Legality

"A seminal publication of Şengün Group"

June - July 2024 | E-Bulletin

JUNE - JULY 2024

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Editor’s Note

Dear Reader,

Şengün Academy presents its June-July 2024 newsletter that covers the latest national and international developments.

Our articles include Roles and Responsibilities of Board Members within the Scope of ESG and What to Expect from the Bill on Crypto-Assets.

As the guest sector of the month, we will trace the development of the renewable energy sector.

In our article on World Environment Day, June 5, we will elucidate the measures to protect the right to live in a healthy environment.

Our “News to the World” section will compile the latest regulations, decisions, communiqués, laws, arrangements and amendments concerning national and international relations.

In “World News”, we will report on the latest global developments with transparency as our guiding principle.

We will announce the latest news from our team in “News from Şengün”.

Enjoy reading!

Istanbul, June - July 2024
Şengün Academy

Legality / Editor’s Note

Articles

Article

Roles and Responsibilities of Board Members within the Scope of ESG

I. Introduction

The rapid progress of industrialization, the perception that natural resources are unlimited and the fact that they are the largest raw material in the hands of the capital sector have paved the way for a global climate crisis, and in today's world, this crisis is growing rapidly in the production/consumption spiral.

Especially since the capital sector uses natural resources extremely unpredictably, climate changes and global warming have already brought even a minimally livable environment/world for humanity to an unsustainable point. This is why despite the existence of global climate crises, many regulations have begun to be made on this risky issue worldwide, aiming to create a sustainable and green environment and prevent the destruction of natural resources, even if not at the same pace.

First, the concept of "sustainability" gained importance and, in parallel with historical developments, took its place on the world agenda with the "Brundtland Report" prepared and published by the United Nations World Commission on Environment and Development in 1987. The perception of meeting today's needs without ignoring the need to meet the needs of future generations has now been replaced by policies to reduce the effects of the climate crisis.

Another reflection of this policy is the abbreviation known as ESG, meaning Environmental, Social and Governance. It first entered our lives in 2004 with the work titled "Who Cares Wins", which was written after the publication of the United Nations Global Compact.

ESG essentially:

- Draws the field of action of companies in the field of sustainability activities.
- Plays a role in determining internal and social responsibilities within the company.
- Supports investment planning and risk management strategies concerning environmental factors in company policies.

Although it is not as broad as the concept of sustainability, it is an important building block in creating an action plan in determining environmental and social policies.

II. Evaluation of Obligations

As sustainability and therefore ESG gain importance, some regulations have been introduced for the duties and responsibilities of the board of directors, which is the most important body of companies. In fact, important legal regulations regarding sustainability and ESG have been implemented in our country as well as in the world; relevant regulations include the Green Deal Action Plan dated July 16, 2021, prepared by the Ministry of Commerce, and the Paris Climate Agreement, which entered into force on October 7, 2021. However, the Turkish Commercial Code No. 6102 ("TTK") and the Capital Markets Law No. 6362 ("SPK") and related regulations and communiqués determine the framework of ESG studies and managerial plans and responsibilities for companies.

Since there is no clear ESG regulation on how companies should carry out their activities in the private sector, the action plan is generally drawn up in company internal regulations, company policies and, in fact, company articles of association, and the importance of the issue is firstly stated following Article 369 of the Turkish Commercial Code No. 6102, *"Members of the board of directors and third parties charged with management are under the obligation to fulfill their duties with the care of a prudent manager and to protect the interests of the company by complying with the rules of honesty."*

Again, with the amendment made for the first time in 2022 with the regulation of Article 88/6 of the same Law, *"Public Oversight, Accounting and Auditing Standards Authority is authorized to determine and publish the Turkish Sustainability Reporting Standards in line with international standards in order to ensure uniformity in practice and international validity of sustainability-related reporting for the businesses and organizations it determines. Institutions and boards established by law to regulate and supervise certain areas can make detailed regulations regarding the standards that will be valid for their own areas, provided that they comply with the Turkish Sustainability Reporting Standards."*

With this article, the Public Oversight, Accounting and Auditing Standards Authority has been authorized specifically for companies. It has been activated to determine and publish "Turkish Sustainability Reporting Standards in line with international standards to ensure uniformity in practice and international validity of sustainability-related reporting for the businesses and organizations it has determined". To determine the framework of these studies, IFRS S1 General Provisions on Disclosure of Sustainability-Related Financial Information (Draft) and IFRS S2 Climate-Related Disclosures (Draft) texts have been published[1].

[1] https://www.kgk.gov.tr/ContentAssignmentDetail/4874/UFRS-S1-Su%CC%88rdu%CC%88ru%CC%88lebilirlikle-I%CC%87lgili-Finansal-Bilgilerin-Ac%CC%A7%C4%B1klanmas%C4%B1na-I%CC%87lis%CC%A7kin-Genel-Hu%CC%88ku%CC%88mler-Taslak-Metin; https://www.kgk.gov.tr/ContentAssignmentDetail/4875/UFRS-S2-I%CC%87klimle-I%CC%87lgili-Ac%CC%A7%C4%B1klamalar-Taslak-Metin

