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We are glad to share February issue of our Law Bulletin which includes recent legal developments and news globally and in Turkey.

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Energy Transition in Turkey

According to International Energy Agency, regional gas and electricity trade framework and integration of Turkey into these are important steps moving forward to new Energy Investments projects and create new strategies in the future. International Energy Agency advice Turkey to complete the liberalization of its electricity and gas markets in order to attract critically needed investments in contrast with opposing view. Also, the Agency recommends Turkey setting up independent transmission system operators, competitive wholesale markets, and fostering resilient and modern gas and electricity infrastructure. ***(Page 2)***

Enforcement of Foreign Judgments in Case of Intellectual Property Law

The process of enforcement of a foreign judgment is set out under articles 50 to 57 of the International Private and Civil Procedure Law Nr. 5718. Recognition of a foreign court decision means that court decision cannot be enforced in Turkey compulsorily, but provides the acknowledgement of that it has the power of a final judgment. On the other hand; enforcement is set out under Article 50 and et seq. under the Law numbered 5718 and defined as the procedure which provides enforceability to the definite judgments awarded by any foreign courts. ***(Page 6)***

Patent, Design and Utility Model Registration Under Turkish Law

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application. In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. ***(Page 10)***

The World's Most Comprehensive Trade Agreement: RCEP

The Regional Comprehensive Economic Partnership (briefly "RCEP") is a free trade agreement executed by ten ASEAN countries (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and 5 other countries (Australia, China, Japan, New Zealand, South Korea) with the aim of promoting relations between the said countries. ***(Page 13)***

Q &A Session:
Automatic Exchange of Information in Tax Matters

Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the "Agreement") was signed on 21.04.2017 after 6 years by 107 countries so far, including Turkey. The Agreement was ratified on 21.12.2019. As per the Agreement, the signatory countries will share the financial account information of the resident of the relevant country, which is collected from the financial institutions every year, automatically without any request. ***(Page 14)***

Recent News

Bearer Shares to be Registered with Central Registry Agency! ***(Page 9)***

Communiqué on Squeeze Out and Sell Out Rights in Partnerships Published! ***(Page 16)***

ENERGY TRANSITION IN TURKEY

Opportunities and Challenges in Renewable Energy

Turkey still needs to set a long-term energy policy agenda in order to reduce dependency on imported energy sources such as natural gas and oils.

This dependency leaves Turkish Economy increasing volatility in oil and gas prices.

Over the past ten years, Turkish Economy has grown at an average rate of 5%.

There is an important part of this rate is reached by a contribution of energy investments.

Today, with a development of gas research in Mediterranean Sea and effect of decrease in global liquefied natural gas prices, Turkey now has an opportunity to build a competitive gas market, while being one step closer to create regional gas hub.

If Turkey uses this opportunity, the country would have reduced its single supplier dependence as well.

In the last decade, Turkey's energy reforms have resisted on private investments which fostered economic growth and energy access.

According to International Energy Agency, regional gas and electricity trade framework and integration of Turkey into these are important steps moving forward to new Energy Investments projects and create new strategies in the future.

International Energy Agency advice Turkey to complete the liberalization of its electricity and gas markets in order to attract critically needed investments in contrast with opposing view.

Also, the Agency recommends Turkey setting up independent transmission system operators, competitive wholesale markets, and fostering resilient and modern gas and electricity infrastructure.

1. Attractiveness to Invest in Turkish Renewable Energy Plants

Turkish Energy Market came to be more attractive with designing incentive mechanism.

Beside these, for the renewable energy investments; VAT, custom duty and stamp duty exemption, and Corporate Tax Reduction are applicable.

Turkish Renewable Energy Investments have been based on Renewable Energy Source Zone ("YEKA") and The Renewable Energy Support Scheme ("YEKDEM") mechanism so far.

The requirements of YEKA tenders are specified in each tender announcement.

To understand the content of these requirements, YEKA tenders held in 2017 and 2019 may be given as an example.

Turkey has made Renewable Energy Source Zone (RESZ) tenders for both solar power and onshore wind power technologies with a capacity of 1000 MW for each in 2017.

In 2019, YEKA RES-2 (wind power) and YEKA GES-2 (solar power) tenders had been announced.

However, the tenders for solar power had been cancelled.

In this part of the article, we would be sharing detailed information for YEKA-1 tenders regarding the solar and wind power and its conditions announced in 2017.

However, we would be touching upon YEKA-2 tenders very shortly with regards to the share status and locally manufactured technologies.

1.1. YEKA RES-1 in 2017

According to announcement made in Official Gazette dated 13 April 2017, Legal entities or Business Partnerships and Consortiums formed by more than one legal entity may apply for the tender regardless of whether or not their capital based on local or foreign sources.

There is no condition limiting the share status of ownership by rates and nationality of shareholders under this announcement. [1]

One of the conditions announced was that the applicants must provide work experience document showing production of nacelle main constituent of Wind Turbine with a minimum power of 2,000 MWe between 01/01/2014 and 31/12/2016. Fee of list of conditions was TL-20.000,00.

Definite letter of guarantee, fully and partially convertible to cash having value of USD- 10 million with a duration of 1 year shall be presented to the Administration at the application stage.

In case that the tender is won, letter of guarantee having value of USD 50 million in total, with a duration of 20 years, shall be presented to the Administration at the latest one day before the date of signature of the Contract.

This letter should be submitted with a content including conditions stated in list of conditions.

If content of the letter is found appropriate to the list of conditions, then previous letter of guarantee submitted at first stage will be returned to the investor.

In this tender, initial price cap was: USD 7.00/kWh.

Power purchase period was designed for 15 years commencing from the date of contract signing between the winner and administration.

Winner was expected to construct a factory producing wind turbine.

This wind turbines must be produced by using local components having certificate proving indigenousness and components having min.

65% total locality which may be produced or supplied in accordance with the domestic participation rates announced by the administration. The factory should start production in 21 months.

It should have capacity to produce 150 pieces/year turbine or 400 MW/year at one shift.

According to list of conditions, winner must establish an R&D ("Research&Development") center in 21 months and carry out R&D services for 10 years. [2]

1.2. YEKA GES in 2017 [3]

This tender is also known as Karapinar Renewable Energy Source Zone Tender.

It had a connection capacity of 1000 MWe in return for domestic production.

Winner was expected to construct PV solar module production factory integrated into list of condition with capacity of 500 MWp/year and establish R&D center beside solar power production facility with capacity of 1000 MWe.

