

# Coronavirus Disease (Covid-19) Legal Update Turkey



**Take Note and Keep Safe!**

Coronavirus (Covid-19) Legal Update  
on 1 April 2020

**Dear clients, dear business partners,**

The development of the coronavirus (COVID-19) outbreak continues to create unprecedented contractual and other legal challenges. In response, we have created a newsletter to advise on the issues businesses are facing in Turkey.

As the director of the firm I wanted to draw your attention to our latest newsletter featuring topics around employment law, corporate law and related issues to address frequently asked questions from our clients across industries in light of continuing Covid-19 crisis.

The situation continues to evolve, we will continue to update our guidance on a regular basis when further information is available. The information below was originally posted on 18 March 2020 and is updated in current developments in Covid-19 as of 1 April 2020. As additional developments occur, please contact your usual Senguler lawyer or our partners.

Keep safe and well!



**Jonathan W. Blythe**

*Director / Partner*

*jonathan.blythe@eurasia.com.tr*



**Gül Şengüler**  
*Partner*

*gul.senguler@  
senguler.av.tr*

*+90 212 361 50 66*



**Nihan Uslu Yiğit**  
*Partner*

*nihan.yigit@  
senguler.av.tr*

*+90 212 361 50 66*

# Client Legal Briefing Note – Coronavirus Turkey

Latest Update: 1 April 2020

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Starting 18 March 2020 the government has announced and implemented a number of measures to lessen the impact that COVID-19 is having and will continue to have on Turkish life and business. A range of measures have been announced aimed at all levels of business.

## Background

Since the WHO declared the Covid-19 Virus a worldwide pandemic countries are taking drastic measures to prevent the spread of the virus. But it is clear that the virus is having significant effects on businesses and some specific legal issues are being raised in each country.

In Turkey the situation is fluid and the case numbers are sadly climbing quite quickly. However the Government has taken some preventive measures including decisions to shut schools, give two weeks paid holiday to vulnerable employees in the public sector, ban large gatherings, and implement self-isolation for returners from overseas and issued guidance as to combat the disease. They are also banned the over 65s from leaving home and are recommending all others stay at home and only going out for essentials.

In addition, an order was issued to close cinemas, theatres, bars, cafes, restaurants, leisure centres, gyms and a number of other places where people have close interaction.

Most courts are shut and all hearings postponed to a later date, only courts open are for emergency matters such as detention, imprisonment however the Ministry of Justice has still not announced an official decision as to the postponements and when the hearings will be rescheduled.

There is a very effective online system for submission of petitions and receiving

notifications and that system continues.

Execution offices are also now shut and most public offices are working limited hours. Many providing services online.

In a televised address on 18 March the President announced a number of measures to combat the virus,

## **A summary of the president's statements is set out below:**

Highlights are as follows:

- Generally people were encouraged to stay at home, only go out for essential purposes, not to go to crowded locations and keep social distancing.
- Support will be provided for families and the elderly.

Specific measures relating to businesses these are as follows:

- Tax and SSI declarations and payments for April, May and June are postponed for 6 months for certain industries Retail, Iron-Steel, Automotive, Logistics transportation, Entertainment, Leisure, F&B, Textile and Event-Organization.
- Hotel Accommodation taxes postponed until Nov 2020 and other incremental taxes related to rental also postponed 6 months.

- VAT on Domestic Airline fares cut from 18% to 1% for 3 months. (in force starting from April 1, 2020)
- Businesses struggling with loan repayments due to Covid-19 will be granted 3 months grace and if in default in April, May and June, Force Majeure will apply to payment obligations. (in force starting from March 26, 2020)
- Exporters will be supported with stock financing to maintain capacity utilization.
- Local Shops and Traders with loans through Halk Bank (State Bank) will have payment holiday for 3 months. (in force starting from April 1, 2020)
- Credit Guarantee fund doubled to 50bn TL. (in force starting from March 26, 2020)
- Minimum Wage Support will continue.
- Minimum pension payments raised to 1,500TL and Holiday bonus to be paid early April (in force starting from March 26, 2020)
- Flexible working and remote working models will be made more effective by new legislation (Not yet in place)
- Support for short working (decreased working time) will also be extended so the permission process will be quicker and more flexible (in force starting from March 26, 2020)
- Statutory 2 months period for making up lost working days will be extended to 4 months. (in force starting from March 24, 2020)

Note the above measures have been declared by the Government but the legislative action to put some of these in place has still to be taken.

