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Q&A: Increase Rate on the Residential Rentals is Fixed

The Law Amending the Attorneys' Act and Turkish Code of Obligations numbered 7409 (**Law**) was published in the Official Gazette dated 11 June 2022 and has entered into force. With provisional article added to the Turkish Code of Obligations numbered 6098 (**TCO**), the Law brought a major change for the residential rentals. Accordingly, the increase rate for the agreements regarding the rental fee to be applied for the renewed rental periods between the dates 11 June 2022 and 1 July 2023, cannot exceed 25% of the previous rental year's rental fee.

How was the rent increase rate calculated before the amendment?

Before the amendment, the parties could determine the rental fee to be applied in the renewed rental periods, on the condition that the increase rate does not exceed the twelve-month averages in the consumer price index (**CPI**) in the previous rental year. Within the Law, the increase will not be made according to the twelve-month averages in the CPI, instead, the rental fee for the renewed period will be determined by increasing 25% of the rental fee of the previous year.

What will be the upper limit if the CPI remains below 25%?

If the change rate is below 25% compared to the twelve-month averages in the CPI of the previous rental year, the CPI change rate will be applied as the upper limit. For example, if the December 2022 CPI change rate will be 20%, the upper limit will be 20% for increasing the rental fee and the limit of 25% will not be applied.

Which type of rentals is the upper limit valid?

The upper limit will only be valid for residential rentals for more than year. Thus, for the roofed workplace rentals, TCO will continue to be applied.

What about the increase above the upper limit?

As per the Law, the agreements that exceed the upper limit will be invalid for the amount exceeding. In other words, even if an increase is decided above the upper limit; only the increase up to the upper limit will be valid legally.

Between which dates is the upper limit valid?

The Law stipulates an upper limit for the renewed rental periods between 11 June 2022 and 1 July 2023. There is no regulation regarding the rental periods renewed before 11 June 2022. Likewise, for the rental periods to be renewed after 1 July 2023, if the date is not extended with a new regulation, the twelve-month rate of change in the CPI will be applied.

How will the rental agreements renewed at the end of 5 years be affected?

As per the TCO, in rental agreements that last longer than 5 years or are renewed after 5 years, a declaratory lawsuit for the rental fee can be filed. The Law did not stipulate an amendment regarding the said article. Therefore, the lessor is able to file a lawsuit for the determination of the rental fee in rental agreement that is longer than 5 years or renewed after 5 years. In the lawsuit for the determination of the rental fee, the new rental fee can be determined in an equitable manner, taking into account the rate of change according to the twelve-month averages in the CPI, the condition of the leased property and the equivalent rental fees.

You can reach the full text of the Law [here](#) (only available in Turkish).

Significant Developments Regarding Geographic Information Systems!

The Law No. 7221 on the Amendment of Geographic Information Systems and Some Laws (**Law**), which imposes permit/license obligation for the collection, production, sharing and sale of geographic data, has been on the agenda of many actors from various sectors. The Law No. 7410 published on the Official Gazette dated 15 June 2022 has amended the Law to include some important changes regarding geographic data permission and license. We summarize below the main amendments:

- As of 2022, the permit fee will be calculated as 74.31 TRY per 1/1000 sheet for foreign real persons and private law legal entities, and 37.16 TRY per 1/1000 sheet for Turkish citizens and private law legal entities established under the laws of the Republic of Turkey. With the amendment, the upper limit of the geographical data permit fee; shall not exceed 100,000 times the permit price per sheet.
- Pursuant to the amendment, if geographic data permit is not obtained and the obliged party doesn't apply for a permit following the minimum 10-day period given by Ministry of Environment, Urbanization and Climate (**Ministry**) from the date of notification, the obliged party's activities will be suspended and an administrative fine of 5 times the permit fee will be imposed.
- The software within the scope of the Geographic Information System will be certified by the Ministry to ensure compliance with the National Geographic Information System standards. Sensors and equipment that collect geographical data will be recorded by those concerned to the electronic environment to be created by the Ministry, and the procedures and principles regarding this will be determined by a regulation to be issued by the Ministry. Software operating in the field of defense, security and intelligence will be exempt from these obligations.
- An administrative fine of 100.000 TRY will be imposed on those who do not acquire certificates for the software within the scope of the Geographical Information System. If the certificate is not acquired within 3 months from the penalty, the same amount of administrative fine will be applied for each detection of use without certificate.

- Licenses will be granted to real persons and legal entities of private law within the scope of their cooperation with the Ministry for the collection, production, sharing and sale of geographical data, data mining and generation of new geographical data within the scope of the National Geographical Data Responsibility Matrix.

You can find the amendments in the Law [here](#) (only available in Turkish).

Reporting Obligation for Publications on the Internet

Tax Procedure Law General Communiqué No. 538 (**Communiqué**) has entered into force with the publishing of the Official Gazette on 31 May 2022. Communiqué, sets out new procedures and principles regarding the receipt of certain information for publications on the internet.