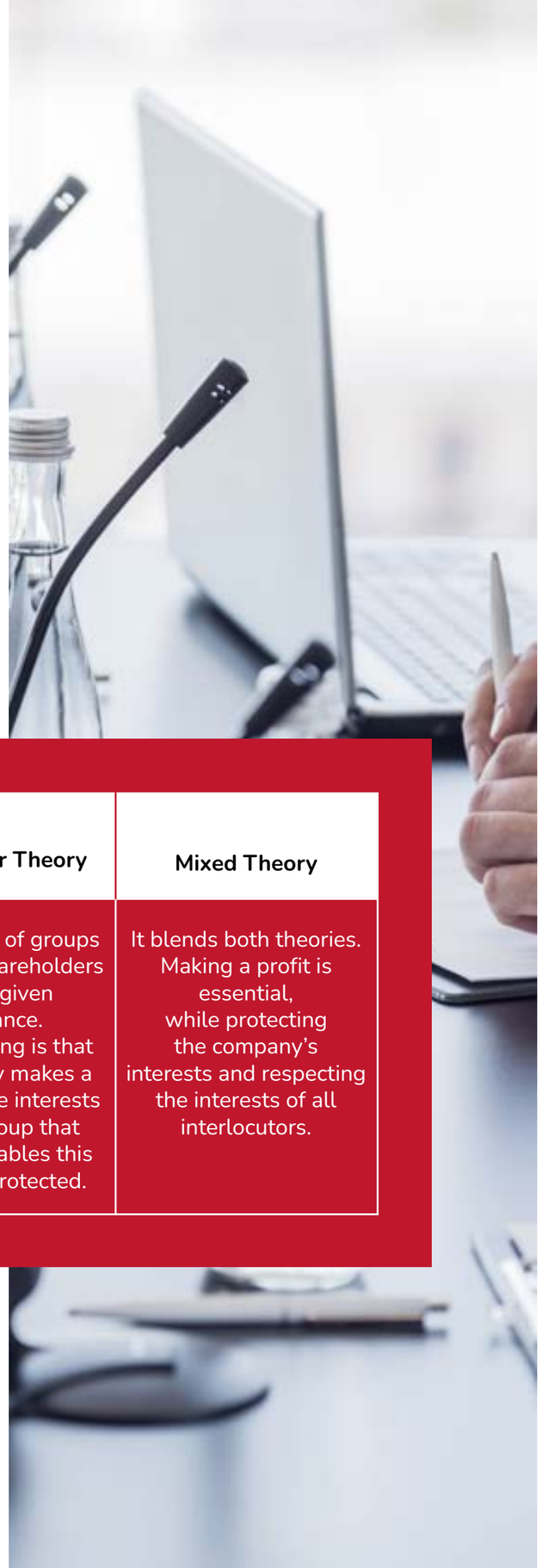
Again, in determining the liability limits, CMB has determined the limitations and implementation techniques by publishing the Corporate Governance Principles ("KYI") and the Corporate Governance Communiqué ("KYT"). Because the main thing is to directly inform the public, who has a superior interest, and it is important for the addressees to fulfill their obligations to inform/provide information, especially in terms of "sustainability" and ESG.

For this reason, Article 369 of the Turkish Commercial Code No. 6102 should be taken into account in terms of the subject, which states, *"Members of the board of directors and third parties charged with management are under the obligation to fulfill their duties with the care of a prudent manager and to protect the interests of the company by complying with the rules of honesty."* Because the article clearly states that in case of conflict of interests, the primary interest is the company's interest.

Again, Article 553/1 of the same Law regulates the responsibilities of the company's board of directors in case the company, its shareholders or the company's creditors suffer a loss due to the representation and binding of the board of directors as the body responsible for the management and representation of the company.

Based on these regulations, for the liability of board members, (i) fault (ii) damage (iii) unlawful act (iv) causal link are required. Both indirect and direct damages are liable. However, as we have stated, this responsibility is a responsibility of care.

In the light of these explanations, it would be appropriate to examine the ESG responsibilities of the board members in terms of sustainability. Because it is not possible to talk directly about the responsibility of the board of directors for sustainability or ESG. There is no direct regulation regarding this. It is also open to interpretation what kind of duty of care the board of directors should have in hierarchical terms in the interests review in terms of ESG protection, which is also in the public interest, and there are some regulations in the international arena as well as in Türkiye. However, investigations are carried out based on three different views.



Shareholder Primacy	Stakeholder Theory	Mixed Theory
What matters is the interest of the shareholder. Because the interest of the shareholder is the interest of the company.	The interests of groups other than shareholders are also given importance. The main thing is that the company makes a profit, and the interests of every group that mediates/enables this should be protected.	It blends both theories. Making a profit is essential, while protecting the company's interests and respecting the interests of all interlocutors.

In other words, in all three theories, the important thing is the sustainability of the company and the company's profit. However, in the performance of these actions, neither other interest groups should be harmed nor society and environmental interests should be destroyed.

III. Conclusion

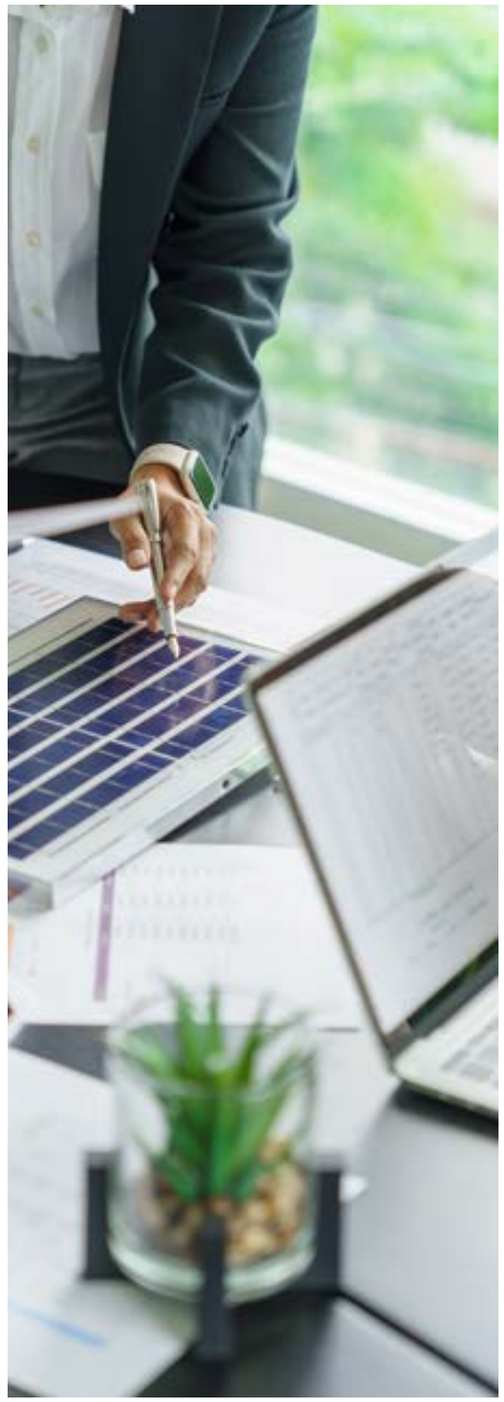
In fact, taking steps for improvement efforts by evaluating both environmental and social responsibility factors together will simultaneously accelerate the company's interests and will not contradict the principle of effective and careful use of management power.