## Latest updates on judicial process

On March 25, 2020, Turkish Parliament enacted new legislation bringing in several measures relating to COVID-19 ("New Measures"). In the New Measures, All time periods for filing a lawsuit, initiating enforcement proceedings, and all related procedures are suspended from March 13, 2020 and April 30, 2020.

All enforcement and bankruptcy proceedings (excluding those related to child support and salaries) have been suspended from March 22 to April 30, 2020. During this period judicial authorities will not execute enforcement proceedings and not accept any new enforcement and bankruptcy requests including interim injunctions.

There are certain exceptions for criminal proceedings (arrest detention etc.) and the 2-week period permitted to raise an action following granting of an interim injunction.

The usual time periods will continue from the day following the end of the suspension period. But periods of less than 15 days will as a minimum extend for 15 days after the lifting of the suspension.

If the crisis continues the President may extend the suspension period (not exceeding six months) or narrow the scope of the judicial actions subject to suspension.

## Employment Law Issues

### Employers' Obligation to Protect

General Rule: There is a general obligation on employers to ensure that places of work are safe and healthy. Therefore it is recommended that employers follow all Government guidelines or (if more stringent) guidelines of their global corporate teams and ensure that there is sufficient cleansing and disinfectant of the environment to seek to ensure the work place is kept safe.

Entry to the workplace by third party

suppliers should be monitored or restricted. If suitable, employees should work remotely, and so employers should ensure this option is supported and made available to the appropriate employees.

Workplace spaces should be managed to ensure there is less contact and people are kept apart more than 2 metres and hygiene should be a priority.

However apart from the general principles above it should be noted that to date there has been no specific regulation issued by the Turkish Government which regulates how private places of employment have to operate to provide protection from the virus.

For the time being Employers have discretion in the context of the general obligation to ensure a safe working place.

Precautions: Under Law 6331, the relevant law of health and safety in the workplace, if applicable the workplace doctor and HSE expert must notify employees of the risks of the disease and have an action plan to be advised to employees.

In this context training and sufficient disinfectants or wash facilities should be provided. Masks and disinfectant at the entrances to the workplace or workplace sections should also be considered.

### Closure of the workplaces;

#### a) Closure at Employer Discretion:

In case the employer closes the workplace at his discretion without any directive from the government, the employer's obligation to pay the full salary continues.

#### b) Closure by Government Decree:

From 16 March 2020, the Turkish government ordered certain workplaces to close. In particular entertainment and leisure venues, such as theatres, cinemas, concert halls, wedding venues, cafes, restaurants, bars, leisure facilities. It also cancelled all kinds of meetings and gatherings such as meetings of non-

governmental organisations, mosques and prayer halls etc. These decisions will be enforced by the relevant force.

According to Turkish Employment Law No. 4857, Article 40, in case the workplace is closed for a period of longer than one week, due to force majeure that prevents employees from working or perform his/her duties, the employment agreement of the employee would be deemed as suspended. For the first one-week period, the employer should pay half of the salary.

We are of the opinion that, the decision of the Turkish Government dated 16 March 2020, closing the workplaces should be considered as a force majeure and so employees working in such workplaces should be paid half salary for a period of one week. After one week, employer of such workplaces are not obliged to pay salaries or social security premiums of the employees who are unable to work from home or elsewhere.

To date, there is no official decision regarding closure of the offices, factories, hotels etc. therefore, the employers of the workplaces that are not subject to the Government's decision dated 16 March 2020 are still liable to pay full salary of the employees. Nevertheless, we are of the opinion that, in case the working hours are significantly decreased, the employers may agree in writing with the employees for a reduction of the salary.

