

RECENT AMENDMENTS OF THE REGULATION ON THE IMPLEMENTATION OF THE FOREIGN DIRECT INVESTMENTS LAW

The Regulation on the Implementation of the Foreign Direct Investments Law which was published in the Official Gazette dated 20 August 2003 and numbered 25205 and entered into force on the same date (the “**Regulation**”) has been amended by the Regulation Amending the Regulation on the Implementation of the Foreign Direct Investments Law which was published in the Official Gazette dated 1 June 2018 and numbered 30438 (the “**Amending Regulation**”).

The Amending Regulation has introduced novelties such as the establishment of an electronic system, principles regarding the persons authorized to have access and submit information through this new electronic system and amendments concerning the scope of the information to be submitted by companies to the General Directorate of Incentive Implementation and Foreign Investments (the “**General Directorate**”).

This Monthly Update aims to provide a brief explanation on the Regulation and highlight the changes introduced with the Amending Regulation.

Scope of the Regulation

The Regulation has been enacted as per the Law No. 4875 on Foreign Direct Investments which was published in the Official Gazette dated 17 June 2003 and numbered 25141 and entered into force on the same date (the “**Law**”). In line with the Law, the Regulation is applicable to (i) legal entities established under the laws of a foreign country (and their branches) and (ii) international organizations. The Regulation principally covers the procedures and principles pertaining to statistical information to be submitted to the Republic of Turkey Ministry of Economy, the information to be submitted to the General Directorate and the establishment of liaison offices by companies and branches within the scope of the Law.

Changes Introduced by the Amending Regulation

The Amending Regulation does not introduce any major regulatory changes and its scope remains unchanged. However, it implements important changes as to the manner companies shall submit the information above. The changes implemented by the Amending Regulation are summarized under the three headings below.

Incentive Implementation and Foreign Investments Information Electronic System (“E-TUYS”)

Companies and branches within the scope of the Law have the obligation to submit to the General Directorate certain information, such as information regarding their share capitals, activities and foreign shareholdings. Under the Regulation, those submissions had to be made by using the forms attached to the Regulation as annexes. The Amending Regulation has removed these forms and introduced a new electronic system namely, the E-TUYS, through which all submissions are to be made from now on. E-TUYS is an online application managed by the General Directorate, first implemented by the Authorization Communiqué on the Electronic Performance of Investment Incentive Certificate Procedures which was published in the Official Gazette dated 31 May 2018 and numbered 30437 and entered into force on the same date (the “**Communiqué**”). The Communiqué implements the use of the E-TUYS system for investment incentive certificate applications. With this new system, the requirement of paper form for all applications and submissions under the Communiqué and the Regulation is ceased and all activities within the scope of the Law are to be made in an electronic environment.

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In addition to the definition of the E-TUYS system, definitions of “electronic signature”, “electronic signature legislation”, “electronic certificate service providers”, “user” and “qualified electronic certificate” were added, reflecting once more the new electronic structure brought forth by the Amending Regulation.

Election of an Authorized User by Companies

Under the Amending Regulation, companies and branches within the scope of the Law have to authorize a user defined therein as “a *person authorized by companies and branches to submit on their behalf the information requested from them within the scope of the Law*”. The newly introduced fourth section of the Amending Regulation contains provisions regarding the authorization process and the characteristics of a user. Accordingly, a user is required to (i) hold a qualified electronic certificate, which can be obtained through an electronic certificate service provider; and (ii) apply to the General Directorate with certain documents listed in Article 10 of the Amending Regulation. It is further mentioned that users who had already applied to the General Directorate will not need to reapply to the General Directorate every time their qualified electronic certificate is renewed and that individuals who already possess a valid qualified electronic certificate for other purposes can use it for the purposes defined in the Amending Regulation.

After reviewing the submitted documents, the General Directorate shall approve or reject the application and inform the user electronically. The duration of the authorization is limited but can be extended through a new application to the General Directorate. The authorization can be terminated (i) by an application in this sense made by the company or branch to the General Directorate, (ii) by the waiver of the authorization by the user or (iii) for other reasons automatically causing the termination of the authorization, such as the loss of capacity, death or absence of the user or the dissolution of the company or branch.

Scope of the Information to be Submitted to the General Directorate

Under the Regulation, companies and branches within the scope of the Law had to submit forms regarding; (i) their share capitals and activities, annually, at the end of May each year at the latest; (ii) payments made to their capital accounts, within one month after the relevant payment; and (iii) all share transfers made between a local and a foreign shareholder or made by a shareholder to a local or foreign investor outside of the company or branch, within one month of the relevant share transfer. Additionally, local companies outside of the scope of the Law had to submit a form to the General Directorate within one month following (i) the participation of a foreign shareholder in the local company; or (ii) the participation of a foreign shareholder in the local company by means of a capital increase and consequently the realization of a share transfer with the effect to include the local company in the scope of the Law.

Under the Amending Regulation, all the above obligations remain. However, companies and branches shall no longer submit paper forms; they shall simply electronically fill in one or more of the “Investor”, “List of Shareholders” and “Affiliate Subsidiaries” forms available on the E-TUYS in the cases specified above.

Furthermore, a small but important obligation has been added with Article 5/b3 of the Amending Regulation: companies and branches now have to submit information regarding their capital increases or decreases to the General Directorate at the latest within one month after the completion of the relevant transaction. Before the Amending Regulation, such information was only submitted on an annual basis as part of the submission regarding the share capital of the company or branch. With the amendment, capital changes are therefore disclosed much sooner.

Conclusion

The Amending Regulation mainly facilitates procedures for both legal and governmental entities. The modernization of legal processes is ongoing and the transition from paper to electronic form we see here is in line with the general trend in accordance to which more and more operations are realized online and virtually.