

# client alert

CORPORATE & EMPLOYMENT LAW | TURKEY

JANUARY 2014

## BRIEF REMINDERS FOR THE BEGINNING OF THE YEAR

As the new year starts, it is time for all companies operating in Turkey to remember a few practical actions they need to implement in terms of corporate law, and a few yearly updates they need to apply in terms of employment, such as minimum wage and penalties for breach of the labour legislation.

This Client Alert aims to provide a brief overview of these matters.

### CORPORATE MATTERS

#### Activity Report

Pursuant to the Regulation on the minimum content of companies' activity reports, the board of directors shall prepare an activity report within the first two months of the new financial year to inform shareholders of the activities performed by the company during the previous financial year. This report shall be submitted to the approval of the shareholders during the ordinary meeting of the general assembly which shall, according to Turkish Commercial Law, take place during the first three months of the new financial year.

The activity report shall include at least the following: (i) general corporate information, (ii) details on financial benefits granted to members of the board of directors and to senior managers, (iii) descriptions of research and development activities performed, (iv) reminders of corporate activities and important developments, (v) information on the financial situation of the company, and (vi) potential threats.

#### Group Report

In cases where a company qualifies as a "controlled company" (in Turkish *bağlı şirket*) belonging to a group of companies pursuant to the provisions of the Turkish Commercial Code, its board of directors shall prepare a separate report **within the first three months of the new financial year**, focusing on transactions with its controlling shareholder and affiliates thereof performed during the previous financial year. This report shall in particular describe all actions taken and/or avoided in favour of the controlling company or its affiliates.

Highlights of this report shall also be reflected in the yearly activity report to be submitted by the board of directors to the general assembly (see above).

## Books

Pursuant to the Communiqué on corporate books, all commercial companies established in Turkey are liable for keeping the following mandatory books: (i) a general assembly decisions book, (ii) a board of directors' resolutions book, (iii) a share ledger, (iv) a journal, (v) a general ledger and (vi) an inventory ledger.

The first use of the corporate books is subject to prior certification by a notary public. At the beginning of each new financial year, these corporate books may again be subject to additional certification procedures on the basis of the following principles:

- (a) The company may continue to use (i) the general assembly decisions book and (ii) the share ledger without further re-certification, provided that they still contain sufficient empty pages;
- (b) The company may continue to use (i) the board of directors' resolutions book, (ii) the journal, (iii) the general ledger and (iv) the inventory ledger, subject to re-certification of these books by a notary public **during the first month of the new financial year**, and provided that they still contain sufficient empty pages.

Failure to comply with the above may lead the company to pay administrative fines and engage the responsibility of the board of directors.

## EMPLOYMENT-RELATED MATTERS

### Severance payment

As a matter of principle, payment of a severance indemnity (in Turkish *kıdem tazminatı*) is mandatory in the event of labour contract termination by the employer, except as regards dismissals arising from employee conduct that is in breach of principles of ethics and good faith described under Article 25/II of the Turkish Labour Law (termination without notice). In any event, the employee must have worked for at least one year to be entitled to a severance indemnity payment.

This indemnity is equal to one month's salary per year of seniority, and is applied on a *pro rata* basis for the last year worked by the employee. The calculation of the severance indemnity is based on the last gross salary including all other financial benefits received by the employee. The severance indemnity is exempt from income tax and social security contributions. Regardless of the reference salary of the employee, the severance indemnity is limited to a ceiling amount fixed annually by a Decree of the Council of Ministers.

The ceiling amount for the period between 1 January 2014 and 30 June 2014 has been recently set to **3,429.44 Turkish Liras**.

### Minimum wage imposed by law

As is well known to all companies operating in Turkey, employment legislation provides for minimum wage that should be taken into consideration when determining lower-level salaries.

For the year 2014, the amount of this minimum wage has been revised as follows:

#### DAILY AND MONTHLY MINIMUM GROSS SALARY FOR 2014

Applicable Periods	Daily Minimum Amount (TL)	Monthly Minimum Amount (TL)
1 January 2014 – 30 June 2014	35.70	1,071
1 July 2014 – 31 December 2014	37.80	1,134

### Administrative Fines

In keeping with usual practice, the amounts of main administrative fines applicable to employers in the event of non-compliance with the provisions of the Turkish Labour Law have been revised for this new year.

Accordingly, the following figures shall be applicable starting from 1 January 2014:

Articles of the Labour Law	Sanctioned Acts	Applicable Fine (TL)
<b>3,98</b>	In case of misrepresentation in the subcontractor relationship, the employer, the subcontractor or their representatives are liable for the following amount:	15,226
<b>5, 99/a</b>	In case of violation of the principle of equal treatment among employees, the employer is liable for the following amount for each employee concerned:	122
<b>8, 99/b</b>	In case of absence of the explanatory document which describes the labour conditions to the employee, the employer is liable for the following amount for each employee concerned:	122
<b>28, 99/c</b>	In case of non-issuance of or provision of false information under the certificate of good service at the time of termination of the labour contract, the employer is liable for the following amount for each employee concerned:	122
<b>29, 100</b>	In case of non-compliance with the provisions related to the collective dismissal, the employer is liable for the following amount for each employee concerned:	504
<b>30, 101</b>	In case of failure to employ disabled personnel, the employer is liable for the following amount for each month and each disabled person that was not employed:	1,904
<b>32, 102/a</b>	In case of deliberate non-payment of the wage stipulated by Labour Law, collective labour agreement or labour contracts, the employer is liable for the following amount for each month and for each employee concerned:	139
<b>39, 102/a</b>	In case of non-payment of or payment below the minimum wage or in case of non-payment of the wage to a bank account, the employer is liable for the following amount for each month and for each employee concerned:	139
<b>37, 102/b</b>	In case of non-issuance of a pay slip, the employer is liable for the following amount for each employee:	504
<b>38, 102/b</b>	In case of application of deduction to the salary as a punishment in violation of the Labour Law, the employer is liable for the following amount for each employee concerned:	504
<b>41, 102/c</b>	In case of non-payment of overtime wages or if the employer fails to allow the employee to use the free time to which the employee is entitled, within six months; or if the employer fails to obtain the employee's approval for extra hours' work, the employer is liable for the following amount for each employee concerned:	246
<b>56, 103</b>	In case of unlawful division of the annual paid leave into segments, the employer is liable for the following amount for each employee concerned:	246
<b>57, 103</b>	In case of non-payment of the salary for annual paid leave or in case of a payment that is below the amount due, the employer is liable for the following amount for each employee concerned:	246

*In compliance with Turkish bar regulations, opinions relating to Turkish law matters which are included in this Client Alert have been issued by Özdirekcan Bilgiç Dündar Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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