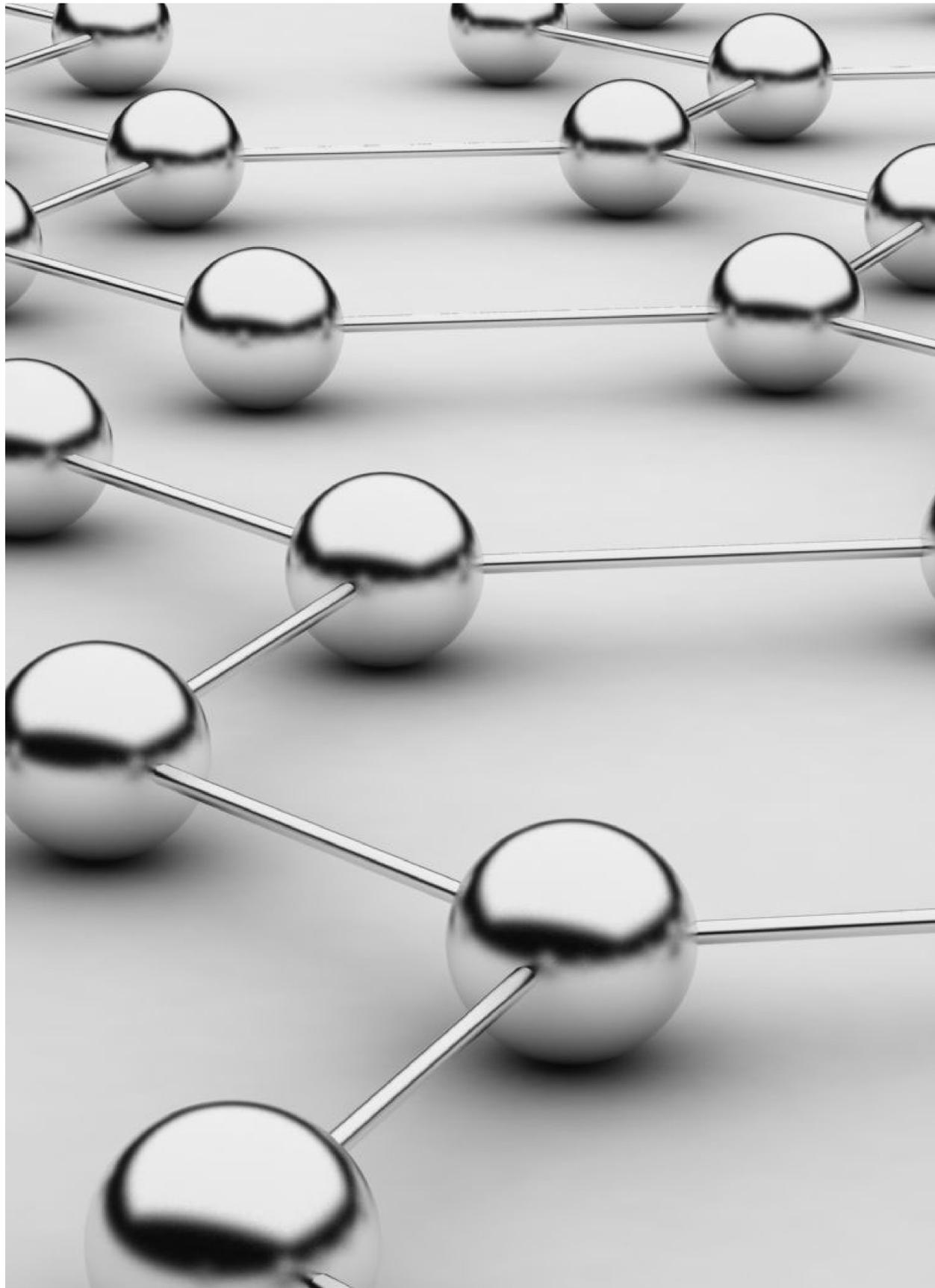
Communiqué on Squeeze Out and Sell Out Rights

