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NOTE ON THE NEW OMNIBUS LAW AIMING TO REDUCE THE IMPACTS OF THE CORONAVIRUS DISEASE

Turkish authorities continue their efforts to struggle with the Coronavirus pandemic in Turkey. Within the framework of these efforts, Turkish Parliament has accepted a new “*Law on Reducing the Impacts of Coronavirus Pandemic in Economic and Social Life and on Amending Certain Laws*” (the “**Omnibus Law**”) and this Law numbered 7244 entered into effect by its promulgation in the Official Gazette on April, 17 2020.

We have noted many amendments in the Omnibus Law compared to its first draft version¹. In this memorandum, we will not deal with every provision of the Omnibus Law; but will just give brief information on certain issues that we deem relatively more important.

1- PROVISIONAL EMPLOYMENT ASSURANCE

The provisional article 10 added to the Labor Code by the Omnibus Law stipulates that it is not possible for employers to **terminate the employment agreements** of their employees (*working based on any kind of employment agreement*) **for a period of 3 months starting from the entry into force of the Omnibus Law**. We should note however that termination of employment agreements based on breach of morality and good will principles and similar cases are not subject to this restriction. Under these circumstances and during this period, the employers are entitled to **give their employees unpaid leaves without having to obtain the consent of the employees**. The employees, using their unpaid leaves upon the request of the employers, do not have the right to terminate their employment agreements based on just cause.

The above mentioned termination ban period may be extended **up to 6 months** by the President of Republic.

¹ The issues that were set forth in our Memorandum on the First Version of the Draft Law and that we have not dealt with herein, are not included in the Omnibus Law.

2- PAYMENTS TO EMPLOYEES TAKING THEIR UNPAID LEAVES

As per the new provisional article inserted in the Unemployment Insurance Law by the Omnibus Law;

- (i) **employees who are given unpaid leave by their employers** within the scope of above-mentioned provisional article 10 and **who do not benefit from short-time working allowance**, and
- (ii) **employees dismissed after March 15, 2020 and who do not get unemployment benefits** within the scope of other articles of Unemployment Insurance Law

shall be paid **TL 39.24 per day** by the Unemployment Insurance Fund during the unemployment or unpaid leave period up to termination ban period (*please see above*), provided that these employees do not receive retirement pension-pay from any social security institution.

In the event that it is determined that an employer forces its employees to work despite these employees benefiting from the above provisions, **such employer shall be subject to an administrative fine in the amount equal to gross minimum wage amount per employee and per month where the employee(s) is(are) forced to work**. In addition, **the amounts paid based on above provisions shall be collected back** from the employer together with statutory interest to be accrued from the actual payment date.

In the event that those employees who benefit from the above payments are not insured under general health insurance or are not dependent on persons insured under general health insurance, they will be deemed insured under general health insurance within the framework of the Law No. 5510 and their premiums will be paid by the Unemployment Insurance Fund.

We note that, in the Omnibus Law, some amendments have been made on the version of this article as drafted in the first draft Omnibus Law: **(i)** A more clear definition of those who will benefit from this unpaid leave payment have been made, **(ii)** the index of administrative fine envisaged for the misinforming employers have been set forth and **(iii)** issues relating to the general health insurance have been regulated.

3- PAYMENT OF SHORT-TIME WORKING ALLOWANCE WITHOUT THE OUTCOME OF COMPLIANCE CHECK

This is a new article that was not included in the first version of draft Omnibus Law. According to the Omnibus Law, for the purpose of speeding-up the process of short-time

working allowance applications, **Turkish Employment Institution will start making payments based on the statements of the employers**; the authority will not wait the outcome of compliance checks, which should normally be completed within 60 days according to relevant legislation.

The Omnibus Law is **retroactive** on this matter: Accordingly, **applications made as of February 29, 2020 and onwards** will be accepted within the scope of the Omnibus Law.

On the other hand, in the event that it is determined that an employer provided false information and documents, overpayments will be collected from this employer together with its statutory interests.