### Unpaid Leave Option

In the current circumstances employees can be asked to go off on unpaid leave however the employee should provide a written consent. In case the employees do not provide consent for the unpaid leave the following options could be considered.

### Annual Paid Leave

It would be possible to direct the employees to use their annual paid leave. However, this should be agreed in writing. If an employee fails to attend without a valid

reason or providing a doctor report the employee should notify the employer as soon as possible since not providing notice or a health report could lead to dismissal for not attending work without a valid reason. If the employee provides a doctors report, the salary of the employee is paid by the Social Security Institution.

### Remote Work

If the employee can perform his/her work remotely, the employer may ask the employee to work from home. In case of remote work, the employer should provide all the necessary tools for the employee to perform his/her work remotely and the full salary of the employee should be paid.

### Offsetting the Working Hours

In case the employer asks the employee not to work for a certain period of time due to Covid-19, the employer may ask the employee to work overtime after the end of the precautionary period to cover the period that the employee did not work.

In other words, the employer may organize the working hours in different way after the precautionary period, provided that the daily working hours of an employee do not exceed 11 hours. The offsetting period should be completed in 2 months period. (Now extended to 4 months under new regs). Please note that, in case offsetting system is applied, the consent of the employee should be obtained.

### Short Working Hour Allowance

Shortening working hours is a useful mechanism for employers to apply in the workplace when working hours are reduced by at least one third or the work is temporarily stopped due to compelling reasons such as economic or other crises. The Government has stated that the COVID-19 crisis is a compelling reason and note employers can apply for Short Work Allowance if the production of good or service and the working hours are reduced or entirely reduced. Employers should apply to Turkish Employment Association ("İŞKUR") for short work

allowance online through [www.iskur.com](http://www.iskur.com) address. The Government promised to make the permission process more streamlined.

In case of short work, the approval of the worker is not required; the time interval for short work is determined by the employer. It is announced to the workers who will be working short time and the union in the workplace is notified of short working arrangements.

If İŞKUR accepts the necessary requirements in the Short Work and Short Work Allowance Regulation ("Regulation") are met, daily short work allowance will be paid by İŞKUR to employees who paid sufficient SSI and satisfies the requirements for length of employment. This is 60% of the employee's average daily gross earnings calculated by taking into consideration the employee's earnings for the last twelve months premium and paid for each employee that meets the requirements in the Regulation.

The amount of short work allowance calculated in this way cannot exceed 150% of the gross amount of the monthly minimum wage which is 2.943 TRY as of 2020. The short-time working allowance is paid to the worker in place of wages during the non-working periods. Payments begin a week after the compelling reason begins. During this one-week period, employers of the workplaces subject to the closure decision of the Government are obliged to pay half salary, but the other employers are obliged to pay the salaries in full.

Short working can be applied for three months and this period can be extended by the decision of President up to six months.

### Recent Changes: Short Working Hour Allowance

Changes were made to the short working hour allowance application. The requirement of İŞKUR to determine the workplace by the sending inspectors has been removed. Requirements for employee contribution to benefit from short working hour allowance are eased in the

New Measures as follows: (i) 120 days reduced to 60 days and (ii) 600 days to 450 days. If employees do not meet these requirements, they can now benefit from short working hour allowance in amount of the balance remaining from their last unemployment payment.

Additionally, employers are required not to dismiss any employee in the workplace (except dismissals based on just cause) to benefit from short working hour allowance.

### Health Report

If the employees are sick or have Corona virus symptoms then a doctor report should be provided to the employer. In case the doctor report is provided, the Social Security Institution pays the salary of the employee therefore the employer will not have any obligation for payment of the full salary.

### Contractual Issues and Lack of Business

As mentioned we are of the opinion that the Corona Virus measures could be considered as Force Majeure. Nevertheless, there is still no clarity on as to whether commercial contracts or lease agreements can be suspended in case of a Force Majeure event.