The Communiqué on Squeeze Out and Sell Our Rights was published in the Official Gazette on 2 January 2014 and will come into effect on 1 July 2014. The Communiqué regulates the squeeze out right of a controlling shareholder, who holds 95% of the total voting rights in public companies (i.e. remove the other shareholders from the company by buying their shares) and sell out rights of the other shareholders (i.e. leaving the company by selling their shares to the controlling shareholder). The Communiqué regulates the following: (i) the shares that shareholders and persons that jointly act, directly and indirectly, hold and the voting privileges will be taken into consideration in determining the share percentage that must be reached; (ii) the lapse of time for the controlling shareholder to exercise its squeeze out right is set out as 3 months upon the date of acquisition of 95% of the public company's shares; (iii) the mechanism is set out for determining the price payable in the exercise of the squeeze out - sell out rights; (iv) the rights of squeeze out and sell out cannot be realized within 2 years as of the shares of the public company is traded in the exchange for the first time; (v) the companies in which the controlling shareholder exercises its squeeze out right will be taken out from the scope of the Capital Market Law by the Capital Market Board.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140102-3.htm>

Communiqué on Principles of Venture Capital Funds

The Communiqué on Principles of Venture Capital Funds was published in the Official Gazette on 2 January 2014 and will come into effect on 1 July 2014. Some of the changes introduced by the Communiqué are as follows: (i) Venture Capital Funds (VCF) may be established by portfolio management companies and venture capital portfolio management companies; (ii) VCF shares may be sold to qualified investors; (iii) VCFs may issue shares designated as qualified shares (General Partners Shares) and other type of shares (Limited Partners Shares); (v) at least 80% of the total value of VCF shall consist of venture capital investments;



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(iv) venture capital investment may be made by different methods such as direct or indirect shareholding, providing mezzanine finance as a mix of debt and equity financing to venture companies, and buying debt instruments issued by venture companies.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140102-4.htm>

Communiqué on Corporate Governance

The Communiqué on Corporate Governance was published in the Official Gazette and came into effect on 3 January 2014. Some of the changes introduced by the Communiqué are as follows: (i) In the event that the public companies and affiliates of the same, are going to enter into transactions with their related parties, they are required to pass a board resolution prior to such transaction; (ii) the investor relations department within a public company must operate by directly reporting to the company's managing director or assistant managing director or one of the officers with an equivalent management responsibility and prepare a report regarding its activities at least once a year and present the same to the board of directors; (v) corporate governance principles

set out by the Capital Markets Board with its earlier decision with respect to securities, pledges and guarantees are regulated in the Communiqué.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140103-3.htm>.

Regulation on Principles of Real Estate Investment Funds

The Regulation Regarding Principles of Real Estate Investment Funds published in the Official Gazette on 3 January 2014 and came into effect as of such date.

Under the Regulation, fundamental principles have been set forth in general as follows: (i) Real Estate Investment Funds (REIFs) can only be incorporated by portfolio management companies or real estate portfolio management companies, (ii) REIFs shall have the legal entity rights limited with the transactions before land registry offices, (iii) shares of the REIFs can only be purchased by qualified investors, (iv) at least 80% of the total value of the REIFs shall consist of real estate investments, (v) assets of the REIFs shall be kept by a portfolio custodian; (vi) value of the REIFs shall reach at least the amount of TL 10,000,000 within one year following the starting date of sale of the shares.

The Turkish language text of the Regulation can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140103-5.htm>

Communiqué on Asset or Mortgage Backed Securities

The Communiqué on Asset- or Mortgage-Backed Securities was published in the Official Gazette on 9 January 2014 and came into effect as of such date. Some of the changes introduced by the Communiqué are as follows: (i) the banks, leasing and financing companies, mortgage financing companies, and brokerage firms having broad authorizations may become fund founders; (ii) asset or mortgage backed securities are allowed to be sold by way of private placement provided that the unit nominal value is at least TL 100,000; (iii) the founding and/or funding entity is imposed the obligation of retaining risk at 5%.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140109-11.htm>.

Communiqué on Guaranteed Securities

The Communiqué on Guaranteed Securities was published in the Official Gazette on 21 January 2014. The provision in relation to issuers' insurance obligations regarding guarantees will come into effect on 21 January 2015 and the other provisions came into effect at the publication date of the Communiqué. Some of the changes introduced by the Communiqué are as follows: (i) Leasing and financing companies together with banks and mortgage financing companies can issue mortgage guaranteed securities



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(MGS); (ii) receivables arising from loans, which are not guaranteed by establishing mortgage therewith, may be the subject of MGS issue provided that it is connected with another guarantee deemed appropriate by the Capital Market Board; (iv) Derivative instruments are allowed to be included in guarantee assets.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140121-14.htm>.

