

COVID-19: Omnibus Law on Reducing the Effects of the Outbreak on Economic and Social Life

Coronavirus (**Covid-19**) outbreak soon became a global threat and its individual and social effects began to be seen promptly. In order to ease the adverse effects caused by Covid-19, various measures are being taken by the government and regulatory authorities.

As per the Law Amending Certain Laws and Reducing the Effects of the Novel Coronavirus (Covid-19) Outbreak on Economic and Social Life numbered 7244 (**Omnibus Law**), which was published in the Official Gazette on 17.04.2020, significant issues that affect businesses and employees have been regulated within the context of the measures taken due to Covid-19. In particular, legal arrangements have been introduced which might be useful for foreseeing the legal consequences of this process for companies that have obstacles pursuing their activities due to Covid-19.

Regulations on Prohibition of Termination and Unpaid Leave in Employment and Service Agreements

- According to the amendments made by Omnibus Law; employment or service agreements shall not be terminated by the employer for 3 months from 17.04.2020, regardless of whether they are covered by the Employment Law. The only exception to this regulation is the situations and similar reasons that do not comply with the moral and good faith rules which regulated in subparagraph (II) of the first paragraph of the Article 25 of the Labour Law and with the relevant provisions of other laws. The employer may terminate the employment or service agreement if such conditions exist.
- From 17.04.2020, the employer may give partly or wholly an unpaid leave to the employee for up to 3 months and such unpaid leave will not entitle the employee with the right to terminate her/his agreement on the basis of valid reason. There is no provision under the Omnibus Law determining whether the employee's approval is required for unpaid leave or not. However, since this situation is not entitling the employee with the right to terminate the agreement rightfully, it can be interpreted as that the employer may give unpaid leave to the employee without awaiting an approval.
- The employer or employer representative who terminates an employment agreement within 3 months from 17.04.2020 shall be imposed an administrative fine in the amount of the monthly gross minimum wage on the date of the action, for each employee whose agreement is terminated.
- The President is authorized to extend the prohibition of termination and the maximum period of unpaid leave up to 6 months.

Application of Short-Time Working and Cash Wage Support under the Unemployment Insurance Law

- Within the scope of previous amendments made due to Covid-19, for short-time working applications made for compelling reasons due to Covid-19, except for termination of the service agreement, the provision regulating the conditions that the worker needs to fulfil in order to qualify for short-time working allowance, decided to be applied as "for the employees who was subject to a service agreement for the last

60 days before the beginning of short-time working, 450 days of unemployment insurance premium has to be paid in the last three years". Applications to benefit from this right will be finalized within 60 days from the application date. With the amendment introduced by Article 6 of the Omnibus Law, the phrase "except conformity determinations" has been added to this article. In this way, a regulation has been made that finalizing the application may take more than 60 days, excluding the 60-day period that has passed during the examination regarding the eligibility assessment of the application. These amendments to the short-time working applications have taken effect as of 29.02.2020.

- On the other hand, for the short-time working applications made by the employers due to Covid-19, without awaiting the eligibility determination, short-time working allowance shall start to be paid according to the declarations of the employer. In this manner, the process can be accelerated and workers can receive their payment immediately. In case excessive and unjustified payment being made in accordance with the declaration of the employer, the payments can be recovered from the employer with the legal interest.
- In accordance with the Provisional Article of the Unemployment Insurance Law; without exceeding the 3 month period (or the extended period if its extended by competent authorities), 39,24 TL of daily cash wage support will be provided to the employees who got an unpaid leave and cannot benefit from the short-time working allowance and after 15.03.2020, to the employees whose agreement is terminated and cannot benefit from the unemployment allowance within the context the Article 51 of the Unemployment Insurance Law. No deductions will be made from these payments except stamp duty.
- If it is determined that the employee who benefits from the cash wage support by getting an unpaid leave due to Covid-19 is actually employed, for each employee and each month that s/he is employed, separately an administrative fine shall be imposed to the employer in the amount of gross minimum wage per month and the cash wage support paid shall be recovered from the employer together with the legal interest.
- The Ministry of Labour and Social Security is authorized to determine the payment procedures and principles for cash wage support, as well as to resolve any doubts that may arise regarding the implementation of the relevant article.