Installation of the factory and the R&D center must be completed in 18 months following the date of signature of the contract. Construction of the Solar Power Plant must be completed in 36 months.

As one of the conditions to participate into tender is showing background experience.

According to PV solar module production technology, participant must have produced 3000 MWp PV solar module between 01/01/2014 - 30/06/2016 by integrating slicing, cell, and module production stages / processes, excluding ingot production.

Consortiums may not bid in this tender. However, it is open to the joint ventures with domestic and foreign partners in which the shares of Turkish citizens may not be less than 25% in each.

Letter of guarantee, definite, unlimited in time, fully and/or partially convertible to cash, without limitations, with an amount of USD 50 million must be submitted to Administration.

In this tender, initial price cap is USD 8.00/kWh.

Power purchase period is designed for 15 years commencing from the date of contract signing between the winner and administration.

1.3. YEKA Regulation and Tenders in General

According to YEKA Regulation enforced in Turkey, the Investors are expected to ensure the usage of local equipment generally.

This obligation came to enforce in 2016. So that, between the 2017 and 2019 YEKA tenders, there is no difference in terms of the main condition regarding the usage of domestic equipment.

As it is seen, in each tender, applicants must provide a commitment regarding the rate of usage of the domestic equipment, but the rate of domestic production is determined and announced in the list of conditions being published later on.

Contrary to YEKA 2017, in 2019 tenders, there was no limitation regarding the share status or rates and nationality of shareholders under the list of conditions.

In addition, there was no obligation to build a factory and R&D center.

YEKA for wind energy, which is called as YEKA RES-2 tender (wind energy source areas are Balikesir, Mugla, Canakkale, Aydin provinces, capacity is 250 MWe for each) had been made in 30.05.2019.

The winner was expected to use local equipment which is determined for tower as 65%, for the blades as 60%, for the other equipment as 51%.

For the solar power projects tenders which were known as YEKA GES-2, there was a condition to use local solar modules with certificates proving domestic product.

Under the list of conditions, there was no explanation about indigenousness of solar cells.

However, this tender cannot be realized in 2019. As it is known that the tender has been realized in 19-23 October 2020.

Pursuant to a recent amendment to the Law on Use of Renewable Energy Source Areas for Power Generation numbered 5346, all new YEKAs will be tendered as Turkish Lira being the currency of the tender and the power purchase agreement.

The ceiling price will be announced in Turkish Lira and the bids will be collected in Turkish Lira.

This is a major change from previous USD based YEKAs and industry players are concerned particularly on how the escalation mechanism will work, which has not been made clear so far.

1.4. The Prime but Forgotten: Biomass-Fueled Plants?

Under the website of related ministry and interviews being made by the minister and the board members of leading energy companies reflected in the press regarding the future of energy investments, there is not any approach to provide YEKA tenders for another renewable energy sources such as biomass-fuel.

However, when the YEKA first came to force in 2011, the most expensive purchase price among the renewable energy sources was belonging to biomass by the price of USD 13,3/kWh.

Purchase period was designed for 10 years. [4]

Even if there are unrivalled advantages of biomass against other energy sources in energy production, it is yet became the popular one.

Biomass fuel is the only energy source that reduces greenhouse gas emissions and slows down climate change.

It is also providing soil protection, securing water, energy, and food production, creating landscape value

In the countries where the energy production based on biomass fueled plants at the rate of 18 %- %20 such as Finland, Sweden, it is creating permanent employment opportunities at high rates.

It provides economic and political advantages to the state.

2. Conclusion

The main result of YEKDEM mechanism has been a significant increase in the renewable energy investments.

YEKDEM providing the investors and the financial institutions with predictability has simplified finance ability of investments. In this regard, it becomes the most important effect leading the growth in energy sector.

40 billion of 70-billion-dollar loan provided to the energy sector is granted to power plants installed within the YEKDEM. [5]

After 2015, spot prices of electricity market were lower than the YEKDEM price. Interest of the player in this sector to YEKDEM has been increased because of the effect of volatility in exchange rate and the existence of the price and exchange risks.

This situation, combined with the increased generation capacity in renewable energy, brought a huge increase in YEKDEM costs to the end users.

As it is understood during the article, YEKDEM was the main factor behind the rapid growth in renewable energy investments in Turkey, is still considered important by the investors.

The existence and continuity of YEKA tenders is also having a great importance in this respect.

The common view and desire in the industry is that YEKDEM will continue after 2020.

With this regard, at the beginning of 2020, Mr. Fatih Donmez, Minister of Energy and Natural Resources made explanations about new YEKDEM mechanism would be launched with renewed conditions.

Many investors expect purchase guarantee to cover a longer period, at least 15 years as fixed term.

However, the Minister stated that they are working on a new draft YEKDEM mechanism, which may provide 10 years purchase guarantee.

Also, the above-mentioned amendment made to the law no 5346 with respect to the currency of YEKA tenders almost certainly indicates that the new YEKDEM mechanism will also use Turkish Lira as the currency.

In his speech reflected in the press, Mr. Donmez gave some clue regarding their perspective on the usage of domestic components and local production in energy investments as well.

According to his explanations, new YEKDEM may continue with domestic components and local production obligation at certain rates, but he added that this is not precise for now and they would be evaluating the needs of the sector.

Current economic circumstances and regulatory frame in Turkey present opportunities and challenges renewable energy investment in general.

The regulatory frame reflecting the new mindset of the policy maker tells us that foreign currency indexed feed-in-tariff will no longer be available for any type of renewable projects.

This is already set forth for YEKA model and the future YEKA tenders for wind and solar.

The ceiling price announced for October YEKA tender also indicates the price we should expect for future projects that are awarded under either YEKA or YEKDEM model.

The problem here is that the policy maker assumes that the investors will be able to invest with prices at grid parity provide the decrease in the cost of wind and solar equipment; however, ignores the importance of financial atmosphere which is in fact as important as the cost of equipment.

Low price ceilings in tenders combined with the absence of USD or EUR indexed feed-in-tariff, and high finance costs of Turkish Lira borrowing will create a challenging environment for projects to be developed under new YEKA tenders or YEKDEM mechanism.

On the other hand, projects that started generation within the last 2 or 3 years and the projects that will start generation within the next 1-year present attractive opportunities for investors who are interested in acquiring operational assets.

All these projects benefit from the current YEKDEM mechanism in USD, financed with either USD or EUR denominated loans with relatively lower costs, and with a further chance of refinancing.

