

Law on improvement of the investment environment

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Ozan Karaduman and Selin Başaran Savuran of Gün + Partners in Istanbul discuss changes to the investment environment

Law On Improvement Of The Investment Environment

The Law Amending Certain Laws for Improvement of the Investment Environment (Amendment Law) was accepted by the Turkish Parliament on July 15 2016 and entered into force on August 9 2016. The Amendment Law, which was accepted by the Turkish Parliament just hours before the failed coup attempt is significant in the sense that it shows that the government started to focus on developing the economy before its focus shifted again to fight against the aftermath of the coup attempt.

The main aim of the Amendment Law is to encourage local and international investors to make new investments in Turkey by reducing investment related costs and creating a more investor-friendly environment.

The Amendment Law has made amendments to a number of laws. Some of these amendments introduce major changes whereas some of them regulate quite smaller issues and intend to eliminate the bottlenecks in the daily business life.

This article aims to give a general overview of the Amendment Law and briefly remark some of the major changes.

Amendments to the Turkish Commercial Code (the TCC) and the Law on Checks

Some of the amendments to the TCC aim to reduce the bureaucratic processes and the company establishment costs creating a faster and cheaper procedure for company establishment. The Amendment Law reduces the documents required for company establishment by removing the founders' declaration document from the documents requested for incorporation. For most of the documents required in the establishment process, an easier approval option is put in place; investors can now have their articles of association and other documents approved by manager in the relevant trade registries as an alternative to notaries. The Amendment Law further exempts companies' articles of association from application of valuable paper fees during the company incorporation process.

The Amendment Law also expedites the liquidation process of companies by decreasing the one year period to six months for distribution of companies' remaining assets to the shareholders following their latest announcements to the company creditors.

Furthermore, due to the increase in the number of the bad checks and the need for speed and security in the commercial life, the Amendment Law has made important amendments on the provisions of the TCC regulating the checks and on the provisions of the Law on Checks.

The Amendment Law introduces a barcode system and requires all banks to establish a system which will enable them to print checks with barcodes as of 31.12.2016. After the amendments, all checks must bear a barcode, which will include important information concerning the accuracy of the check and check drawer's past check payment performance.

Additionally, the Amendment Law has introduced monetary fines and judicial penalties for bad checks.

Amendments on the Law on Enforcement and Bankruptcy

One of the most important changes introduced by the Amendment Law is about the postponement of bankruptcy. Postponement of bankruptcy is a mechanism regulated under the Law on Enforcement and Bankruptcy, which enables an insolvent company to avoid becoming bankrupt provided that its financial position can be restored. A company requesting postponement of bankruptcy should submit an improvement project to the court and show its plans to restore its financial position. In the recent years, this mechanism has been used widely by companies, which do not have any hope for an economic improvement. Therefore, postponement of bankruptcy has deviated from its main aim, which is giving a second chance to a financially distressed company.

After the amendments introduced by the Amendment Law, the improvement projects must show objective and real new resources and measures including ways to provide new cash to the company. Furthermore, such projects must show how the operating costs and working capital of the company will be covered. The Amendment Law further requires submission of sufficient documents showing that the improvement project is serious and credible, such as current debts and their payment terms, list of the creditors, latest balance sheet etc. If the above mentioned documents are not submitted to the court together with the postponement application or at the latest within 2 weeks' term to be provided by the court, the court will decide for the bankruptcy of the relevant company. The Amendment Law aims to allow only the companies with the possibility of recovery to benefit from the provisions of postponement of bankruptcy and to stop the negative effects of abuse of this procedure on the economy and the creditors in the market.

Amendments to various Tax Laws and the Law on Fees

As the Amendment Law aims to reduce the transaction costs, it has introduced more advantageous provisions concerning the statutory fees.

The Amendment Law has also made amendments in various laws regulating tax related issues, such as Real Estate Tax Law, Value Added Tax Law, Corporate Tax Law, Income and Expense Tax Law. With these amendments, the Amendment Law has extended the scope of some of the tax exemptions and clarified some vague issues such as the minimum shareholding percentage required to be regarded as an affiliated party under transfer pricing rules.

Finally, the Amendment Law has also made fundamental changes to the Stamp Tax Law. For further information on the relevant amendments, you may check out our article titled "Recent Amendments to Stamp Tax Law in Turkey" on the following link: [<http://www.iflr1000.com/NewsAndAnalysis/Recent-amendments-to-stamp-tax-law-in-Turkey/Index/5803>]

Concluding remarks

We had not seen many legislative efforts to improve economy in recent years in Turkey. The government could not make the economy its main focus as it used to do in the past. The Amendment Law was good news in that respect; it was the harbinger of shifting of the focus towards the economy again. Due to the failed coup attempt, the government had to focus on fighting the organisation behind that horrendous act. However, the downgrade in Moody's rating of Turkish economy makes it a necessity for the government to continue to take the steps for improving the investment environment in Turkey.

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