Unfair Price Evaluation Board for Retail Businesses

- Certain amendments have been made in the Regulation of Retail Trade Law with the Omnibus Law. In this context, an exorbitant increase in the sales price of a product or service shall not be made by the manufacturers, suppliers and retail enterprises. In addition, it is forbidden for the manufacturers, suppliers and retail enterprises to engage in activities that create market shrinkage, disrupt market balance and free competition, and prevent the consumer from reaching the goods.
- Within the scope of the measures; Unfair Price Evaluation Board (**Board**) will be established in order to make regulations for exorbitant price increase and stocking practices of manufacturers, suppliers and retail businesses, to impose administrative fines by pursuing auditing and examinations when necessary, and to take all kind of measures. The Board, upon the call of the Chairman in case of any need, may convene with at least 7 members, including the Chairman, and can take decisions

with the absolute majority of those attending the meeting. Although the formation, duties, working principles and procedures of the Board, secretarial services and other issues related to the Board will be determined by the secondary regulation, such regulation does not exist yet.

- Within the scope of these new provisions introduced into the Regulation of Retail Trade Law, administrative fines ranging from ten thousand Turkish Liras to one hundred thousand Turkish Liras will be imposed to those who make exorbitant price increases; from fifty thousand Turkish Liras to five hundred thousand Turkish Liras will be applied to those who engage in activities that create market shrinkage, disrupt market balance and free competition, and prevent the consumer from reaching the goods. The authority to enforce the prescribed administrative fines will belong to the Unfair Price Evaluation Board.

Arrangements relating to TechnoPark companies and R&D and design centers

Companies operating in technology development zones and enterprises with Research and Development (**R&D**) and design centres, are required to perform R&D and design activities inside the technology development zones or R&D and design centres in order to benefit from exemptions and incentives. Accordingly, it was released to the public by the press statement made by the Ministry of Industry and Technology on 15.03.2020, that employees working in these areas could work remotely due to the Covid-19 outbreak risk and that within this, they can continue to benefit from exemptions and incentives until the end of April. Therefore, the activities will be carried out from outside the technology development zones or R&D and design centres temporarily.

With the Omnibus Law, the press release made by the Ministry of Industry and Technology has become a law. Thereby with the Omnibus Law;

- It is possible to carry out activities outside the R&D and design centres or technology development zones with the amendments on the Law on the Support of Research, Development and Design Activities and the Technology Development Zones Law.
- The permission process for activities to be performed outside the centre and the region has been introduced and the Minister of Industry and Technology has been authorized for a period of 4 months starting from 11.3.2020. It is regulated that the R&D and design centres and technology development zones will continue to benefit from the exemptions and incentives granted after the permitting process.

Developments regarding General Assembly Meetings of Associations, Cooperatives, and UCCE

- As per Article 2(1)(ç) of the Omnibus Law, declarations and notifications to be submitted by associations as well as General Assembly meetings to be held by associations have been postponed until 31.07.2020. Additionally, the Minister of Interior has been authorized to extend the postponement period for a period up to 3 months.
- General Assembly meetings which have been postponed in accordance with the above provision are to be convened within 30 days as of the end of the postponement period, whereas duties, authorities, and responsibilities of the existing bodies of associations (i.e. General Assembly, Board of Directors, Board of Supervisors and any other bodies,

if any) will remain in force during the postponement period, until the first General Assembly meeting to be convened following the expiry of the postponement period.

