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## REGULATION ON DATA CONTROLLER REGISTRY ENTERED INTO FORCE

**Highlights of this issue**

Major Changes in Consumer Law

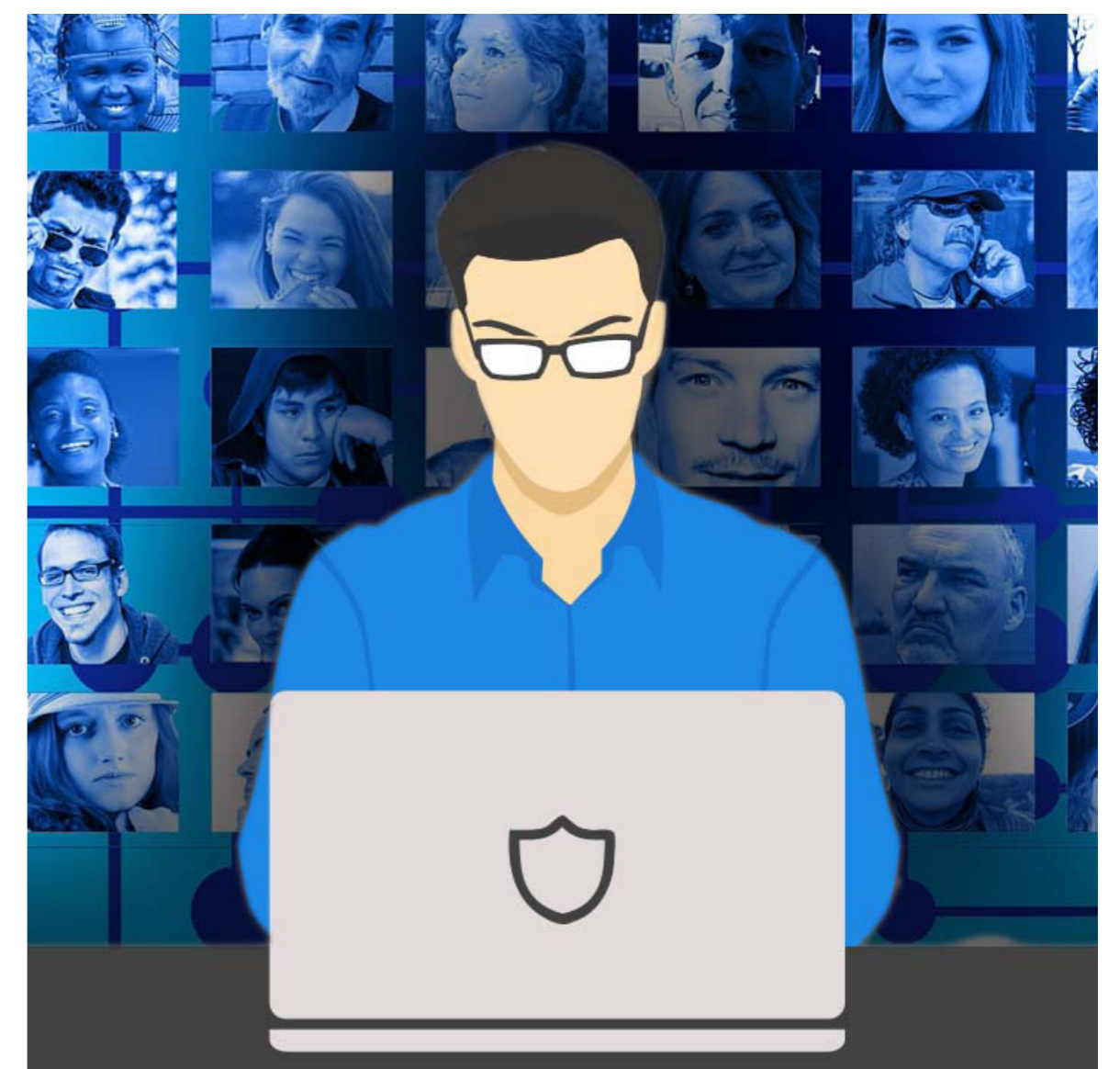


## REGULATION ON DATA CONTROLLER REGISTRY ENTERED INTO FORCE

Regulation on Data Controller Registry (**Regulation**) was published in the Official Gazette and entered into force on **1 January 2018**. Data Controller Registry (**Registry**) has been originally regulated in Law on the Protection of Personal Data (**Law**). However, Regulation more comprehensively regulates the provisions existed in Law.

### Registry and Registration Process

First, it should be reminded that data controller is any real and legal person who determines the means of processing personal data and who is responsible for the establishment and management of the data filing system. Before any personal data processing activities, data controllers shall register with Registry through the online platform; Registry Information System of Data Controllers (**VERBIS**), which will be established by Personal Data Protection Authority (**Authority**). Data controllers residing in Turkey are able to register with Registry directly by themselves. However, data controllers residing abroad are able to register with the Registry through a duly authorised and appointed Data Controller Representative.



Regulation also addresses the required information to be filed when data controllers are registered with **Registry**. Accordingly; identity and contact information of the contact person, data controller and its representative, purpose of processing personal data, data subject groups and data categories, the recipient or recipient groups which personal data could be transferred, personal data which is envisaged to be transferred abroad, measures taken by data controller regarding data protection and maximum data retention period shall be included in the registration application. Data controllers shall prepare such required information based on personal data processing inventory (**Inventory**) and personal data retention and destruction policy (**Policy**) and submit to Registry in the course of the application process. In this context, preliminary preparations such as implementing Policy and Inventory are essential before the registration.