Board members should draw an action plan regarding ESG under the following headings;

- Identifying activities that negatively affect or have the potential to affect society and the environment,
- Carrying out improvement works based on the determinations,
- If it is possible to eliminate the issues that create negativity as a result of the findings, a road map should be prepared to minimize them.

In fact, with this management policy to be created, the board members will also have the duty of care within the scope of their duties. Although the main principle is that the company should make a profit, the principle of protecting the public interest, environmental and social needs should not be ignored.

Gülşah Güven, LL.M.,
Managing Senior Associate



Article

What to Expect from the Bill on Crypto-Assets?

The Bill Amending the Capital Markets Law, including regulations on crypto-assets, was adopted by the Plan and Budget Commission of the Grand National Assembly of Türkiye on May 30, 2024. It will be effective upon approval by the General Assembly.

The main amendments proposed in the bill aiming to regulate and supervise the cryptocurrency market are as follows:

I. New definitions have been introduced.

Thus, the bill has extended the Capital Markets Law to include definitions for "crypto-asset", "wallet", "crypto-asset service provider", "crypto-asset custody service" and "platform" in order to establish their legal basis. They are defined as follows:

Crypto-asset: Intangible assets that can be created and stored electronically using distributed ledger or similar technology for distribution over digital networks to denote value or rights,

Wallet: Crypto wallets,

Crypto-asset service provider: Organizations providing all types of services related to crypto-assets, especially their custody or initial sale or distribution,

Crypto-asset custody service: Custody and management services for platform users' cryptocurrencies or private keys,

Platform: Organizations performing actions relevant to crypto-assets, such as trading, initial coin offering (ICO) or distribution, exchange, transfer, and custody and other transactions.

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II. The Capital Markets Board has been granted new powers.

The Capital Markets Board ("SPK") will establish the principles for the issuance of capital market instruments as crypto-assets and their recording and monitoring in an electronic platform offered by service providers, where they are created and stored, instead of being monitored by the Central Securities Depository Institution ("MKK"). When capital market instruments are issued as crypto-assets, electronic records will constitute the basis for asserting rights, using them in relation to third parties and transferring them. The SPK may require integration between these electronic records and the MKK's system and will establish the relevant procedures and principles.

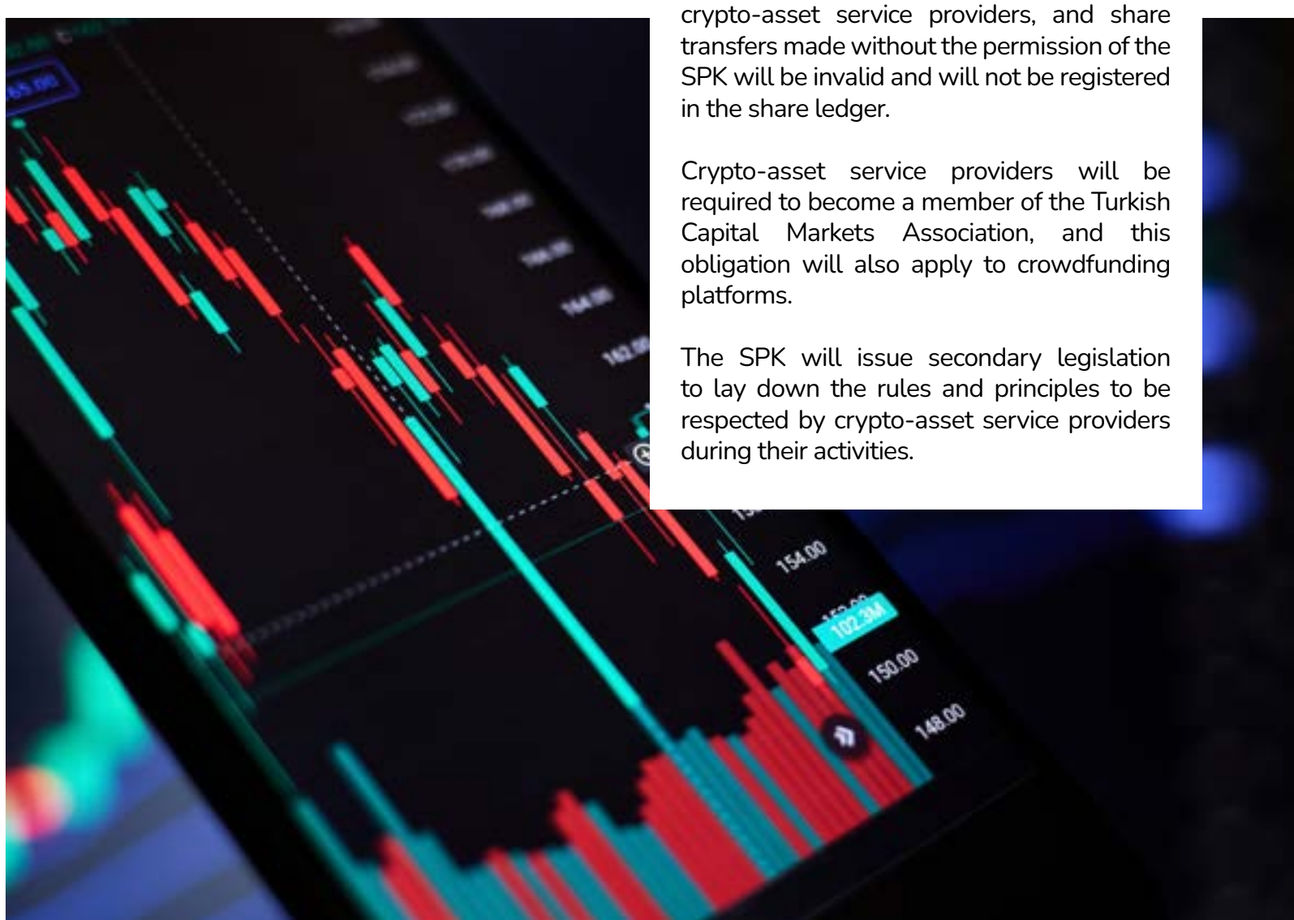
III. Various obligations have been imposed on crypto-asset service providers.