Most of them enjoy a final guaranteed purchase price of 7-8 USD cent/kWh for 10 years.

From this perspective Turkish renewable energy market still presents opportunities with the country's solid track record of non-default on its obligations relative to feed-in-tariff payments.

Even if transition to Turkish Lira based feed-in-tariff will make financing more complicated and therefore will negatively affect the new investments, to balance this affect, it would be expected from the policy makers that a reasonable price escalation formula to be in place so that the investors could be at least protected against devaluation of Turkish Lira.

On the other hand, Turkish wind market presents quite attractive M&A opportunities for acquisition of operational wind assets and in any case have very fast and attractive dispute resolution mechanism presented by Istanbul Arbitration Centre since 2014.

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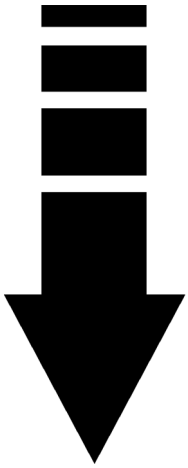

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EVEN IF TRANSITION TO TURKISH LIRA BASED FEED-IN-TARIFF WILL MAKE FINANCING MORE COMPLICATED AND THEREFORE WILL NEGATIVELY AFFECT THE NEW INVESTMENTS, TO BALANCE THIS AFFECT, IT WOULD BE EXPECTED FROM THE POLICY MAKERS THAT A REASONABLE PRICE ESCALATION FORMULA TO BE IN PLACE SO THAT THE INVESTORS COULD BE AT LEAST PROTECTED AGAINST DEVALUATION OF TURKISH LIRA.

ENFORCEMENT OF FOREIGN JUDGMENTS IN CASE OF INTELLECTUAL PROPERTY LAW

As a rule, the judgments of one country's courts have no force by themselves in another country.

The court decisions issued by any foreign state court shall be effective in another country as final judgment and final evidence after it goes through a process of the recognition and enforcement decisions. [1]

The process of enforcement of a foreign judgment is set out under articles 50 to 57 of the International Private and Civil Procedure Law Nr. 5718.

Recognition of a foreign court decision means that court decision cannot be enforced in Turkey compulsorily, but provides the acknowledgement of that it has the power of a final judgment.

On the other hand; enforcement is set out under Article 50 and et seq. under the Law numbered 5718 and defined as the procedure which provides enforceability to the definite judgments awarded by any foreign courts.

According to the definitions set out under the Law numbered 5718, the recognition of any foreign court decision provides the legal existence and recognition of rights, to be used as conclusive evidence, and if necessary, introducing administrative acts in accordance with these decisions.

However; enforcement of a foreign judgment provides enforcement of the decision in the same way as the decision of national courts.

At this point; award of enforcement with its capability of enforcement differs from award of recognition in this respect.

First of all; there must be a court decision issued by a foreign court and this decision must be related to a legal case and it must be finalized according to the laws of the country where the respective court decision was issued, pursuant to Article 50 of the International Private and Civil Procedure Law Nr. 5718 for enforcement.

Intellectual property rights are the rights granted to persons over creations of their minds.

They usually provide the creator with an exclusive right over the use of his/her creation for a certain period of time.

As a general rule, intellectual property rights have limited protection, and intellectual property rights are protected according to the laws of the country where they are protected and limited to that country and may be claimed against strangers in this way.

Therefore; due to such nature of IP rights, it is not possible to recognize and enforce foreign court decisions regarding the registration, cancellation, invalidation of intellectual property rights and determination of trademark infringement.

However; if any compensation award has been awarded in a foreign country as a result of a lawsuit based on intellectual property rights - for example a lawsuit based on infringement of trademark rights and unfair competition - enforcement of the respective foreign court decision on compensation will be possible.

At this point; enforcement ensures that the compensation ruled by a foreign court against real and/or legal persons whose assets are in Turkey are executed as a final judgement awarded by the Turkish court.

Another issue is whether mandatory conciliation will be applied before filing an enforcement action for the amount of compensation ruled in the foreign court decision regarding the intellectual property rights.

First of all, it is crucial to state that there is no clear regulation on this issue currently.

Applying to the mediator before filing a lawsuit is regulated as a condition of lawsuit in cases involving both commercial lawsuits and lawsuits involving claims and compensation for payment of a certain amount of money.

The original or a copy of the final minutes approved by the mediator regarding the person, who could not reach an agreement at the end of the mediation process, must be attached to the petition.

Otherwise, the plaintiff will be granted a definite period of 1 week by the court for submission of the report, and if the report is not submitted within the certain period of time granted therefor, the case will be denied procedurally.

In accordance with Article 4 of the Turkish Commercial Code, all kinds of lawsuits based on intellectual property rights are considered as commercial cases, and it is possible to accept that enforcement actions to be filed for the amount of compensation ruled in any foreign court decision are within the scope of compulsory mediation.

Although the enforcement case itself is not a lawsuit for claim or compensation, the part of the foreign court decision subject to enforcement is related to the compensation provision.

For this reason, it may be considered that it falls under the scope of compulsory mediation, even if indirectly.

Competent Courts

According to article 50 of the International Private and Civil Procedure Law Nr. 5718, Enforcement of court decisions rendered by any foreign courts in the course of civil lawsuits in Turkey, which are final pursuant to the law of that foreign state, are subject to the enforcement decision of the competent Turkish court.

Article 51 of the International Private and Civil Procedure Law sets out the competent courts for enforcement of foreign judgments.

The civil courts of first instance are competent for enforcement of foreign judgments.

Nevertheless; there is no unity in practice, because some civil courts of first instance reject the applications owing to lack of jurisdiction, and escalate the file to the relevant commercial, intellectual property or labour courts.

Paragraph 2, article 51 of the International Private and Civil Procedure Law also sets out the jurisdiction of the courts. Pursuant to this provision, a case regarding enforcement of a foreign judgment must be filed before the court where the party, against which the enforcement is sought, is resident.

If there is no address of residence for the respective party, then the case may be filed before the court on this party's place of residence.

If none of these exists, the case may be filed before one of the courts in Ankara, Istanbul or Izmir.

Enforcement Conditions [2]

The enforcement conditions are listed in Article 54 of the International Private and Civil Procedure Law (MOHUK), and basically 4 conditions are sought for enforcement of any foreign court decision.