4- COLLECTIVE BARGAINING AGREEMENTS AND PROCESSES REGARDING STRIKES AND LOCKOUTS

As per the Omnibus Law, determination of authorization, collective bargaining processes, resolutions of **collective labor disputes** and strike and lockout processes within the scope of the Law on Trade Unions and Collective Bargaining Agreements **have been extended for a period of 3 months** starting from entry into force of the Omnibus Law.

The above mentioned 3- month period may be extended up to 6 months by the President of Republic.

5- AMENDMENTS ON THE TURKISH COMMERCIAL CODE

A. Distribution of Profit in Joint Stock Corporations and Limited Liability Companies

In our previous Memorandum, we had stated that Turkish Union of Chambers and Commodity Exchanges, by referring to a letter of the Ministry of Commerce, had sent letters to the chambers of commerce regarding the limitation of profit distribution for companies except for state affiliated companies. The first version of draft Omnibus Law had also a similar arrangement.

On this matter, the Omnibus Law sets out a similar provision by adding a provisional article to the Turkish Commercial Code ("**TCC**"). According to this article, until September 30, 2020:

- the distributable profit amount of joint stock corporations and limited liability companies **shall be limited to 25% of the net profit of 2019**,
- it will not be possible to distribute **retained earnings and capital reserves**, and

- it will not be possible for general assemblies to empower their boards of directors for **distribution of advance dividend**.

Concerning companies who have already resolved on distribution of profit for the year 2019, the Omnibus Law provides **postponement of distribution of profits** exceeding 25% of the net profit of 2019 **until 31.09.2020** in the event that no payment or partial payment has been made to the right holders.

The above mentioned period may be extended until 31.12.2010 or shortened by the President of Republic.

This provision does not apply to companies where any state organization owns directly or indirectly more than 50% shares.

B. Provisions That Existed In The First Version Of The Draft Omnibus Law Relating To The Turkish Commercial Code

The first version of the draft Omnibus Law included provisions on (i) increasing to 5 months the period for holding the ordinary general assemblies and appointment of auditors of joint stock and limited liability companies; and (ii) imposing administrative fines to the company managers who did not call the ordinary general assembly within the said period. In addition, the processes for signature declarations of the merchants were simplified. However, we noted that the Omnibus Law as enacted does not includes such provisions.

6- PROHIBITION ON STOCKPILING AND EXCESSIVE PRICING

The Omnibus Law inserts provisions in the Law on Regulation of Retail Trade regarding “excessive pricing” and “stockpiling”.

Accordingly, producers, suppliers and retail enterprises are prohibited from **applying excessive increases in the sale price of goods and services**. In addition, producers, suppliers and retail enterprises **are prohibited from conducting activities** that are considered as “stockpiling”, which activities **cause market narrowness, distort the market balance and free competition as well as prevent the consumers from reaching goods**.

Further, the Omnibus Law also states that the **Assessment of Unfair Price Board** will be established in order to taking any measures against stockpiling and excessive pricing, including making regulations, carrying out audits and inspections and applying penalties if necessary.

We would like to also note that an administrative fine is set forth for the breach of these provisions: the amount of fine may be up to **TL 500,000** for “stockpiling” and may be up to **TL 100,000** for “excessive pricing”.

7- RENT AND ADEQUATE PAY FOR THE TREASURY REAL ESTATES

Concerning the treasury real estates, based on force majeure due to the Coronavirus disease, the Minister of Environment and Urban Planning has been empowered to delay, for a period of 3 months, the payments of (i) **the fees that shall be paid under the contracts** (sale price, rent, easement fee, usage fee, etc); and (ii) **adequate pays that should be collected for a period of 3 months as of 1/4/2020. Such delay does not require the application of the relevant person.** The Minister of Environment and Urban Planning may extend the said period for a further 3-month period. The delayed payments will be collected at the end of the term by monthly instalments during the same term as the delayed period, without applying any legal or default interest rate.

In the first version of the draft Omnibus Law, authority was granted to the Minister of Environment and Urban Planning for deciding **on not collecting, delaying, decreasing, making instalments on such fees** or applying **interest rate lesser** than the interest rate in force. However, the Omnibus Law only regulates the **delay of the collection** of such fees.