In accordance with the Bill, crypto-asset service providers have to obtain permission from the SPK to start their their business. These organizations will undertake the activities required by the SPK. The SPK will lay down the principles concerning such organizations' incorporation, activities, shareholders, managers, personnel, organization, capital and capital adequacy, liabilities, information systems and technological infrastructure, share transfers, permitted activities, and temporary or permanent suspension of activities.

Moreover, the permission of the SPK will be required for the share transfers of crypto-asset service providers, and share transfers made without the permission of the SPK will be invalid and will not be registered in the share ledger.

Crypto-asset service providers will be required to become a member of the Turkish Capital Markets Association, and this obligation will also apply to crowdfunding platforms.

The SPK will issue secondary legislation to lay down the rules and principles to be respected by crypto-asset service providers during their activities.



IV. Customer rights will be secured.

Customers' crypto-assets and cash will be secured and kept separate from the assets of crypto-asset service providers. They will not be seized or pledged for service providers' debts. The SPK will establish the principles regarding the interest accrual of client accounts in banks.

In addition, any contractual terms that eliminate or limit the liabilities of crypto-asset service providers to their customers will be void and null.

V. Service providers that violate the relevant regulations will suffer penalties.

The SPK will inspect crypto-asset service providers. The Scientific and Technological Research Council of Türkiye (TÜBİTAK) or other relevant organizations will be responsible for the independent audit of information systems during such inspections. Service providers violating the relevant regulations will incur administrative fines.

Moreover, unauthorized persons providing crypto-asset services will be sentenced to imprisonment from three to five years and suffer a judicial fine from five thousand days to ten thousand days.

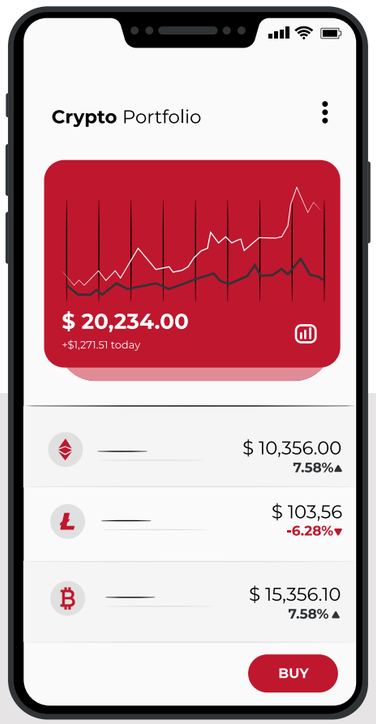
Unauthorized persons providing crypto-asset services will be sentenced to imprisonment from three to five years and suffer a judicial fine from five thousand days to ten thousand days.

VI. Opinion

If the bill becomes law, crypto-asset platforms, service providers and custodians will have a legal framework to comply with during their operations. The regulations proposed by the Bill aim to increase security and order in the cryptocurrency market. If the proposed regulations are implemented and inspected properly, users who trade crypto-assets are likely to enjoy a safer environment in the new cryptocurrency market.

The Bill also authorizes the SPK to issue secondary legislation and grants discretion in various areas. Upon the adoption of the Bill, the SPK's secondary legislation will be key in shaping the Turkish crypto-asset market.

İrem Öztürkmen, Associate



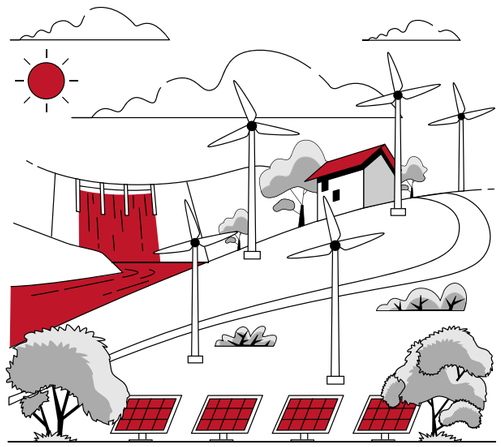
Guest Sector

Guest Sector

Industry of Renewable Energy

Renewable energy refers to energy derived from natural resources, such as sun, wind, water, geothermal, animal and plant waste, and replenished by itself, i.e. energy that is constantly available as part of its own transformation. Examples include solar energy, wind energy, biomass energy, geothermal energy, hydroelectricity, hydrogen energy and wave power.

Due to the global population increase and rapid industrial development, energy demand is on the rise. Although the increased energy demand is largely met by non-renewable energy sources, such as oil, natural gas, nuclear energy and coal, their negative impact on the environment and human health, and the fact that we are expecting to run out of oil in 50 years and natural gas in about 200 years push us towards eco-friendly and affordable energy sources. Therefore, countries can turn to legislation and various incentives to promote renewable energy sources.