1. If there is reciprocity between the countries subject to enforcement of the decision with Turkey:

Unlike recognition, in order to have any foreign court decision enforced in Turkey, there needs to be a mutual agreement between Turkey and the country where the decision is issued - that is in that country, there must be a provision of law or a de facto application in this direction that enables enforcement of the decisions issued by the Turkish courts.

2. If the decision is issued on an issue that does not fall under the exclusive jurisdiction of Turkish courts:

The foreign court decision must be issued on a matter that does not fall under the exclusive jurisdiction of Turkish courts.

In Turkey, enforcement of any foreign court decisions in matters, falling under the jurisdiction of the Turkish courts, is not possible.

Due to the nature of intellectual property rights, all issues such as registration, cancellation, invalidity and cancellation of these rights are falling under the exclusive jurisdiction of Turkish courts, and therefore, they are of unenforceable nature.

Similarly, in the enforcement of foreign court decisions in Turkey on the prevention of intellectual property rights infringement detection it is not possible.

Because intellectual property rights should also be registered in Turkey to be accepted that the offense occured on property, the relevant law is being realized mainly from Turkish courts require these matters fall under the exclusive jurisdiction.

3. Not being against the public order:

In case enforcement of foreign judgments subject to the provision does not clearly contravene the public order, the enforcement is not possible in Turkey.

It should be understood here with respect to enforcement of foreign court decisions that the results will emerge if the execution is not clearly contrary to the public order in Turkey.

In this regard, the most controversial issue in Turkish law is whether or not the foreign court decision is clearly contrary to public order if the decision of the foreign court is unjustified.

The General Assembly of the Supreme Court of Appeals Unification of Jurisprudence has decided that the fact that the foreign court decision is unjustified will not be regarded as clearly contrary to public order.

4. Providing the defendant's right to defense:

As a rule, the right of defense of the person (defendant) against whom enforcement is requested must be ensured in accordance with the laws of the country where the decision is issued when the foreign court decision is issued.

If the person against whom enforcement is sought has not been duly summoned to the court giving the verdict or is not represented in that court, or has been convicted in her/his absence contrary to the laws of the country where the decision is issued, this alone does not affect enforceability of the decision.

However; if this person objects to the Turkish court against the request for enforcement based on one of the abovementioned issues and proves this situation, enforcement of the decision is not possible.

Trial Procedure in Enforcement Cases

In accordance with Article 53 of the International Private and Procedural Law; the petition for enforcement is approved by:

i) the original of the foreign court decision duly approved by the authorities of that country or a copy and a certified translation by the judicial body that issued the decision;

ii) a letter or document showing finalization of the decision and duly approved by the authorities of that country, translation must also be added. In summary, what should be understood here is that a certified copy of the foreign court decision and the finalization annotation should be submitted with the notarized and apostilled translations thereof.

Pursuant to Article 55 of the International Private and Procedural Law; the request for enforcement is examined and decided in compliance with the provisions of the simple trial procedure.

The simple trial procedure is set out under the articles 316 and et seq. of the Code of Civil Procedure, and exchange of petitions is completed by submitting a petition and a rebuttal petition for the case, unlike the written trial procedure.

The aim here is to conclude the case in a more rapid and practical way.

Because the Turkish court will not make a detailed examination of the concrete case in these cases, it will examine whether the foreign court decision requested for enforcement is enforceable in terms of form and substance.

Revision ban

In enforcement cases, Turkish courts do not have the authority to examine and evaluate the accuracy of the procedure applied in the foreign court decision or the material and legal determinations contained in the decision.

Turkish courts can only examine whether the foreign court decision meets the conditions of enforcement in enforcement cases.

Because of this reason, any claims regarding the fact that the material event and legal determinations subject to the foreign court decision have been evaluated incorrectly by the foreign court and any requests that the Turkish court should re-examine such claims (such as infringement of intellectual property rights and unfair competition allegations, the exorbitant amount of compensation and the reduction) are not possible and appropriate to be heard and accepted under the enforcement cases.

Effect of Enforcement Decision

In the presence of the conditions set out under International Private and Civil Procedure Law, any foreign court decision may be partially or completely enforced.

If a foreign court decision is enforced, this decision will have a judgment and result as if it had been issued by a Turkish court.

If a foreign court decision arising from an intellectual property right is enforced, this decision becomes enforceable.

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BEARER SHARES TO BE REGISTERED WITH CENTRAL REGISTRY AGENCY

The Law nr.7262 on Prevention of Financing of Proliferation of Weapons of Mass Destruction, adopted on December 27, 2020 at the Grand National Assembly of Turkey, introduces many regulations to enhance transparency of shares and share transfers, and to contribute to the environment of business confidence to the extent that any and all information on the owners of bearer shares and shares thereof is entered to the system on record basis.

As per the former version of the Section 486, under the Turkish Commercial Code, on issuance of share certificates at the incorporated companies; it was sufficient to have the resolution, adopted for issuance of the bearer shares by the board of directors, registered and announced, and then to publish the same on the website of the company in order to ensure that the bearer shares are valid at the incorporated companies.

However; the Section 486 has been supplemented by the Section 31 of the Law nr. 7262, introducing the requirement to notify the Central Registry Agency of the details on the share owners and the shares held by the same, before distribution of the bearer share certificates at the incorporated companies.

Accordingly; the provisions, set out under Turkish Commercial Code nr. 6102 regarding the bearer share certificates, have been amended by the Law nr. 7262, making it mandatory for the incorporated companies to notify the Central Registry Agency of the details on the bearer share certificates, and transfer of such shares.

Moreover; it has been set out, under the paragraph a of the Section 43 on effect of the Law nr. 7262, that the provisions on the bearer share certificates (Sections 28-34) shall enter into effect as of April 1, 2021.

The owners of the bearer shares are required to apply with the incorporated company until December 31, 2021 together with the share certificates to be notified to the Central Registry Agency.

Upon such application, the board of directors of the incorporated company shall be obliged to notify the Central Registry Agency of the owners of bearer shares, and the shares held by the same, in 5 business days.

Section 562 of the Code nr. 6102 has been supplemented by the Section 33 of the Law nr. 7262, setting out that any person, failing to observe such requirement to notify as included under the section 486 thereunder – in other words; any person who fails to notify the Central Registry Agency of the owners of bearer shares, and the shares held by the same before distribution of such share certificates to their owners - shall be imposed with an administrative fine of 20 thousand TRY.

