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New Implementation Regarding Signature Declarations

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The execution and certification formalities of the signature declarations are regulated under Article 40/2 of the Turkish Commercial Code (“TCC”). Before 10 March 2018, signature declarations were certified by the notary publics in Turkey. However, following the introduction of the new central registration system called “MERSIS”, Article 40/2 of the TCC was amended by the Law on the Amendment of Certain Laws for the Improvement of the Investment Environment, numbered 7099, published in the Official Gazette dated 10 March 2018. According to such amendment, “the signature declaration shall be executed in presence of authorized personnel in any trade registry directorate. The procedures and principles regarding the implementation of such article shall be determined by a communiqué to be issued by the Ministry of Customs and Trade (“Ministry”)^[1]. Accordingly, following such amendment, the authority of the notary publics in Turkey to certify the signature declarations has been revoked and such authority has been solely granted to the trade registry directorates.

In order to comply with the amended provisions of Article 40/2 of the TCC, the Ministry has amended “the Communiqué on the execution of the articles of association of a company before the commercial registry directorates dated 06 December 2016” on 13 March 2018 (the “Communiqué”) and inserted new articles to regulate the principles governing the execution and certification formalities of the signature declarations in light of the amended Article 40/2 of the TCC. Certain articles of such Communiqué has been amended for a second time by a new Communiqué published in the Official Gazette dated 17 April 2018.

As the Communiqués dated 06 December 2016 and 13 March 2018 were silent on the execution and certification formalities of the signature declarations of the non-Turkish resident authorized signatories; the previous implementation of notarization and legalization abroad (either apostilled in accordance with Hague Convention or consularized by a Turkish Consulate) had not been changed. However, the Communiqué dated 17 April 2018 has brought a new principle by regulating in its Article 13(6) that, the signature declarations of the persons authorized to represent the Company residing in a foreign country may be submitted by having their signatures certified by the Turkish consulate in that country.

In short, the general rule currently regarding execution and certification of signature declarations is to have the said be certified in presence of a authorized personnel in any trade registry directorate. The possibility to have the signature declaration of signatories residing outside of Turkey be certified by the Turkish consulate in the relevant country has been introduced by the new Communiqué dated 17 April 2018 as a matter of convenience.

It should be noted however that the trade registries in Turkey do not apply the above uniformly. For example, Istanbul Trade Registry still accepts the signature declaration of a signatory residing outside of Turkey in notarized and apostilled form, however, Bursa and Ankara Trade Registries no longer accept the signature declaration of a signatory residing outside of Turkey in notarized and apostilled form and request that the signature declarations of such persons to be consularized by the Turkish Consulate in their relevant country of residence.

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