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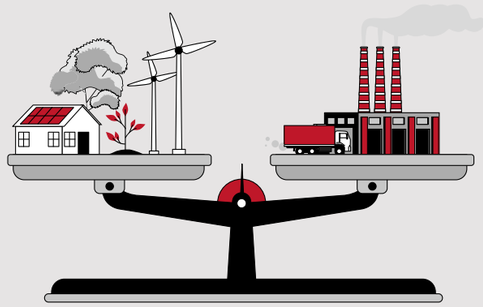
Energy production is crucial for industrialization in developing countries like Türkiye. Thanks to its geopolitical location, climate diversity, four seasons, etc., Türkiye is rich in renewable energy such as solar, wind, geothermal, hydropower and biomass. According to statistics for 2023 released by the Ministry of Energy and Natural Resources, Türkiye generated 36.3% of its electricity from coal, 21.4% from natural gas, 19.6% from hydropower, 10.4% from wind, 5.7% from solar, 3.4% from geothermal and 3.2% from other sources. The statistics announced by the Ministry on 24.06.2024 show that the number of power plants in Türkiye increased to 25,825 (including unlicensed power plants) by the end of May 2024. 763 of the existing power plants are hydropower, 69 coal, 367 wind, 63 geothermal, 359 natural gas, 23,730 solar and 474 other sources. According to other research, Türkiye ranks 12th in the world with its investments in renewable energy in the last decade.



Türkiye ranks 12th in the world with its investments in renewable energy in the last decade.

Although the renewable energy industry is growing rapidly and countries are increasingly turning to it, there are ongoing challenges in the sector. The major problems can be listed as follows: (i) lack of investment and financing, (ii) lack of infrastructure and technology, (iii) lack of energy storage investments, (iv) obstacles in license and permit acquisition, and (v) difficulty in finding qualified personnel.

Companies wishing to invest in renewable energy face difficulties in accessing funds. Lack of investment and financing is being addressed through financial instruments such as government incentives, green bonds and private sector partnerships. Deficiencies regarding the necessary infrastructure and technology in renewable energy projects affect their success. Therefore, companies must adapt their infrastructure to innovative technologies and make the necessary contacts and investments. Renewable energy sources such as wind and solar are often unstable. Energy storage technologies are crucial to stabilize them. Companies should invest in and develop energy storage systems. While the necessary licenses and permits must be obtained for renewable energy investments, bureaucracy and process obstacles can make it difficult to complete the project on time. To overcome the bureaucratic obstacles faster, companies should prepare the application information and documents completely and accurately with professionals and, if necessary, be in contact with local authorities.

The Ministry of Energy and Natural Resources provides state support/ incentives for renewable energy, solar energy, wind energy, energy efficiency and energy saving. The Ministry also supports energy efficiency projects (Efficiency Improvement Project - “VAP”). The supported projects for energy efficiency include the use of equipment and systems, repair, insulation, modification, rehabilitation, prevention of unnecessary energy use, prevention or minimization of energy waste, energy losses and leakages, and energy recovery. The Ministry partners with companies in “Voluntary Agreement Incentives”, which warrant to reduce energy intensity by at least 10% in three years. Moreover, the Ministry provides fifth region incentives as well as VAT and customs exemption incentives with the “General Investment Incentive System”. In addition to the Ministry, other institutions and organizations also provide incentives and/or loans for energy efficiency, such as the Technology Development Foundation of Türkiye and the World Bank.

Betül Önal Payze, Executive Associate

Legality / Guest Sector

Special Day

Special Day

World Environment Day, June 5

Right to Life

World Environment Day was declared by the United Nations (UN) in 1972 with the aim of increasing environmental awareness and drawing attention to global environmental issues.

It was decided to celebrate June 5th as World Environment Day each year at the United Nations Conference on the Human Environment held in Stockholm. This conference also paved the way for the establishment of the United Nations Environment Programme (UNEP).

First celebrated in 1974, the theme of World Environment Day was “Only One Earth”. Since then, a different theme has been chosen each year to draw attention to environmental issues. These themes usually focus on the most significant environmental problems of that year and encourage individuals, communities, and governments to contribute to finding solutions to these problems.

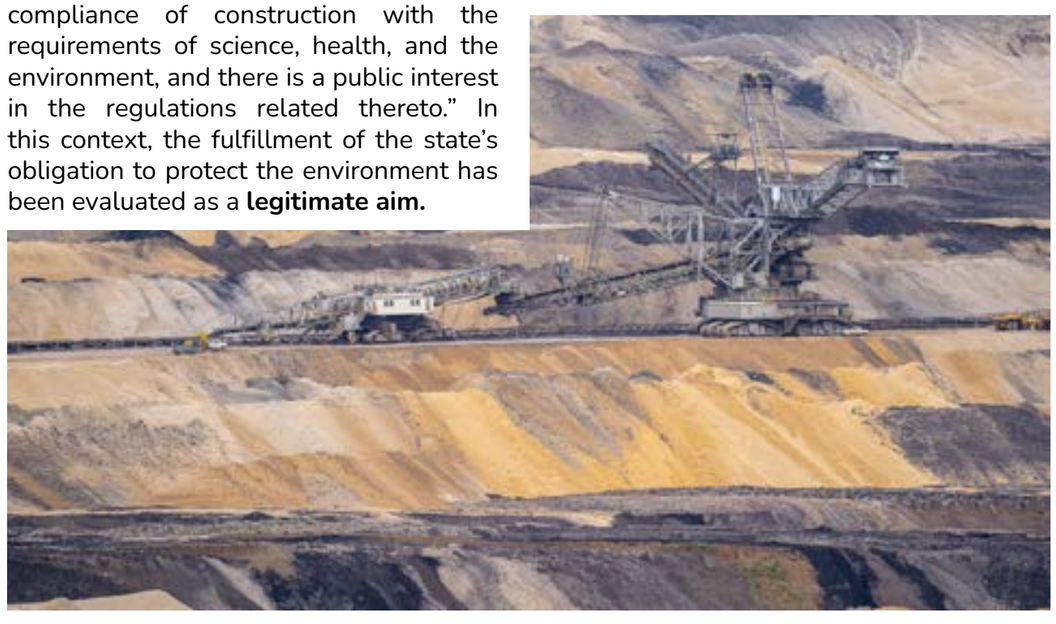
Today, on this special occasion, attention is being drawn to the right to live in a healthy environment, which is guaranteed by the Constitution. Article 56 of the Constitution stipulates that everyone has the right to live in a healthy and balanced environment. Within the scope of this provision, the duties of the state and citizens to protect and improve the environment and prevent pollution are also imposed in the second paragraph of the same article. Since the right to live in an unhealthy environment cannot be discussed, this regulation ensures that the most fundamental right, the right to life, is applicable and sustainable.

