



COLLECTION
OF MEMORANDA
2011

GSIMERIDIAN | ATTORNEYS
& COUNSELORS

GSIMERIDIAN | ATTORNEYS
& COUNSELORS

COLLECTION OF MEMORANDA 2011

on Selected Issues and Developments
in Turkey and the Surrounding Region

GSI Collection of Memoranda 2011

For enquiries and feedback

Süleyman Seba Caddesi
BJK Plaza No: 48 B Blok 34357
Beşiktaş, İSTANBUL
TURKEY

T: + 90 212 381 8000

F: + 90 212 381 8048

Email: editor@gsimeridian.com

Owner of the publication

Gündoğdu Serhat Işık Avukatlık Ortaklığı

Editor

Suzanne Carlson

Responsible Manager

Ömer Gündoğdu

Design

Yusuf Gör ADV

Printing

Mavi Ofset

Copyright

All articles and other materials published in this Collection of Memoranda are copyrighted. No part can be reproduced or redistributed in any form without written consent from GSI Meridian and the copyright holder(s). All rights reserved worldwide.

Disclaimer

The articles in this publication are for general purposes and guidance only. The information and opinions expressed in GSI memoranda do not necessarily reflect the views of GSI Meridian. They are not meant to give any professional or legal advice. All information in this Collection of Memoranda represents the circumstances at the date of its original production and publication and it may not have been updated subsequently.

Foreword

Dear GSI Friends,

We are pleased to present you with our GSI Collection of Memoranda 2010. This collection covers a selection of brief memoranda on various legal issues that were of particular interest to our clients and us in 2010.

Although 2010 was a year in which intensive legislative activities were carried out by regulators in various fields, we had to narrow our selection to those of more particular interest to our clients. In that regard, we have included primarily memoranda on energy and mining related issues. Furthermore, memoranda regarding competition law issues, tax matters, new media regulations and the new code of obligations are included, among others.

With this publication, we aim to provide the reader with a reference book on an annual basis to help clarify relevant issues, ranging from establishing a nuclear power plant to obtaining a work permit for foreigners. The distribution of this collective research will ensure more effective information sharing within GSI so we can better serve our clients in a time-effective and cost-efficient manner.

We hope it will serve to this end and you find them interesting and helpful for your work. We also kindly encourage you to send us any further questions or comments you may have about the issues covered here.

With best wishes,



Ömer Gündoğdu
Managing Partner

Delivering Peace of Mind

Contents

A Comparison of Turkish Code of Obligations no. 6098 and Code of Obligations no. 818	6
Establishment of Nuclear Power Plants in Turkey	23
Geothermal Energy and its Legal Implementation in Turkey	33
Wind Farm Permits	39
Legislation on Expropriation under Turkish Law and in the Energy Sector	49
Environmental Impact Assessment (“EIA”) Legislation Regarding Mining Activities	61
Law Regarding Amendments to the Mining Law and Certain Other Laws no. 5995	74
Anticompetitive Restraints in Vertical Agreements and Distributorship Agreements	82
The “Essential Facilities Doctrine” under Competition Law	95
The Concept of Undertaking under Turkish Law	104
Broadcasting Licenses and Permits under Turkish Law	112
The Application Procedure for Work Permits for Foreigners in Turkey	120
Scope of the Stamp Tax and Tax Assessment Transactions	134
Review of Turkish Legislation Regarding Solid Waste	140
Apart-hotels and Condominium Ownership Rights	144

A Comparison of Turkish Code of Obligations no. 6098 and Code of Obligations no. 818

by Lale Deliveli and Hande Tuğçe Keser

I. Introduction

This memorandum (“Memorandum”) aims to examine the material differences between Code of Obligations no. 818 (“Code”) and Code of Obligations no. 6098 (“New Code”) in detail. The Code, which has been in force since October 4, 1926, mainly regulates the rights and obligations between parties. The New Code, consisting of 649 articles, was enacted on January 11, 2011 to meet current needs and to modernize the language of the code. As per Article 648 of the New Code, it shall come in force on July 1, 2012.

In this Memorandum, first the material amendments to the “General Provisions” and then the material amendments to the “Special Provisions” shall be examined in line with the structure of the New Code as well as the Code itself.

II. Amendments Regarding the General Provisions

2.1 Amendments Regarding Execution of an Agreement

New provisions regarding the execution of an agreement between parties are included in the New Code either through the addition of new provisions or by amendment of the current provisions of the Code. Such amendments are as follows:

2.1.1 Offer by Present Parties for an Indefinite Term

As per Article 4 of the Code, “...agreements made by phone communications shall be deemed as executed between present parties.” However, as a result of technological progress, the context of the second paragraph of Article 4 of the New Code is amended as follows: “Offers made in direct communications through communication tools such as telephone, computer etc., shall be deemed as executed between present parties.” Thus, agreements shall be deemed as executed following the

declaration of acceptance submitted through different communication tools such as fax, SMS etc., and accordingly, rights and obligations shall arise immediately on behalf of such parties.

2.1.2 Delivery of an Unordered Product

Article 7 of the New Code, titled “Delivery of an Unordered Product,” was not regulated under the Code. As per this article, delivery of an unordered product shall not be considered an offer to execute an agreement. No rights or obligations shall arise from the receipt of an unordered product which is delivered to the post box or the door, and a recipient shall not be liable for keeping or returning such a product. However, if the delivery of the product is concluded to be a mistake, the recipient is only required to notify the sender within the scope of good faith.

2.1.3 Format of Agreements

The format to be used in the amendment of an agreement which is required by law to be executed in written form is regulated in Article 13 of the New Code. This article corresponds to Article 12 of the Code. As per Article 12 of the Code, an amendment to an agreement is also legally required to be made in writing. However, supplementary agreements which are not conflicting with or amending the preceding agreement are not subject to this article. This requirement shall be applicable to any other kind of form amendment.

In addition, the scope of Article 14 of the New Code is extended to include other written forms to match the developments in communication technology. As per the provision requiring that debtors sign agreements in written form, the following shall be deemed as written form;

- i) A signed letter,
- ii) Telegram with the original signed by the debtor,
- iii) Confirmed fax,
- iv) Confirmed telex, or
- v) Secured electronic signature.

2.1.4 Standard Transaction Terms

Standard transaction terms, which were not regulated under the Code, have been regulated in a new provision set forth under Article 20 of the New Code. As defined in Article 20 of the New Code, standard transaction terms are defined as the provisions of an agreement which has been previously drafted and submitted to another party by either of the parties for use in other, similar agreements to be executed in the future. Banks, insurance companies and companies producing and marketing durable consumer goods unilaterally prepare the terms and conditions of the agreements regulating their future relationships. Terms and conditions of agreements which have been previously prepared are called the “standard transaction terms.”

Such unilaterally prepared agreements are not subject to negotiation and bargaining over their execution. In this type of agreement, the controlling party is the merchants supplying the product or services. Due to the necessity to protect the weaker party, standard transaction terms are regulated in the New Code as mandatory provisions and are applicable to all kinds of agreements. Accordingly, in Article