- Similarly, General Assembly meetings to be held within the scope of the Cooperatives Law (Law No. 1163) (**Cooperatives Law**) have been postponed until 31.07.2020 and such postponement period may be extended for a period up to 3 months by the relevant Minister¹ under Article 2(1)(d) of the Omnibus Law. In parallel with the aforesaid provisions applicable to associations, the postponed General Assembly meetings of cooperatives are to be convened within 30 days as of the end of the postponement period, whereas duties, authorities, and responsibilities of the existing bodies of cooperatives (i.e. General Assembly, Board of Directors and Auditors) will remain in force during the postponement, until the first General Assembly meeting to be convened following the expiry of the postponement period.
- It should be further noted that the above mentioned provisions applicable to associations and cooperative which were introduced the Omnibus Law have taken effect as of 10.03.2020.
- Lastly, the 76th General Assembly meeting of the Union of Chambers and Commodity Exchanges of Turkey (*Türkiye Odalar ve Borsalar Birliği*) (**UCCET**), which was envisaged to take place in May 2020 under the Law on the UCCET and Chambers and Commodity Exchanges, will be held on the date of the General Assembly meeting of the next year in accordance with Article 2(1)(f) of the Omnibus Law.

Restrictions on Distribution of Dividends by Companies

Pursuant to Article 12 of the Omnibus Law, Provisional Article 13 regarding distribution of dividends by companies has been added to the Turkish Commercial Code (Law No. 6102) (**TCC**), in a way to introduce the following provisions with immediate effect. In principle, the said provisions serve the purpose of preserving equities as well as preventing needs of additional financings of Turkish companies, as part of the prudence policy adopted with a view to mitigating negative impacts of the Covid-19 on commercial and economical life.

- As per the newly added Provisional Article 13 of the TCC, any companies other than those in which the State, special provincial administration, municipality, village or other public legal entities are shareholders having directly or indirectly more than 50% of the shares of such companies, or those in which a public fund holds directly or indirectly more than 50% of the shares of such companies (i) may resolve to distribute dividends only up to 25% of their net profit pertaining to the year of 2019, (ii) cannot distribute retained earnings and free reserve funds pertaining to the year of 2018 or previous years, and (iii) cannot authorize their Board of Directors, by way of a General Assembly resolution, to distribute advance dividends, until September 30, 2020. In addition, the Turkish President has been authorized to extend and shorten such period for 3 months.

¹ Pursuant to Article 35/b of Law No. 3161 (*published in the Official Gazette dated March 12, 1985 and numbered 18692*), duties and authorities granted to the Minister and Ministry of Trade in relation to incorporation and supervision of village development cooperatives, forest villages development cooperatives, tea production and sales cooperatives, beetroot production and sales cooperatives, veterinary producers supply and marketing cooperatives, electricity production cooperatives and senior institutions thereof have been assigned to the Minister and Ministry of Agriculture and Forestry.

- On the other hand, companies which have already resolved to distribute dividends for the financial year of 2019 during General Assembly meetings, but which have yet to make any payment or have made partial payment to their shareholders so far, are required to postpone dividend payments exceeding 25% of their net profit pertaining to the year of 2019, until September 30, 2020.
- Last but not least, since the Ministry of Trade considering the opinion of the Ministry of Treasury and Finance has been authorized to determine exemptions from as well as procedures and principles regarding the provisional article introduced by the Omnibus Law, the Ministry of Trade may introduce the secondary legislation setting out principles regarding the implementation of such newly added provisional article.

Conclusion

With the Omnibus Law published in the Official Gazette dated 17.04.2020, arrangements have been made that may affect many sectors. As mentioned in this note, it is important to follow the developments closely, especially as the steps to be taken by the regulatory authorities in the upcoming days will be decisive.

Kind regards,

Gökçe Attorney Partnership

This note is prepared on the date of 21 April 2020 within the developments till this day, solely for the purpose of presenting general information and does not provide any case-related assessment. This note does not include any taxation advisory. The information given in this note may differ for each particular situation. Thus, Gokce Attorney Partnership would not be held liable for these situations.