First celebrated in 1974, the theme of World Environment Day was “Only One Earth”.

The reflection of the relevant regulation in judicial decisions is exemplified as follows:

o **In its decision dated 16.02.2022 within the scope of Application No. 2019/16373, the Constitutional Court stated:** “Article 56 of the Constitution regulates that everyone has the right to live in a healthy and balanced environment; it is stated that it is the duty of the state and citizens to improve the environment, protect environmental health, and prevent environmental pollution. Ensuring that structures to be built comply with zoning regulations and that all structures, except those clearly stated to be exempt from permit according to the relevant legislation, are subject to permits, thus ensuring that construction is carried out in accordance with the requirements of science, health, and the environment, are significant in creating healthy, safe, quality, and economical living environments. In this respect, it should be accepted that there is a public interest in ensuring the compliance of construction with the requirements of science, health, and the environment, and there is a public interest in the regulations related thereto.” In this context, the fulfillment of the state’s obligation to protect the environment has been evaluated as a **legitimate aim.**

o **Likewise, in the case numbered 2017/34596, the Constitutional Court stated:** “...On the other hand, Article 56 of the Constitution, which states ‘Everyone has the right to live in a healthy and balanced environment,’ continues as follows: ‘It is the duty of the State... to improve the natural environment, to protect the environmental health and to prevent environmental pollution.’ Mining activities, while providing economic benefits, also lead to various environmental problems. Foremost among these is subsidence. Subsidence can cause changes in natural slope on the earth’s surface, thus leading to events such as erosion, movement, landslide, and collapse. Therefore, taking necessary precautions to prevent environmental damage due to subsidence during mining activities carried out by the state or natural persons and legal entities with the permission of the state is the constitutional duty of the state.” Thus, the Constitutional Court practically demonstrates **the state’s obligation**.



o **In the case numbered 2017/39159, the Constitutional Court,** in its examination of the allegation that the right to property was violated due to the imposition of administrative fines for failure to dispose of hazardous wastes buried in the factory area, stated in its decision dated 26.02.2020: "*... Property right can only be restricted for public interest purposes in accordance with Articles 13 and 35 of the Constitution. Since the concept of public interest allows the restriction of property rights only in cases where the public interest requires it, it effectively protects the right to property by stipulating that a restriction cannot be made outside the public interest purpose of property rights. The concept of public interest is a concept that brings with it the discretion of state organs and needs to be evaluated separately on each concrete case. Article 56 of the Constitution regulates that everyone has the right to live in a healthy and balanced environment; it is stated that it is the duty of the state and citizens to improve the environment, protect environmental health, and prevent environmental pollution. Accordingly, taking measures to improve the environment, protect environmental health, and prevent environmental pollution is one of the basic duties of the state. In this respect, the state is obliged to establish an effective legal system to ensure the protection of the environment. In this context,* ***it is indisputable that there is a public interest*** *in sanctioning violations of environmental legislation for the protection of the environment. Therefore,* ***there is a clear public interest*** *in imposing administrative fines for failure to dispose of hazardous wastes in violation of environmental regulations. ... In this case, when compared with the public interest purpose contained in the intervention and especially considering that the applicant contributed to the violation of the law through his own fault, it is considered that the intervention did not impose an excessive burden on the applicant personally. Therefore, it is concluded that the fair balance between the right to property of the applicant and the public interest has not been disturbed and the intervention is proportionate.*" Thus, the Constitutional Court highlights the public interest in living in a balanced environment. In this regard, it states that there is a legitimate aim and concludes that the right to property was not violated.

The right to live in a healthy and balanced environment, as demonstrated by the above decisions, is an individual and societal right, and the violation of this right is contrary to the public interest. The implementation of the duty to protect and ensure this right has been concretized through judicial decisions. A livable world will only be possible with the fulfillment of our duties towards the environment.

As Aziz Nesin said, "A dirty environment dirties the soul of a person, and dirty souls dirty the environment."

Öykü Güldürmez, Associate

News to the World

Legality
News to the World

Law No. 7511 Amending the Turkish Commercial Code and Some Other Laws

Law no. 7511 Amending the Turkish Commercial Code and Some Other Laws has been published in the Official Gazette no. 32560 of 29 May 2024.

The Law amends the Act on the Protection of Competition, the Turkish Commercial Code, and the Law on Consumer Protection.

A. Amendments to Act No. 4054 on the Protection of Competition

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
Status of the Personnel of the Authority **ARTICLE 34/3** *(Repealed the second and third sentences: the Decision of the Constitutional Court dated 6/6/2013 and numbered E.: 2013/47, K.: 2013/72)* Within the limits of the current position titles or the position titles included in the tables attached to the Presidential Decree dated 10/7/2018 and numbered 2 on General Positions and Procedures, the Board is authorized to establish the rules and procedures for changing the service classes, positions, titles and degrees as well as for utilizing these positions, provided that the number does not exceed the total number of positions in the attached Table no (I).	**Status of the Personnel of the Authority** **ARTICLE 34/3** *(Amended: 23/5/2024-7511/3 art.)* The Board shall decide to change degrees in occupied positions and classes, titles and degrees in vacant positions, provided that the number does not exceed the total number of positions in the attached Table no (I) and within the limits of the position titles included in the same table and the position titles included in the tables attached to the legislation regarding positions.