Communiqué on Market Abuse

The Communiqué on Activities causing Market Abuse was published in the Official Gazette and came into effect on 21 January 2014. Activities that are deemed to abuse the capital markets are described under four main headings by the Communiqué: (i) activities relating to insider information or continuous information, (ii) activities relating to orders or transactions, (iii) activities committed through

communications and (iv) other activities. In addition the Communiqué establishes which professional activities carried out by journalists according to the professional principles of the press and ethics will not be considered as activities that abuses the capital markets.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140121-17.htm>.

Communiqué on Measures Applicable to Information Abuse and Market Fraud Inspections

The Communiqué on Measures Applicable to Information Abuse and Market Fraud Inspections was published in the Official Gazette on 21 January 2014 and will come into effect on 21 April 2014. The Communiqué sets out the measures that will be available in cases where there is reasonable doubt that activities related to "information abuse" and "market fraud" have been committed or it is found out that such acts have been committed.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140121-15.htm>.

Communiqué on Dividends

The Communiqué on Dividends was published in the Official Gazette on 23 January 2014 and came into effect on 1 February 2014. Some of the changes introduced by the Communiqué are as follows: (i) a dividend may be paid in installments provided that a resolution is adopted for this purpose at the general assembly meeting; (ii) if no rate has been set out for the dividend to be given to holders of preferred shares, holders of dividend right certificate, members of the board of directors, employees of the company, and persons other than shareholders in the articles of association, the sum of the dividend to be paid out to such persons may not exceed $\frac{1}{4}$ of the dividend paid out to shareholders; (iii) the public companies, shares of which are not traded on the exchange, must pay out the dividend in full and in cash at least 20% of the net distributable profit for the period; (iv) in order for the public companies to make donations, their articles of association must include a provision that allows them to make donations and that the Capital Market Board is authorized to set an upper limit for the sum of donation.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140123-7.htm>.



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Communiqué on Amending the Communiqué on the Principles on Real Estate Investment Trusts

The Communiqué on Amending the Communiqué of Rules on Real Estate Investment Trusts that regulates the “real estate investment trust” (REIT) model as an alternative financing instrument in financing projects that require a large sum of capital was published in the Official Gazette on 23 January 2014 and came into effect as of such date. Some of the changes introduced by the Communiqué are as follows: (i) REITs, that will operate a portfolio consisting of infrastructure investments and services, must exclusively engage in such activity and at least 75% of their total assets must consist of infrastructure investments and services as well as projects and rights based upon such; (ii) each of the beginning capital upon incorporation, the existing paid-in or issued capital and the net worth of REITs that will exclusively operate a portfolio consisting of infrastructure investments and services shall not be less than TL 100,000,000; (iii) if at least 20% of the company’s capital is held by a public institution, the beginning capital of the company must be at least TL 5,000,000.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140123-9.htm>.

Communiqué on Public Disclosure Requirement

The Communiqué on Special Cases was published in the Official Gazette on 23 January 2014 and will come into effect on 23 February 2014. The Communiqué regulates the public disclosure requirement. Some of the changes introduced by the Communiqué are as follows: (i) if insider information is learned beyond the issuers’ knowledge by the persons who hold 10% or more of the shares of the public company, the concerning persons shall make a public disclosure regarding such insider information; if a significant change emerges in the operations of the parent company and affiliated companies of

the issuer, the issuer shall make a public disclosure; (ii) a “right of deferral” is introduced for real persons, who are required to make a public disclosure; (iii) the principles regarding public disclosure of evaluations for prospects are regulated; (iv) the list of those who have access to insider information will be kept by the Central Securities Depository of Turkey on an issuer basis.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140123-5.htm>.

Communiqué on Tender Offer

The Communiqué on Tender Offer was published in the Official Gazette on 23 January 2014 and came into effect as of such date. Some of the changes introduced by the Communiqué are as follows: (i) The procedures and principles for making a mandatory or voluntary tender offer due to a change in management control of the public company are regulated; (ii) as a principle a cash payment must be

made for the tender offers but payment may also be made in securities fully or partially provided that the shareholder’s written consent is obtained; (iii) the tender offer must be made within two months from the date at which the obligation to make tender offer arose; (iv) if the actual tender offer procedures are not completed within the periods specified in the Communiqué, the persons who have not fulfilled the obligation of making a tender offer will be fined with an administrative monetary fine; (iv) if the periods in the Communiqué regarding the fulfillment of the obligation of tender offer are not complied with, the voting rights held by real and legal persons, who did not comply with tender offer requirement as well as persons acting together with them, will automatically be frozen without the necessity of taking of any other action by the Capital Markets Board.

The Turkish language text of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140123-8.htm>.



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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 for further information on our legal staff and expertise.

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