Section 562 of the Code nr. 6102 has also been supplemented by the Section 33 of the Law nr. 7262, setting out that any person, failing to observe such new requirement to notify the transfer of bearer shares as included under the section 489 thereunder – in other words; any person who fails to notify the Central Registry Agency although they have taken over bearer such shares - shall be imposed with an administrative fine of 5 thousand TRY.

Owners of bearer shares are required to apply with the respective incorporate companies until December 31, 2021 in order to ensure that the bearer shares held by the same are notified to the Central Registry Agency; otherwise, they shall be imposed with administrative fine, and in case of any failure to file such application, they may not exercise any of the statutory rights, granted thereto regarding their shares, until performance of such application.

The Ministry of Trade has been granted with the authority to set out the principles and procedures, to be followed in notification of the Central Registry Agency of the bearer shares, and registration thereof, as well as the fees to be collected for such purpose.

Accordingly; the principles and procedures on this matter, as well as the fees to be collected for such purpose shall be set out under a communiqué to be promulgated by the Ministry of Trade.

Source: The Official Journal, dated 31/12/2020 and bearing the Issue number 31351 (5th bis.), publishing the Law nr.7262 on Prevention of Financing of Proliferation of Weapons of Mass Destruction

PATENT, DESIGN AND UTILITY MODEL REGISTRATION UNDER TURKISH LAW

Intellectual property (IP) refers to creations of the mind such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create.

By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

To get a patent, technical information about the invention must be disclosed to the public in a patent application.

In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent.

Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region.

Similar to patents, utility models protect new technical inventions through granting a limited exclusive right to prevent others from commercially exploiting the protected inventions without consents of the right holders. In order to obtain protection, an application must be filed, and a utility model must be granted.

They are sometimes referred to as "short-term patents", "utility innovations" or "innovation patents". It is not easy to define a utility model, as it varies from one country to another.

In general, utility models are considered particularly suited for protecting inventions that make small improvements to, and adaptations of, existing products or that have a short commercial life. Utility model systems are often used by local inventors.

In some countries, utility model protection can only be obtained for certain fields of technology and only for product inventions.

For example, in some countries, technical, chemical, and biological processes are not eligible for utility model protection.

In those countries, there is no choice but seeking patent protection if the invention falls under such non-eligible subject matter.[1]

On the other hand, design means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation.

Product means any industrial or handicraft item, including parts intended to be assembled into a complex product, products like packaging, presentations of more than one object perceived together, graphic symbols and typographic typefaces, but excluding computer programs.

Complex product means a product which is composed of components which can be replaced or renewed by disassembly and reassembly of the product.

If the component part is mounted to the complex product, remains visible during normal use of the complex product or if the visible features of the component part fulfil the requirements as to novelty and individual character.

Industrial Property Law Article 55;

"Design shall be the appearance of the whole or a part of a product resulting from the features of, the line, contour, color, shape, material or texture of the product itself or its ornamentation.

(2) Product means any industrial or handicraft item, including parts intended to be assembled into a complex product, products like packaging, presentations of more than one object perceived together, graphic symbols and typographic typefaces, but excluding computer programs.

(3) Complex product shall be a product which is composed of components which can be replaced or renewed by disassembly and reassembly of the product.

(4) A design shall be protected as a registered design in case it is registered in accordance with the provisions of this Act and a design shall be protected as non-registered design in case it is presented to the public for the first time in Turkey." [2]

Industrial Property Law Article 82;

"A patent shall be granted to the inventions in all fields of technology provided that the invention is new, involves an inventive step and is susceptible to industry.

Below mentioned shall not be considered as inventions. In case the application for a patent or the patent itself are involved in the subjects or activities mentioned below, this subject only or the activity itself shall stay out of patentability.

a) Discoveries, scientific theories, and mathematical methods;

b) mental acts, business activities or game related plans, rules, and methods;

c) computer programs;

ç) products with aesthetical creations, belles-lettres, artworks, and treatise;

d) presentation of the information.

(3) Below mentioned inventions shall not be granted a patent:

a) inventions violating public order or public moral;

b) biological processes relating to plant varieties or animal races; or intending to generate plant varieties or animal races with the exception of microbiological processes or products obtained in the result of such processes;

c) all treatment modalities including the diagnosis methods which are intended to be applied to human or animal bodies and surgical methods;

ç) discovering only one of the parts of human body including human body and a gene sequence or a partial gene sequence in the various phases of their generation and evolution;

d) the human cloning processes, the changing processes of genetic identity of human sextinked inheritance, using human embryos for industrial or commercial purposes, changing processes of genetic identity in a way that may agonize the animals without providing any significant medical avails for human or animals and animals that are obtained in the result of such operations." [3]

You can file a national patent application for Turkey directly with TURKPATENT. Alternatively, you may file an international application using the Patent Cooperation Treaty (PCT) or European Patent Office, and designate Turkey.

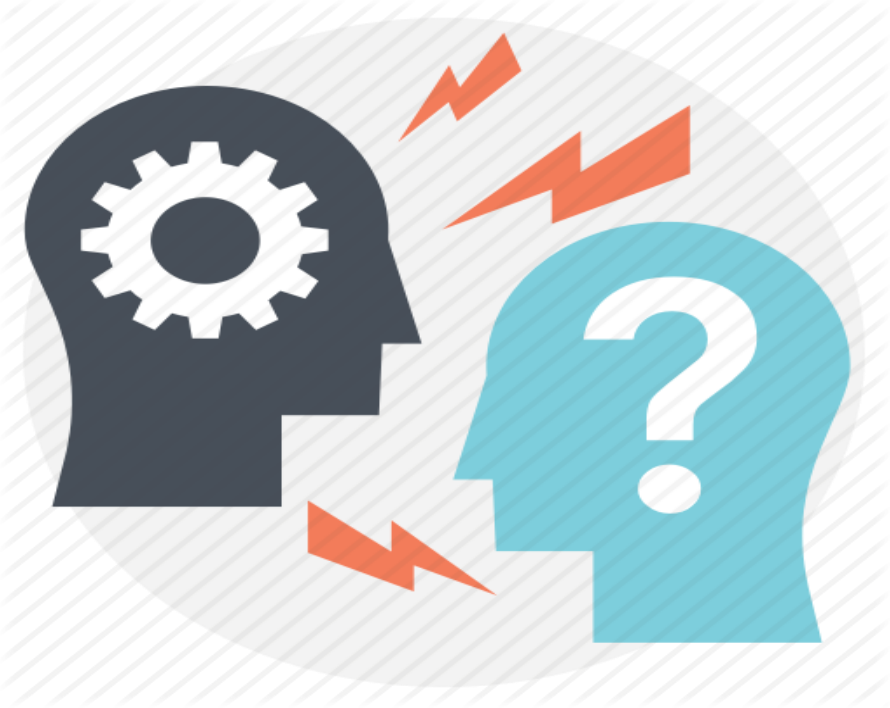
As Turkey is a member state of the Paris Convention, you are also able to use the first filing date of an existing patent application as the effective filing date in Turkey, provided that you apply within 12 months from the first filing date.