Pursuant to the Communiqué, **intermediary service providers, social network providers and hosting providers** who mediate the publications for the purchase, sale or rental of movable and immovable properties and goods and services are required to notify following information concerning their transactions to the Revenue Administration (**GIB**):

- The web address where the service is provided,
- The name, surname/title and Turkish Identity Number/Foreigner Identity Number/Tax Identification Number of the service receivers and their workplace address,
- The amount and date of each collection or sale transaction regarding the sale/rental of movable and immovable properties and goods and services performed on behalf of the service receivers, and
- The bank account information regarding the payment of the collected amounts to the intermediary service providers.

The data format and standard for the information to be reported by those who are obliged to provide information will be announced by GIB through the Information Transfer System (**BTRANS**). The information will also be reported to the GIB via BTRANS.

A critical regulation introduced with the Communiqué is that the notifiers will also be held responsible for the accuracy of the information reported. The first notification must be made by 1 August 2022 for the period of June 2022. In case of violation of the Communiqué, the penal provisions of Tax Procedure Law No. 213 will be applied.

It is expected that the declarations made on BTRANS will provide some guidance as to how the Communiqué, whose main object was to “tackle informal economy” will be enforced.

You can reach the full text of Communiqué [here](#) (only available in Turkish).

New Regulation on Lotteries: Licensing Obligation for Intermediary Companies Providing Consultancy Services

Regulation amending the Regulation of the Turkish General Directorate of National Lottery on Lotteries and Draws with Non-Cash Prizes (**Regulation**) has entered into force with the publication of the Official Gazette on 16 June 2022. Regulation introduced significant changes regarding intermediary activity.

It is well known that those who want to organize lotteries and draws with non-cash prizes must apply to National Lottery Administration (**Administration**) electronically in accordance with the law. As per Regulation, intermediary companies that forward applications to the Administration and provide consultancy services to applicants, must now obtain a license from the Administration in order to carry out their intermediation activities.

Regulation sets out the procedures and principles regarding obtaining the license in detail. In this context, the legal person to be granted an intermediary license must fulfill a series of conditions set out in the Regulation, from the amount of capital to the qualifications required for its shareholders and board members.

The license granted to those deemed suitable to engage in intermediary activities will be valid for a maximum of ten years. In this instance, it is also stipulated that an intermediary agreement between the Administration and the legal person must be made. The license may, however, be unilaterally revoked by the Administration in circumstances where the intermediary company fails to maintain the electronic system associated to the lottery in operation for more than 60 consecutive or intermittent days in a calendar year or if the company declares bankruptcy.

You can reach the full text of the Regulation [here](#) (*only available in Turkish*).

Draft Guideline on Loyalty Programs Presented for Public Opinion

Turkish Personal Data Protection Authority (**Authority**) presented the Draft Guideline on Loyalty Programs (**Draft**) to public opinion on 16 June 2022.

According to the Draft; loyalty programs developed to offer certain promotions to customers are widely used by plenty sectors today and many personal data are processed within the scope of these programs. Draft includes significant regulations for individuals and companies using loyalty programs and customers whose data is processed through loyalty programs.

Significant aspects outlined in the Draft are as follows:

- Loyalty programs were defined in Draft as *“programs that aim to increase the sales and profitability of the company while providing benefits to the customer through the implementation of all or some of the strategies, such as providing the customer with points/gifts/advantages within the framework of various criteria in return for shopping by processing the customer’s personal data that will enable them to be specific or identifiable in terms of the business, monitoring the customer’s shopping habits, and providing personalized product/service offers by analyzing the processed personal data.”*
- It is stated that companies achieve significant economic benefit from the data obtained by analyzing the personal data processed within the scope of loyalty programs and increase their competitive power.
- As per Draft, the legal basis for the purpose of processing personal data processed within the scope of loyalty programs may change and this should be clearly determined for every distinct processing purpose. In case personal data is processed within the scope of fulfilling the purpose of the loyalty program, the legal basis for this may be the performance of the agreement. However, it was underlined that if this processed data is used for different purposes such as customer profiling, the legal basis for this should be determined and express consent should be obtained when necessary.
- Requiring customers to give their explicit consent to become members of loyalty programs is not considered as setting explicit consent as a pre-condition of such services. Authority emphasized that needing the explicit consent to provide goods/services within loyalty programs should not be regarded as setting explicit consent as a pre-condition for such services; instead, it should be deemed as such product/service being offered without additional benefits. However, Draft underlined that in order to reach this conclusion, the discount/advantage ratio should not cause a significant disadvantage to customers.
- Suggestions were made for complying with the obligation to inform for data processing activities. As per the personal data of loyalty programs’ members; it was stated that it would be more appropriate to use specific privacy policies for this data processing activity, rather than general privacy policies containing all the processed data of the customers.
- It was reminded that obtaining the consent of the relevant parties is obligatory as a rule to send commercial electronic messages to customers. Processing personal data to get to know the customer and send commercial electronic messages are stated as two different “processing purposes”. For this reason, it was underlined that whether the contact information of the loyalty program members can be used to send commercial electronic messages is a matter which should be evaluated in detail.

This guideline which will be finalized by the Authority after public opinion is received, will be very important for those who run loyalty programs.

You can find the full text of the Draft [here](#) (only available in Turkish).

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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