In accordance with the provisions of Regulation, in case the activity required to register with Registry ended, data controller shall apply to Institution for erasing their records from Registry. Registry records will be publicly available and in this context, the information submitted to VERBIS by data controller will be shared on the official web site of Authority. Registry will not contain any personal data.

### Data Controller Representative and Contact Person

During the registration process, data controllers residing abroad are obliged to appoint Data Controller Representative (**Representative**) residing in Turkey. Data controller is also obliged to submit a resolution to Institution in this respect. Accordingly, Representative shall be authorized to perform the required activities and to conduct transactions related to VERBIS on behalf data controllers residing abroad. In this context it is necessary to point out the differences between the contact person and Representative.



According to Regulation, contact person is not authorized to represent data controllers residing in Turkey. Contact person is responsible to ensure the communication between the data controller and Authority or related person. During the registration process, data controllers residing in Turkey are obliged to notify VERBİS for the required information of contact person. Herein contact person and Representative are not responsible for the implementations and sanctions of Law and Regulation.

## **Personal Data Processing Inventory**

Law and Regulation do not stipulate any specific requirements for the preparation process of Inventory. According to Authority, easily accessible text or list containing the required information regarding the data processing activity would be sufficient for Inventory. According to Regulation, Inventory shall include the purposes, the data categories, recipient group which the data are transferred, the maximum processing period required for achieving the purposes, the personal data envisaged to be transferred abroad, and the measures taken regarding data security within the scope of personal data processing activities.

## **Personal Data Storage and Destruction Policy**

According to the explanations above, the maximum retention period for the personal data shall be included in the required information to be submitted during the registration application. In order to determine the retention period, it is necessary to specify the data categories properly in Inventory. After that, the period prescribed by law for the data categories shall also be considered. In this regard, Regulation designates two different kinds of periods: the maximum period required for achieving the purpose of the processing of personal data and the periods stipulated in the legislation regarding personal data. If the periods are different from each other, the maximum retention period will be the period determined by the legislation. According to Regulation on Deletion, Destruction or Anonymization of Personal Data (**Destruction Regulation**) and Regulation, data controllers who are liable to register with Registry shall prepare Policy which should be compatible with Inventory. Therefore, Regulation and Destruction Regulation have been harmonized.

## **Exceptions and Administrative Fines**

Regulation provides some exceptions for the registration obligation. Accordingly, data controllers do not have to register with Registry, in case:

- a) Processing of personal data is required for a criminal investigation or to prevent from a criminal act;
- b) Personal data being processed is already revealed to the public by the data subject;
- c) Personal data processing activity based on the authority given by Law is required for a disciplinary investigation or prosecution and execution of a supervision or regulation duties of public institutions and organizations and professional organizations with public institution status.
- d) Processing of personal data is required to protect the economic and financial interests of the State in relation to budget, tax and financial matters.

Finally, Law stipulates that data controllers who fail to comply with the registration and notification obligation will be subjected to an administrative fine between TRY 20,000 and TRY 1,000,000.



## **MAJOR CHANGES IN CONSUMER LAW Monetary Threshold for Applying to Consumer Arbitration Committee Has Been Raised**

In order to apply to consumer courts for the disputes arising from Consumer Protection Law (**Law**), monetary value of the consumer's claim must be above a certain limit. Consumers are unable to bring the disputes below this limit to consumer courts, and unable to bring disputes over this limit to consumer arbitration committees.

Within this scope, thresholds brought by Law for consumer applications to consumer arbitration committees have been changed as of 01 January 2018:

- For disputes below TRY 4.570, **district consumer arbitration committees**,
- In cities with metropolis status, for disputes between TRY 4.570 and TRY 6.860, **provincial consumer arbitration committees**,
- In centers of non-metropolitan cities, for disputes below TRY 6.860, **provincial consumer arbitration committees** and in districts within the boundaries of these cities, for disputes between TRY 4.570 and TRY 6.860, **provincial consumer arbitration committees** shall be competent.

## **Administrative Fines in Consumer Protection Law Have Been Raised**

Administrative fines envisaged for some certain cases in Law have been changed as of 01/01/2018:

- A fine in the amount of **TRY 274** per violation shall be imposed on persons, who fail to use at least 12 point font size in consumer information notes and agreements, do not use understandable and plain language, do not provide the copies of the agreements to consumers, do not comply with the arrangements regarding distance sales agreements/subscription agreements, fail to fulfill their obligations regarding regulations on price labels, introductory guide and instruction book and guarantee certificate, provide products and services incompatible with safety of life and property and environment;
- A Fine in the amount of **TRY 1.380** per transaction or agreement shall be imposed on persons who do not comply with certain obligations in Law regarding agreements executed outside of the workplace and consumer loans;
- A Fine in the amount of **TRY 138.172** shall be imposed on the producers or importers who do not obtain a competence certificate to provide after-sales maintenance and repair services for goods produced or imported during the lifetime of the goods, A Fine in the amount of **TRY 13.816**, if they do not establish a service station and A Fine in the amount of **TRY 1.380** is for the deficiencies in stations;
- For the advertisements made through the mass media, it is envisaged that administrative fines between **TRY 6.907** and **TRY 276.345** shall be imposed on those who do not comply with basic principles and who do not make proper advertisements.





# 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, debt recovery, 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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