If you file a national patent application, you will receive an official filing receipt within 2 months.

With application or within 12 months of the application date, or priority date, you should file a search request on the state of the art (also known as a prior art search).

Failing to do so will cause the application to be deemed withdrawn.

IN PRINCIPLE, THE PATENT OWNER HAS THE EXCLUSIVE RIGHT TO PREVENT OR STOP OTHERS FROM COMMERCIALLY EXPLOITING THE PATENTED INVENTION. IN OTHER WORDS, PATENT PROTECTION MEANS THAT THE INVENTION CANNOT BE COMMERCIALLY MADE, USED, DISTRIBUTED, IMPORTED OR SOLD BY OTHERS WITHOUT THE PATENT OWNER'S CONSENT.



If an invention is considered to be novel and capable of industrial application, it may be protected by a utility model.

You can file a national application directly with TURKPATENT or file a PCT or European Patent application and designate Turkey.

The term of protection for a utility model is 10 years from the filing date.

When you file a national application, TURKPATENT checks whether it meets their formalities and issues an official filing receipt.

With application or within 12 months from the application date, or priority date, you should file a search request on the state of the art (also known as a prior art search).

Failing to do so will cause the application to be deemed withdrawn. The search report will be published in the bulletin.

You may file an opposition to the conducted search report and also third parties have opportunity to notify a review to the search report.

These oppositions and reviews will be evaluated by Re-examination and Evaluation Department of TURKPATENT. [4]

Infringement of a patent is the unauthorized making, using, selling, or importing of the patented invention during the term of the patent.

The scope of this right is governed by the claims found in the issued patent.

In most cases, a patent will issue with multiple claims. Only one claim needs to be infringed in order for the entire patent to be infringed.

If a patent is infringed, the patent holder may sue for relief in the appropriate court.

The patent holder may ask the court for an injunction to prevent the continued infringement and may also ask the court for an award of damages.

In such an infringement suit, the defendant may question the validity of the patent, which is then decided by the court.

The defendant may also claim that its actions do not constitute infringement. Infringement is determined by comparing the language of the patent claims against the allegedly infringing device:

If what the defendant is making does not fall within the language of any of the claims of the patent, there is no infringement.

According to decision 2017/952 given by the regional court of appeal, alleged advantages to which the patent proprietor/ applicant merely refers, without offering sufficient evidence to support the comparison with the closet prior art, cannot be taken into consideration in determining the problem underlying the invention and therefore in assessing inventive step.

The board added that there was no reason to deviate from this case law as it was based on the understandable rule that a patent can only properly be granted for a solution claimed as non-obvious if it actually has the alleged effect.

Some beneficial effects or advantageous properties, if appropriately demonstrated by means of truly comparable results, can in certain circumstances properly form a basis for the definition of the problem that the claimed invention sets out to solve and can, in principle, be regarded as an indication of the inventive step. The only comparative tests suitable for this are, however, those which are concerned with the structurally closest state of the art to the invention, because it is only here that the factor of unexpectedness is to be sought. [5]

The regional court of appeal has decided that the product which has been produced by the claimant shall not be considered as infringement of defendant's patent rights and the registered patent (2009 09405 B) shall be invalid.

For further information:
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Trainee Lawyer

References:

1. World Intellectual Property Organization Official Website (wipo.int/patents/en)

2. Industrial Property Law Article 55

3. Industrial Property Law Article 82

4. Intellectual Property Rights in Turkey (assets.publishing.service.gov.uk)

5. Case Law of the Boards of Appeal of the European Patent Office, 7th Edition, 2013

THE WORLD'S MOST COMPREHENSIVE TRADE AGREEMENT: RCEP

The Regional Comprehensive Economic Partnership (briefly "RCEP") is a free trade agreement executed by ten ASEAN countries (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and 5 other countries (Australia, China, Japan, New Zealand, South Korea) with the aim of promoting relations between the said countries.

The agreement, executed on 15th November 2020, will enter into full effect after it is ratified by each party in accordance with their respective domestic laws.

The most notable aspect of the agreement is that the participating countries constitute about 30% of global GDP and 30% of the global population. So, we can say that the agreement is the biggest free trade agreement in the world.

Because the RCEP is the first Free Trade Agreement between China, Japan, and South Korea, three of the four largest economies across Asia. The agreement is also the first multilateral free trade agreement in which China is involved.

Objective of RCEP Agreement

The main objective of the RCEP agreement is to establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership that will facilitate the expansion of regional trade and investment and contribute to global economic growth and development.

The agreement aims to reduce the products that RCEP countries will receive from outside by 65 percent, and then increase this figure to 90 percent.

Therefore; the RCEP agreement, which removes the customs walls between the countries that executed the agreement, is expected to lead the exports of the United States and European countries to the region to decrease at very serious rates.

Important Topics of the RCEP Agreement;

- It is envisaged, under the agreement, to gradually reduce or eliminate customs duties, increase mutual investments, and free movement of commercial goods across the region.
- The objectives of the agreement include simplification of customs procedures and harmonization of customs procedures with international standards.
- Agreement on human, animal or plant life or health to protect trade and SPS measures to facilitate trade by minimizing negative effects on development, reveals the basic framework for adoption and implementation.
- By significantly removing restrictive and discriminatory measures affecting the trade in services, it aims to open up more ways for the trade in services between the parties.
- RCEP also contains provisions on intellectual property rights. These provisions provide protection of intellectual property rights beyond the level of the WTO Agreement, including the provisions on the trade-related aspects of intellectual property rights, as well as the provisions on enforcement of Criminal Procedure and penalties in case of infringement of intellectual property rights. Furthermore; it also includes the provisions on regulation and alignment of the procedures in relation to establishment of the intellectual property rights such as the ones on filing of applications electronically and provision of any and all related information on online basis in order to support the owners of the intellectual property rights. This is a very important issue as many of the RCEP signatories are production centers for various high-tech products.

