THE

Gökçe

Fine PRINT

May 2021

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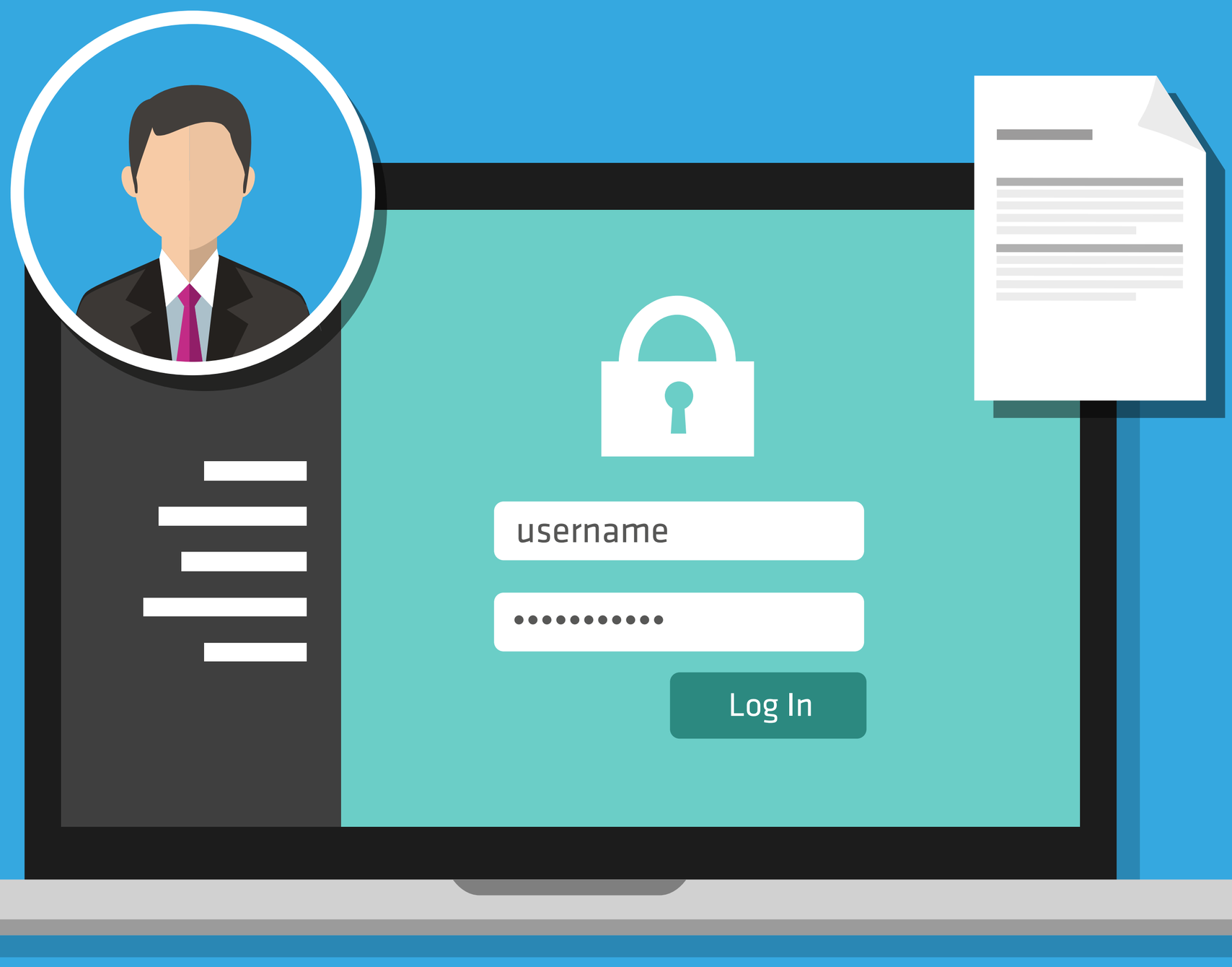

Deadline for IYS is 31st of May!

- **Guideline has been published for Influencers**
- **Crypto Asset Service Providers Became MASAK Obligator**

Deadline for IYS is 31st of May!

With the Regulation Amending the Regulation on Commercial Communication and Commercial Electronic Messages, published on the Official Gazette dated 04 January 2020; there were significant changes made within commercial electronic messages' practice. With this amendment, Commercial Electronic Message Management System (**IYS**), which has been proposed by the Law on the Regulation of Electronic Commerce (**Law**) but was not implemented previously, was established.

According to regulations on IYS, service providers have been deemed responsible for registering with IYS and transferring their current databases (the consents already been taken from the recipients) to IYS, to ensure that approval and refusal rights and the process of complaints are carried out through IYS. With Ministry of Commerce's press release, service providers having more than 150.000 consents, had completed their uploads as of 31 December 2020.

For service providers with 150.000 or less consents, deadline for uploading is 31 May 2021 and deadline for checking these consents by citizens is 15 July 2021. Therefore, we have reached the end of these deadlines for IYS, in terms of service providers.