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
Initiating an Investigation, Commitments and Settlements **ARTICLE 43/2** The Board notifies the parties concerned of the investigations initiated by it, within 15 days of issuing the decision for the initiation of investigation, and requests that the parties submit their first written pleas within 30 days. In order to initiate the first written reply period granted to the parties, it is required that the Board should send to the parties concerned this notification letter, accompanied by adequate information as to the type and nature of the claims.	**Initiating an Investigation, Commitments and Settlements** **ARTICLE 43/2** The Board notifies the parties concerned of the investigations initiated by it, within 15 days of issuing the decision for the initiation of investigation. The Board sends to the parties concerned this notification letter, accompanied by adequate information as to the type and nature of the claims.
Notice and Reply **ARTICLE 45/2** Those found to have infringed this Act are notified that they should submit their written pleas to the Board within 30 days. Those charged with conducting the investigation submit an additional written opinion within 15 days against the pleas to be submitted by the parties, and this is also notified to all members of the Board and the parties concerned. The parties may reply to such opinion within 30 days. In case justifiable grounds are provided, these periods may be extended only once and by one fold at the most.	**Notice and Reply** **ARTICLE 45/2** The parties are notified to send their written pleas to the Board within 30 days from the notification of the investigation report. In case justifiable grounds are provided, these periods may be extended only once and by one fold at the most. Those charged with conducting the investigation notify all Board members and the parties concerned of their written opinions within 15 days if there is a change in their opinions in the investigation report as a result of the written pleas. The parties may reply to such opinion within 30 days.

B. Amendments to Turkish Commercial Code No. 6102

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
Distribution of Duties **ARTICLE 366/1** Every year, the Board of Directors elects a chair among its members and at least one vice chair to represent the chair in case of absence. The articles of association may stipulate that the chair and vice chair or one of them be elected by the general assembly.	**Distribution of Duties** **ARTICLE 366/1** The Board of Directors elects a chair among its members and at least one vice chair to represent the chair in case of absence. The articles of association may stipulate that the chair and vice chair or one of them be elected by the general assembly.
Inalienable Duties and Powers **ARTICLE 375/1/d** Appointment and dismissal of directors, persons with the same function and those who have signing authority.	**Inalienable Duties and Powers** **ARTICLE 375/1/d** Appointment and dismissal of directors, except for branch managers, and persons with the same function.
The Right to Information and Examination **ARTICLE 392/7** Each member of the board of directors may request in writing from the chair to call the board of directors for a meeting.	**The Right to Information and Examination** **ARTICLE 392/7** Each member of the board of directors may request in writing from the chair to call the board of directors for a meeting. If the request is deemed appropriate, the chair shall call for a meeting. However, upon the written request of the majority of the board members, the chair shall call the board of directors for a meeting to be held within maximum thirty days

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
	from the date of receipt of the request. If the board of directors is not called for a meeting within this period or the chair or the vice chair of the board of directors cannot be reached, the call may be made directly by the requesting parties. The first paragraph of article 390 will apply to the meeting and decision quorums at the meetings held upon a call. The articles of association may require a different procedure for calling the board of directors for a meeting.
PROVISIONAL ARTICLE 7/15 In matters not regulated in this article, the procedures stipulated in the relevant laws and articles of association shall be followed. Any assets that may arise from companies or cooperatives whose titles have been deleted without being liquidated in accordance with this article shall be transferred to the Treasury ten years after the date on which the registration regarding the title is deleted. The Treasury is not held responsible for the debts of these companies and cooperatives. Regarding the responsibilities of the liquidators, the provisions of this Law or the Cooperatives Law shall apply, without prejudice to the provisions regarding liability in special laws. The creditors of the company or cooperative whose registration has been deleted from the trade registry and those who have legal interests may apply to the court within five years from the date of	**PROVISIONAL ARTICLE 7/15** In matters not regulated in this article, the procedures stipulated in the relevant laws and articles of association shall be followed. Any assets that may arise from companies or cooperatives whose titles have been deleted without being liquidated in accordance with this article shall be transferred to the Treasury ten years after the date on which the registration regarding the title is deleted. The Treasury is not held responsible for the debts of these companies and cooperatives. Regarding the responsibilities of the liquidators, the provisions of this Law or the Cooperatives Law shall apply, without prejudice to the provisions regarding liability in special laws. The creditors of the company or cooperative whose registration has been deleted from the trade registry and those who have legal interests may apply to the court within five years from the date of

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
deletion based on justified reasons, and request the revival of the company or cooperative.	deletion based on justified reasons, and request the revival of the company or cooperative. In the proceedings to be held for the revival of the company or cooperative whose registration has been deleted in accordance with the procedure specified in this article, the relevant trade registry shall not incur any judicial expenses and attorney fees.
	**PROVISIONAL ARTICLE 15** (1)Joint stock and limited liability companies with capital below the minimum capital amount shall increase their capital to the amounts specified in articles 332 and 580 until 31/12/2026; otherwise, they will be deemed to have dissolved. Non-public joint stock companies that have adopted the registered capital system with issued capital of at least two hundred and fifty thousand Turkish liras will be deemed to have left the system unless they increase their initial and issued capital to five hundred thousand Turkish liras by the mentioned date.(2) At the general assembly meetings to be held to increase the capital to the amounts stipulated in articles 332 and 580, no meeting quorum will be required as resolutions will be adopted by the majority of the votes present at the meeting, and no privileges will be exercised against such resolutions.(3) The Ministry of Trade may extend the duration mentioned in the initial paragraph up to two times, each lasting one year.