Possible Effects of the Agreement on Turkey

RCEP and Turkey and the EU's exports to the countries participating in the RCEP agreement are expected to decrease significantly over the next 20 years.

Because upon execution of this regional agreement, almost a third of the world economy is expected to form a trade block. [1]

Although Turkey has bilateral trade relations with China, South Korea and Japan, Turkey does not have great economic ties with the RCEP signatories.

In 2019, Turkey realized half of its total exports of about 170 billion dollars to EU countries, while it exports only 7 billion 168 million dollars to the RCEP countries. Imports from RCEP countries reached 36 billion 108 million dollars.

Turkey, which gave a foreign trade deficit of 31 billion dollars in 2019, gave 28 billion 940 million dollars of this foreign trade deficit to RCEP countries. Turkey gives foreign trade deficit to 12 of the 15 RCEP member countries. [2]

Therefore, it seems likely that Turkey will be in an axis shift towards the EU.

Of course, within the framework of political relations, Turkey can also try to intensify bilateral trade agreements as part of the development of trade relations with RCEP signatories.

For further information:
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References:

1. https://rcepsec.org/2020/11/26/rcep-asia-pacific-countries-form-worlds-largest-trading-bloc/

2. https://www.dw.com/tr/t%C3%BCrkiye-ab-ili%C5%9Fkilerinde-rcep-etkisi/a-55767630

Q&A SESSION: AUTOMATIC EXCHANGE OF INFORMATION IN TAX MATTERS

As a result of the efforts of the Organization for Economic Cooperation and Development (OECD), the G20 and the EU to combat tax evasion on an international scale, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") has emerged.

This convention has been signed by 136 countries as of today, including countries such as Switzerland, Norway, Brazil, and India, as well as the EU member states. The Convention was signed by Turkey in 2011.

Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the "Agreement") was signed on 21.04.2017 after 6 years by 107 countries so far, including Turkey.

The Agreement was ratified on 21.12.2019.

As per the Agreement, the signatory countries will share the financial account information of the resident of the relevant country, which is collected from the financial institutions every year, automatically without any request.

Turkey's competent authority is the Turkish Revenue Administration under the Ministry of Treasury and Finance under the scope of the Agreement.

In this context, Turkish Revenue Administration has published the "Guideline on Application of Automatic Exchange of Financial Account Information in Tax Issues" (the "Guideline") on its official website, aiming to explain the standard which was created by the OECD in 2014.

The highlights of the Guideline are briefly explained below:

⇒ **What are the reasons of exchanging information?**

In order to provide tax transparency at the international level, it is agreed that bank information will not be kept confidential around the world. All countries, which are parties to the Convention, aim to minimize tax evasion by acting in collaboration with each other.

⇒ **With which countries information will be exchanged?**

Turkey's first automatic exchange of information began with Norway and Latvia in 2018. Germany, France, Netherlands, Belgium, and Austria were not included on the automatic exchange of information calendar of 2020 (the period which includes the information on 2019).

The automatic information exchange procedure will take some time to include all countries that are party to the contract. The current list can be followed from the link below.

http://www.oecd.org/tax/transparency/who-we-are/members/

⇒ **How will the system work?**

Financial institutions in Turkey will inform the Turkish Revenue Administration of the Ministry of Treasury and Finance about the information on identified accounts, and the Turkish Revenue Administration will exchange information with the concerned countries via a secure electronic network.

Respectively, the information will be exchanged by the relevant tax administration of the related country (on the basis of reciprocity).

Exchange of information between any two countries can be made until the end of September of the following year regarding the status of any account on December 31, and the information collected. Only the information of the resident persons of a country will be exchanged with that country.

⇒ **Whose information will be subject to change?**

The information exchange within the scope of the Agreement comprises the residents in the countries concerned (resident individuals and institutions), as well as some institutions with Turkish residency which are controlled by residents of the concerned country (e.g. which generate passive income like interest and dividends or hold assets for this purpose without any financial institution.)

⇒ **Which organizations will be notified?**

There are 4 types of financial institutions:

1- Deposit organizations (generally banks)

2- Custodian institutions (custodian banks, etc.)

3- Investment institutions (such as investment banks and funds)

4- Certain insurance companies
However; public institutions and international organizations are not included under this scope.

⇒ **Is there a limitation for notifications?**

It is not obligatory for the financial institutions, established before 01.07.2017, to report an account of legal entities provided that the account balance does not exceed USD 250,000,00.-.

There is no such threshold value for individual accounts.

Both individual accounts and corporate accounts opened after 01.07.2017 are included under the scope of the exchange of information regardless of their balance.

⇒ **Are inactive accounts also included under the scope?**

Accounts which do not have any account activity for 3 years, and accounts which have no contact with the financial institutions - unless the balance exceeds USD 1.000,00. - are considered as inactive accounts and will not be subject to the exchange of information (excluding regular payment contracts -annuity).

⇒ **What kinds of information will be exchanged?**

Name and surname, address, country of residence (resident), tax identification number in the country of residence (resident) of the account holder and the persons controlling the institutions (some partners or sometimes managers) and year-end balance of the account and the gross amount of payments include interest paid to the account during the year, dividends, income from the sale of financial assets held in the account will be exchanged.

⇒ **Which accounts are considered financial accounts?**

- Financial accounts, falling under the said scope, include five categories, namely;
- deposit accounts,
- custody accounts,
- debt and partnership interest benefit,
- cash value insurance contracts regular payment contracts (annuities).

⇒ **For what purpose may such information to be exchanged be used?**

The information to be exchanged may be used for tax purposes.