For our other articles on the main regulations with regards to IYS, see also – TFP August 2020 and TFP June-July 2020.

Guideline has been published for Influencers

Guideline on Commercial Advertising and Unfair Commercial Practices by Social Media Influencers (Guideline), that was accepted as a principle decision by Board of Advertisement was published by Ministry of Commerce on 5 May 2021.

Basic principles regarding sharing of advertising content, obligations and responsibilities of influencers and advertisers were determined with the Guideline. Guideline covers all kinds of commercial advertisements and commercial practices made by influencers towards consumers.

In the Guideline, "social media influencer" has been defined as *the person who, through their social media account, informs or persuades the target audience, performs marketing communications to ensure sale or rent of a product or service belonging to itself or the advertiser.*

It was set forth in the Guideline that advertisements to be made by the influencers shall be clearly and comprehensibly expressed and distinguishable, and surreptitious advertising was prohibited. In this way, it is aimed to prevent the consumer from being deceived and to make it clear that such sharing is made for advertising purposes.

In the posts where the influencers provide benefits from the advertiser (such as financial gain, free/discounted goods or services), it is obligatory to indicate such situation with the tags and explanations included in the Guideline. In order to be able to easily understand whether the relevant sharing is an advertising content, it is stipulated that the labels and descriptions to be used must meet certain standards in terms of colour and size.

In the Guideline, besides the features that the posts should bear, obligations influencers must comply have also been arranged. One of the essential obligations is that influencers cannot promote the product they have not experienced. Another point is that in case influencers use effects or filtering applications, it must be clearly stated that the image is filtered.

Those who advertise through influencers are held responsible for informing influencers about the Guideline, asking influencers to act in accordance with the legislation, making efforts to fulfil their obligations and taking measures against violations. Advertisers and influencers were separately deemed responsible for compliance with obligations. In addition to the advertiser, the influencer was also responsible for the compliance of the influencers with the obligations.

In case of failure to comply with obligations set forth in Guideline, the advertisements can be ceased or rectified, or administrative fine of 114,326 Turkish Liras shall be imposed as of 2021 if the violation occurred via the internet and in cases where it deemed necessary, cautionary suspension penalty of up to 3 months was stipulated towards advertisers, advertising agencies and media organizations.

You can find the Guideline here (only available in Turkish).

Crypto Asset Service Providers Became MASAK Obligator

A short while ago, Ministry of Treasury and Finance has requested some information from crypto exchanges operating in Turkey about users' IDs and amount of crypto holdings in their wallets. Not long after this, "Regulation on not Using Crypto Assets in Payments" has been published in the Official Gazette dated 16 April 2021. While the public is trying to keep up with these, a new actor has entered the crypto asset market: Financial Crimes Investigation Board (**MASAK**)!

With Regulation Amending the Regulation on Measures to Prevent Money Laundering and Terrorism Financing (**Amending Regulation**) published on Official Gazette dated 1 May 2021, Regulation on Measures to Prevent Money Laundering and Terrorism Financing (**Regulation**) has been changed and "crypto asset service providers" were included in the scope of organizations subject to MASAK obligations as of 1 May 2021. Thereafter MASAK published a guide named Basic Principles of Obligations Regarding the Prevention of Laundering Proceeds of Crime and the Financing of Terrorism for Crypto Asset Service Providers (Guideline) and explained the details of the relevant regulation with this Guideline.

In the Guide, concepts of money laundering and financing terrorism were explained first and it was stated that "crypto asset service providers", which was brought to our legislation as a definition for the first time and included in the scope of the regulation, are crypto assets exchange platforms.

Obligations of crypto asset service providers are regulated in Law on Prevention of Crime Revenues (**Law**) and Regulation:

- First one is the obligation to know the customer. In accordance with the Regulation, crypto asset service providers must obtain the identity information of their users and confirm this information. Unidentified users shall not fulfil transactions regardless of the amount. It is stated that this determination of identities can be accepted provided that communiqués and regulations within the scope of MASAK legislation and conditions published by institutions such as the Banking Regulation and Supervision Agency and the Capital Markets Board are met.
- Another obligation of crypto asset service providers within the scope of the Regulation is to report suspicious transactions to MASAK. There is no pecuniary limit for reporting of suspicious transactions. Crypto asset service providers must report these transactions within ten working days from the date of the suspicious transaction, and if there is significant suspicion, immediately.
- Crypto asset service providers are obliged to block the relevant investment amount of the user until MASAK examines the reported transactions.
- In addition, crypto asset service providers are responsible for providing all kinds of information, documents, records requested by MASAK and audit personnel completely and accurately.
- Crypto asset service providers are obliged to keep the following records regarding their obligations and their transactions in all kinds of mediums for eight years and to submit it to the authorities upon request; the documents as of the date of issuance, books and records as of the last registration date, identification documents as of the date of the last transaction.

At the same time, crypto asset service providers will continuously inform the relevant institutions, which details regarding this will be determined by the Ministry of Treasury and Finance within the upcoming days.