That being said, the Turkish Code of Obligations (TCO) has a mechanisms called "impossibility in performance" and "hardship in performance".

Accordingly, if the execution of an obligation becomes impossible due to reasons beyond the control of a party, the obligation could be deemed as suspended or even terminated.

In addition, under hardship in performance provisions, in case the party to the contract cannot perform his obligations due to the extraordinary reasons which (i) does not exist or could not be predicted by the parties at the time of the contract (ii) arises out of the reasons other than the obliged

party (iii) prevents the relevant party from performance due to significant changes in circumstances, to the detriment of the obliged party, the affected party may request the court to revise the contract as per the existing circumstances or terminate the contract.

Based on the foregoing provision, we are of the opinion that, the companies may ask the court to terminate any service contract signed with the third parties or lease agreement (as the case maybe) if the conditions are met.

However, as indicated above, we are expecting a more detailed decision from the government covering these business areas particularly related to the remedies in case of hardship in performance.

Given the circumstances, due to the lack of clarity in relation to the position of commercial agreements, we recommend parties ensure they can continue to comply with the provisions of their agreements as much as possible, unless there is a specific prohibition imposed by law which overrules such duties.

There may be provisions of insurance cover which may assist in providing cover where performance cannot take place due to Force Majeure events (i.e. corona virus issues).

Under the New Measures, default in payment of workplace rent will not be permitted to be used as a reason for termination or evacuation for the period between March 1, 2020 and June 30, 2020.

Under the New Measures, if the companies default in payment of their credit loan taken out before March 24, 2020, their negative credit notes recorded in the Risk Center of Turkish Banking Association will not be considered in the following financial transactions made with financial or credit institutions as long as these companies pay or restructure the unpaid credit loan subject to the default before December 31, 2020.

## Changes in Credit Guarantee Fund Limits

On 30 March 2020, the Resolution Regarding Treasury Support Provided to Credit Guarantee Institutions was amended as a measure regarding COVID-19 to make it easier for businesses to use credit with the support of the Treasury. The amendments are as follows:

The balance amount of the guarantees provided by Credit Guarantee Fund has been increased from 250 billion TRY to 500 billion TRY and the guarantee limit has been increased from 25 billion TRY to 50 billion TRY.

Turkey Investment and Development Bank can now change terms of the loans and make multiple restructuring in individual, working capital and investment loans provided that not exceeding 96 months in individual and working capital loans and 156 months in investment loans starting from the opening date of the loan.

The guarantee limit to be determined by the Ministry of Treasury and Finance for individuals is determined as 100.000 TRY, for SME's is increased from 12 million to 35 million TRY, and for the other entities is increased from 200 million TRY to 250 million TRY.

## Corporate Law Issues

### Remote Board Meetings

During the period in which COVID-19 continues to impact businesses, boards may prefer electronic meetings rather than meeting in person to pass the required resolutions. Article 1527 of the Turkish Commercial Code allows this option for companies whose articles of association include a provision on electronic meetings.

If the necessary infrastructure is in place, all usual decisions can be made as if done in person at a meeting. Board members also have the option to sign resolutions via their secured electronic signature but require a website allocated for this purpose

which preserves confidentiality and has been approved by the authorities.

Following announcements towards the end of last week the Ministry of Trade appears to be considering the option of allowing all companies to take electronic decisions even if they do not have provisions in their articles. **Nevertheless the details are still awaited.**

## CONCLUSION

If the State Authorities were to require all workplaces to shut and all residents to remain at home for an extended period then of course the employment and contractual obligations would potentially be suspended.

However, it is uncertain if employers would be obliged to continue to pay salaries, social security and tax in these circumstances. It is to be hoped that if the situation becomes sufficiently serious to merit this then the Government would implement legislation to regulate such circumstances.

Currently, the virus and measures taken poses a serious threat to normal business life and work. The situation continues to be subject to change and development.

Please keep safe, wash hands, disinfect, create social space and if you are concerned self-isolate, if symptoms seek treatment.



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