⇒ **With which institutions will such information be exchanged?**

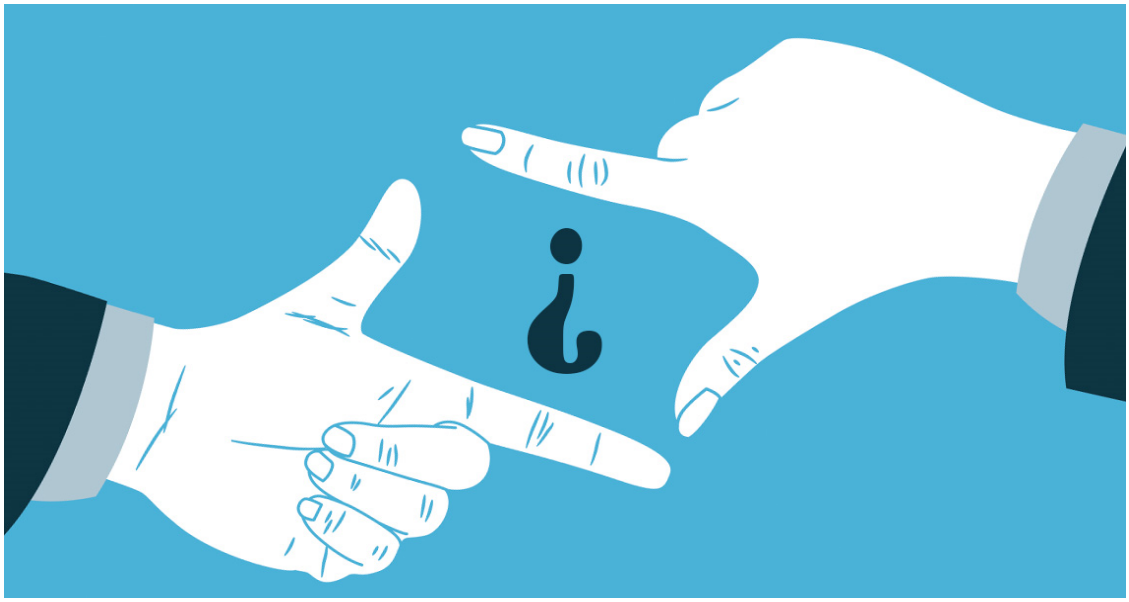
Automatic exchange of information will take place between tax administrations on a reciprocity basis through the transmission mechanism created by the OECD.

A limited share will be made only to the country of residence (resident).

⇒ **Is the Law on Protection of Personal Data violated by automatic information exchange?**

Written requests concerning lack of consent for transferring some data to a foreign country, within the scope of the Law nr.6698 on Protection of Personal Data, may not prevent automatic exchange of information.

Public Institution's replications to applications stated that; "Regarding Automatic Exchange of Financial Account Information, the Multilateral Competent Authority Agreement has been signed, and the agreement covers only financial accounts, and the transactions made are in compliance with the applicable regulations."



COMMUNIQUE ON SQUEEZE OUT AND SELL OUT RIGHTS IN PARTNERSHIPS PUBLISHED

The Capital Markets Board's "Communiqué on Squeeze Out and Sell Out Rights in Partnerships" numbered II-27.2 was published in the Official Journal on 12 November 2014 and entered into force.

The communiqué, prepared on the basis of Article 27 of the Capital Market Law, regulates the procedures and principles regarding the implementation of the controlling shareholder's right to squeeze out other shareholders from the partnership and the right of other shareholders to sell their shares to the controlling shareholder in joint stock companies whose shares are offered to the public or deemed to be offered to the public. This communiqué numbered II-27.2 repealed the "Communiqué on Squeeze Out and Sell Out Rights in Partnerships" numbered II-27.1 published in the Official Journal dated 2/1/2014.

However, according to the transitional provision in the Communiqué, if it was disclosed to the public that the controlling shareholder position has been acquired or an additional share was taken while in this situation before 31 December 2020, the usage fee of the rights will be determined in accordance with the former "Communiqué on Squeeze Out and Sell Out Rights in Partnerships" numbered II-27.1.

The fourth article of the Communique sets out the "arising of rights and calculation procedure of voting rights". According to this: As a result of the takeover bid or in case the voting rights regarding the shares owned in any way, including acting together, reach 98% of the voting rights of the partnership, or if an additional share is received while in this situation, except for the exceptions specified in this Communiqué, the controlling shareholder has the right to squeeze out all other shareholders from the partnership regardless of whether their shares are privileged, and the other shareholders also have the right to sell their shares to the controlling shareholder.

In determining the ratio regarding voting rights, direct and indirect shares owned by the controlling shareholder are considered. Voting privileges are not considered. Shares based on usufruct or purchase right and the squeeze out right in partnerships cannot be used.

The squeeze out or sell out rights in partnership does not acquired due to the reasons such as shares acquired by existing shareholders, inheritance, repurchased shares, freezing of voting rights.

It is accepted that the following persons act together in the determination of share purchases which will cause to be acquired the squeeze out and sell out rights in partnership: Partnerships in which real and / or legal person partners have management control. Real and/or legal persons holding management control of legal person partners, partnerships in which these persons have management control.

The liabilities of corporations arising from other legislation other than the capital market legislation are reserved. The procedure for the use of the Rights was set out under the Article 5 of the Communiqué.

Other partners other than the controlling shareholder who wish to exercise their right to sell may submit their request to use the right to sell to the partnership in writing within two months following the public disclosure of the summary of the appraisal report on share values.

Until the end of the term of use of the right to sell, the controlling partner will continue to exercise the right to sell, even if the controlling partner loses his/her position as a controlling partner, but during the said period, the controlling partner will not be able to purchase additional shares, except for the purchases made due to the exercise of the right to sell. The controlling partner is obliged to deposit the share prices into the partnership account within two business days at the latest following the receipt of the request for use of the right to sell.

The price of the shares owned by the partners who want to use their right to sell will be paid by the partnership on the first business day following the deposit of the share prices to the partnership account and share transfer transactions will be finalized with the payment. In addition, the right to sell can be used by the investment firm.

Within the scope of the Communiqué, the matters to be considered in the calculation of the cost of using the squeeze out and sell out rights in partnership are determined separately for the corporations whose shares are traded on the stock exchange and the corporations whose shares are not traded on the stock exchange.

For partnerships whose shares are traded on the stock exchange; For partnerships whose shares are traded on the Star Market, the last month before the date of the public disclosure of rights; For partnerships whose shares are traded in markets and platforms other than Yildiz Market, within the last six months before the date of the public disclosure of rights; The arithmetic average of the daily corrected weighted average prices in the stock market and the value determined in the valuation report prepared for the determination of the price for each share group and in the event that and the acquisition of the controlling shareholder position simultaneously cause a change in management control, the higher of the mandatory takeover bid price, which must be calculated within the framework of takeover bid regulations, will be considered as the share price.

For partnerships whose shares are not traded on the stock exchange;

The value determined in the valuation report prepared for the determination of the price for each share group and in the event that the acquisition of the controlling shareholder position simultaneously cause a change in management control, the higher of the mandatory takeover bid price, which must be calculated within the framework of takeover bid regulations, will be considered as the share price.

Source: Communiqué on Squeeze Out and Sell Out Rights in Partnerships published on the Official Journal dated December 31, 2020 and bearing the issue number 31351

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