

TURKEY INTRODUCES NEW OMNIBUS BILL

A new law on Amendments to Tax Laws and Other Laws and Statutory Decrees (Law No.7161) has been published in the Official Gazette on 17 January 2019. The amendments provided under Law No. 7161 relate to various pieces of legislation and are mostly in relation to tax laws; however, certain amendments provided thereunder also relate to public procurement agreements, lease certificate (*sukuk*) issuance by the asset leasing companies owned by the Ministry of Treasury and Finance, and the measures to be taken for financial stability.

CHANGES TO THE LAW ON FINANCIAL STABILITY AND CERTAIN REGULATIONS

Out of the amendments effected under Law No. 7161, provisions aiming to reinforce the ability of the relevant authorities to take actions to ensure financial stability have been a point of special interest in the market. Those who have interpreted the recent changes have placed a particular emphasis on the "emergency powers" granted to the President. In actual fact, however, the changes are mere adjustments to powers granted to the executive body of Turkey a while ago. A Financial Stability Committee was already established under the body of the former Undersecretariat of Treasury in 2011, with the amendments introduced to the Law on Financial Stability and Certain Regulations (Law No. 4059) by Decree No. 637¹. In 2012, Law No. 4059 has been further amended to grant the then existing Council of Ministers with wide authority to determine and take necessary measures if the Financial Stability Committee identifies an adverse development which may impact the financial system as a whole. In line with the change in the Turkish constitutional regime in 2018, the relevant provision of Law No. 4059 has been amended to refer to the President, instead of the Council of Ministers, in terms of the authority to identify the necessary measures. Accordingly, it would be correct to note that these tools were already available to the governmental authorities prior to the amendments introduced under Law No. 7161.

Now, with the structural amendments introduced under Law No. 7161, the Financial Stability Committee has been re-established as the Financial Stability and Development Committee (the Committee)² within the body of the Ministry of Treasury and Finance, and the duties and authorities of such Committee has been extended to cover the procurement of solid financial development. To summarise, the existing and new roles of the Committee include:

- i. monitoring and managing systemic risks;
- ii. ensuring compliance with financial regulations;
- iii. enhancing coordination with real sector;
- iv. efficient allocation of financial resources to real sector; and
- v. procurement of a sound development in the financial sector.

¹ Published in the Official Gazette dated 8 June 2011 and numbered 27958.

² The Financial Stability and Development Committee has already been established with the following members: the Minister of Treasury and Finance, the Chairman of the Central Bank of the Republic of Turkey, the Chairman of the Banking Regulation and Supervision Agency, the Chairman of the Capital Markets Board, the Chairman of the Savings Depository Insurance Fund, the General Manager of the Istanbul Stock Exchange and the Chairman of the Banks Association of Turkey. The Committee has commenced its activities and convened twice in 2018.

The principles and procedures regarding the operations of the Committee are to be determined under a regulation to be passed by the Ministry of Treasury and Finance. Once issued, such regulation may shed more light on the role of the Committee and its likely impact.

In addition, the amendments under Law No. 7161 have arguably narrowed the wide discretionary authority granted to the President in determining the required measures to be taken upon the Committee's identification of an adverse condition impacting the whole financial system. The amendments require such authority to be used in accordance with "*the general duties, authorities and responsibilities of the President*" and be limited to the measures which are not within the scope of the duties and authorities of any member institutions (e.g. the Banking Regulation and Supervision Agency). All related institutions (e.g. the Banking Regulation and Supervision Agency, the Central Bank of the Republic of Turkey, the Capital Markets Board, etc) are obligated to immediately comply with such measures. As such, the President's authority as to financial stability measures is not new but should be read in conjunction with the enhanced duties, authorities and responsibilities of the President within the presidential system, taking into account that the former main driver of this process (i.e. the Council of Ministers) did not have the same rights and duties afforded to the President when the concept of Financial Stability Committee was first established.

OTHER NOTEWORTHY AMENDMENTS

As mentioned, the amendments under Law No. 7161 relate to many different pieces of legislation and are not limited to those in relation to financial stability measures and the Committee. Other noteworthy amendments introduced under Law No. 7161 include:

- Amendments to the Expenditure Tax Law (Law No. 6802) rendering capital market transactions of asset financing funds exempt from banking and insurance transaction tax (*banka ve sigorta muameleleri vergisi*)
- Amendments to the Public Procurement Law (Law No. 4734) concerning the public procurement agreements executed prior to 31 August 2018, enabling the contractors thereof to terminate or transfer the relevant agreements (with the consent of the relevant public authority) due to unforeseeable increases in the price of manufacturing inputs
- Amendments to the Law on Public Finance and Debt Management (Law No. 4749), which authorise asset leasing companies owned by the Ministry of Treasury and Finance to construct, acquire the concession rights of, develop, manage and transfer the assets that have been previously transferred to such asset leasing companies in exchange for the issuance of lease certificates
- Amendments to the Turkish Code of Obligations (Law No. 6098) replacing the producer price index with the consumer price index as the reference point to increase rental payments on renewal of a lease

The amendments brought by Law No. 7161 do indeed have an impact on daily business transactions as well as complex structured deals. Given the current economic environment both domestically and internationally, it is evident that the Turkish government is keeping up the trend in introducing new legislation in an attempt to mitigate the adverse effects. Time will tell how these measures and tools will be implemented by the President and the impact of them on the Turkish private and public sectors.

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