You can find the text of the Guideline here (Only available in Turkish).

MASAK Communique on Remote Identification Has Been Published

Financial Crimes Investigation Board (**MASAK**) has published the General Communique no. 19 on remote identification (**Communique**), which was published on the Official Gazette dated 30 April 2021 and entered into force on 1 May 2021. Communique specifies the procedures and principles of remote identification methods for customer identification and the required tightened measures to be taken within Law Regarding the Prevention of Laundering of Crime Revenues.

Pursuant to the Communique, only same obligated parties will be able to use remote identification methods for the customer identification in the establishment of a continuous business relationship. These parties are the ones who are allowed by the legislation to establish contracts related to their main fields of, with methods that will allow the customer to be identified without meeting the customer.

Some significant and prominent regulations of the Communique are as below:

- Remote identification must be completed prior to establishing a continuous business relationship.
- Remote identification can only be made for real persons or real person merchants with Turkish nationality,
- It is mandatory to use the new generation Republic of Turkey Identity Cards for identification.

In accordance with the Communiqué, remote communication tools such as information or electronic communication devices can be used for remote identification over an electronic channel. Electronic channels are defined as *“electronic service methods such as mobile application, web-based application, internet branch, telephone services”*. In addition, it is expected that necessary organization, technical infrastructure, identity verification components need to be developed and confidentiality and security measures will be taken in remote identifications to be made over the electronic channel.

Communique also specifies the tightened measures to be taken during remote identification. With the application of the customer, below steps are envisaged to be fulfilled:

- A risk assessment shall be made about the person in order to create and evaluate the customer profile,
- Additional information about the customer as well as the information required under Article 6 of the Regulation on the Prevention of Laundering Proceeds of Crime and the Financing of Terrorism shall be obtained,
- In the event that the following transaction within the scope of the continuous business relationship established by remote identification is carried out face to face with the obliged party, identification shall be made according to the procedure in Article 6 of the Regulation and a signature sample shall be taken, and
- Finally, it is envisaged that some additional measures shall be taken in proportion to the risks identified by financial institutions and certain non-financial businesses and professions.

As stated in the definition of “remote identification”, the purpose of this regulation is to provide assurance that an identity belongs to the person who actually wants to perform the transaction.
As a new practice, we are eagerly awaiting its effects on our lives.

You can find the full text of the Communique here (only available in Turkish).

The Internet Domain Names Regulation Has Been Amended

The Ministry of Transport and Infrastructure (**Ministry**) changed the regulation that sets the procedures and principles regarding the management of Internet domain names with the extension ".tr". The Regulation on the Amending the Internet Domain Names Regulation (Amending Regulation) entered into force after being published in the Official Gazette on 20.04.2021.

The authority to allocate ".tr" extension domain names was transferred from Nic.TR within the Middle East Technical University (**METU**) to the Information and Communication Technologies Authority (**ICTA**) in 2010. In this context, a protocol for the establishment of the ".tr" Network Information System (**TRABIS**) was signed between METU and ICTA in 2018. Together with the changes, some novelties have been introduced before the transition to the TRABIS. The primary changes made by the Regulation are as follows.

The person who wanted to renew the domain name allocation, used to renew three months before the end of the allocation period. This period was removed with the Amending Regulation. Thus, the person who wants to renew the allocation of the domain name will not have to wait for this period and will be able to do the renewal process earlier.

The Amending Regulation stated that in case of renunciation of the domain name, the application fee will not be refunded. Before the amendments, the regulation stated that "renunciation of the domain name does not create a right in favor of the domain name owner. In addition, it was predicted that the issues regarding the reallocation of the renounced domain name will be regulated by the ICTA.

With this regulation, it was predicted that the domain name establishment may be canceled if it is determined that the documents submitted during the application for the sub-domain names allocated with the certificate are out of validity.

With the Amending Regulation, the definition clause has also been changed. According to this, the phrase "sub-domain names" was removed from the definition of the List of Non-Allocated Names and the definition of the List of Non-Allocated Names was updated to be "the list of domain names that are not allowed to be allocated for reasons such as violating the legislation, public order and general morality".

Amending Regulation has also expanded the authority of ICTA. Within this, ICTA has been given the authority to audit registrars and Dispute Resolution Service Providers (**DRSP**) and to impose necessary administrative sanctions, including terminating their activities. ICTA publishes the decisions regarding domain name disputes on its website. It is stated in the Amending Regulation that, ICTA shall take the necessary measures to protect personal data while publishing the decisions regarding domain name conflicts on its website.

In addition, the obligations of the registrars that mediate transactions regarding domain names such as application, renewal and cancellation have been expanded. Registrars are obliged to keep their systems and backups integrated with TRABIS within the borders of the Republic of Turkey and to fulfill the requirements of the arbitral tribunal decisions regarding the domain names that are the subject of the dispute submitted by the DRSP and the court decisions submitted to them regarding domain name conflicts.

You can find the full text of the regulation here.

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

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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 for further information on our legal staff and expertise.

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