8- R&D AND DESIGN CENTERS AND TECHNOLOGY DEVELOPMENT REGIONS

As per the Omnibus Law, the Minister of Industry and Technology is entitled to decide that, for a period of **4 months as of 11.03.2020**, activities conducted at the R&D and Design centres as per the Law on Research, Development and Design Activities Support can be conducted out of such centres, and that activities conducted in the Regions as defined under the Law on Technology Development Regions can be conducted out of the regions defined under this Law.

Once the decision stated above is taken, the Minister of Industry and Technology must be informed so that the **discounts, exemptions, supports and incentives** applied under these laws can **continue to be applied**.

The Minister of Industry and Technology may extend the 4-month period starting from 11.03.2020 for additional 3 months.

9- PROVISIONS REGARDING MUNICIPALITIES

A. Concerning Municipalities' Real Estates

The Omnibus Law allows a **delay of 3 months** for the collection of payments pertaining to the period **starting from 19/3/2020** concerning the **sale, adequate pay and rent fees** under the relevant laws for the real estates owned by or under the possession of the municipalities, their affiliates and the local administrative unions.

The councils of the municipalities or unions; and the relevant competent body of the affiliates shall take such decision. The 3-month period may be extended for further 3 months by the Minister of Environment and Urban Planning or Minister of Internal Affairs. The delayed payments will be collected at the end of the term by monthly instalments during the same term as the delayed period, without applying any legal or default interest rate.

Further, rent fees will not be collected from enterprises whose activities have been stopped or which cannot carry out activities, for the period during which they did not conduct activities.

B. Concerning Some Tax Items

The annual announcement and advertisement tax and annual environment cleaning tax for enterprises whose activities have been stopped or which cannot carry out activities will not be collected for the period during which they did not conduct activities.

C. Concerning Private Public Transportation

The municipalities have been entitled to make support payments, based on municipality council decision, for a period of 3 months starting from the entry into force of the Omnibus Law to the persons who carry out transportation services under a permit or license issued by the municipality or by renting a transportation line from the municipality, provided that the support is limited to the purpose of ensuring uninterrupted public transportation. In addition, the collection of license or rent fees for the said period may be delayed by the municipality without incurring any interest. The 3-month period may be extended for further 3 months by the Minister of Environment and Urban Planning. The delayed payments will be collected at the end of the term by monthly instalments during the same term as the delayed period, without applying any legal or default interest rate.

D. Concerning Water Fees

The municipalities and their affiliates may decide to delay, based on municipality council decision, for a period of 3 months starting from the entry into force of the Omnibus Law, the collection of their receivables relating to the water consumption of the residences and enterprises whose activities have been stopped or which cannot carry out activities. The municipality council may decide to extend this period for a further 3-month period. The

delayed payments will be collected at the end of the term by monthly instalments during the same term as the delayed period, without applying any legal or default interest rate.

10- CONCERNING ANTI-SMUGLING

As per the amendment of the Anti-Smuggling Law, the equipment and devices² that are seized under this Law until 30/09/2020 for the purpose of fighting the Coronavirus disease **can be assigned to the relevant authorities** in compliance with the conditions under the relevant law, without incurring a waiting period.

The President of Republic may extend the term mentioned above for a further 3-month period.

11- GENERAL ASSEMBLY MEETINGS OF ASSOCIATIONS AND COOPERATIVES

The **general assembly meetings of associations and cooperatives** have been postponed until 31/7/2020.

This term may be extended by the relevant Minister for a further 3-month period. The general assembly meetings of associations that have been postponed must be held within 30 days, the general assembly meetings of cooperatives must be held within 3 months following the expiry of this term. The duties, responsibilities and liabilities of the current bodies will continue until the first general assembly meeting.

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In the light of the information provided above, please contact us if you have any further questions concerning the Omnibus Law.

Best regards,

Tabak & Ongan Law Office

² Testing material, plasma, ethyl alcohol, isopropyl alcohol, glycerol, masks, gloves, overalls, galosh, eau de cologne, disinfectant, disinfection devices, respirators, intensive care materials, pills, vaccines, first aid materials and devices and materials used for the manufacturing of these.