C. Amendments to Law No. 6502 on Consumer Protection

BEFORE THE AMENDMENT	AFTER THE AMENDMENT
Board of Advertisement **ARTICLE 63/1** An Advertisement Board shall be established to set the principles to be complied by in commercial advertisements and to make the regulations for the protection of the consumer against unfair commercial practice, to review commercial advertisements within the framework of these principles and inspect them when necessary, and suspend or to correct or impose a fine with the same method as a result of the review and inspection or when necessary, to impose a precautionary suspension up to three months. The Board may transfer its authority of precautionary suspension to the President of the Board of Advertisement. The decisions of the Advertisement Boards are implemented by the Ministry.	**Board of Advertisement** **ARTICLE 63/1** An Advertisement Board shall be established to set the principles to be complied by in commercial advertisements and to make the regulations for the protection of the consumer against unfair commercial practice, to review commercial advertisements within the framework of these principles and inspect them when necessary, and suspend or to correct or impose a fine with the same method as a result of the review and inspection or when necessary, to impose a precautionary suspension up to three months, or to decide to remove the content and/or block access. The Board may transfer its authority of precautionary suspension to the President of the Board of Advertisement. The decisions of the Advertisement Boards are implemented by the Ministry.
Penalty Provisions **ARTICLE 77/10/b** b) With regard to manufacturers and importers breaching article 58: 1) An administrative fine of three hundred fifteen thousand Turkish liras will be imposed if they fail to obtain an after-sale service adequacy certificate,	**Sanction Provisions** **ARTICLE 77/10/b** b) With respect to article 58: 1) An administrative fine of one million one hundred and fifteen thousand Turkish liras will be imposed on manufacturers and importers violating the second paragraph if they fail to obtain an after-sale service adequacy certificate,
2) An administrative fine of five thousand Turkish liras will be imposed if they fail to register or update the registration in the system established by the Ministry, 3) If they fail to provide the minimum number of service stations after obtaining an after-sale service adequacy certificate, an administrative fine of five thousand Turkish liras will be imposed for each missing service station. 4) An administrative fine of five thousand Turkish liras will be imposed on each service station for any deficiencies and non-conformities.	An administrative fine of eighteen thousand Turkish liras will be imposed on the same for each service station if they fail to register or update the registration in the system established by the Ministry, 2) An administrative fine of eighteen thousand Turkish liras will be imposed on private service stations that do not use the phrase “private service” in an easily visible and readable manner in all kinds of media and activities in violation of the fifth paragraph, 3) An administrative fine of one hundred twenty-four thousand Turkish liras will be imposed on the manufacturers and importers who fail to provide the minimum number of service stations during the validity period of their after-sale service adequacy certificates in violation of the eighth paragraph for each missing service station.
PROVISIONAL ARTICLE 3/2 Regarding the immovable properties used for timeshare vacation for which a building license has been obtained as of the publication date of this article, timeshare, timeshare vacation providing real rights as part of the ownership share, or timeshare vacation providing personal rights may be sold, including prepaid sales, for five years from the publication date of this article.	**PROVISIONAL ARTICLE 3/2** Regarding the immovable properties used for timeshare vacation for which a building license has been obtained as of the publication date of this article, timeshare, timeshare vacation providing real rights as part of the ownership share, or timeshare vacation providing personal rights may be sold, including prepaid sales, for five years from the publication date of this article, timeshare vacation rights may be granted through cooperative or commercial company partnership or association or foundation membership, and those who do not have real rights on the property used for timeshare vacation may sell timeshare.

See the full Law at:

https://www.resmigazete.gov.tr/eskiler/2024/05/20240529-1.htm

Legality / News to the World

Communiqué on the Circulation of 5 Turkish Lira Coins

The Communiqué on the Circulation of 5 Turkish Lira Coins became effective upon publication in Official Gazette no. 32570 of 8 June 2024.

The new coin features:

An octangular Seljuk star pattern on the outer ring, a sign of moon & star where the ring and the center meets, with the outer contour of this pattern repeated to add depth, the logo of "Türkiye Yüzyılı" in the center, the number "5" to the left of it, the inscription "TÜRK LİRASI" at the bottom, and the year of minting below the inscription on its face.

A relief of Atatürk and the inscription "TÜRKİYE CUMHURİYETİ" around it on the reverse.

5 Turkish lira coins will be put into circulation following the publication of this Communiqué.

See the full Communiqué at:

https://www.resmigazete.gov.tr/eskiler/2024/06/20240608-4.htm

Communiqué (Export: 2024/2) Amending the Communiqué on Inward Processing Procedure (Export: 2006/12)

The Communiqué (Export: 2024/2) Amending the Communiqué on Inward Processing Procedure (Export: 2006/12) was published in Official Gazette no. 32576 of 14 June 2024.

The Communiqué became effective on its publication date with the addition of the following paragraph to the provisional article 37 in the Communiqué on Inward Processing Procedure (Export: 2006/12) published in Official Gazette no. 26382 of 20/12/2006:

"(3) Regarding inward processing certificates issued for items other than tariff headings 71.08, 7112.91, and 7113.19, before the enforcement date of this paragraph and after 1/1/2021, with export commitment account still open, an additional duration not exceeding half of the original certificate duration is granted upon approval of an application made to the Ministry within 6 (six) months from the enforcement date of this paragraph."

See the full Communiqué at:

https://www.resmigazete.gov.tr/eskiler/2024/06/20240614-3.htm

World News

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Competition Authority Investigates Apple

The Competition Authority has launched an investigation into Apple as part of its Mobile Ecosystems Industry Survey on the grounds that the electronics giant forces app developers to use its own payment system. The Authority has started the investigation to see whether Apple is violating the Competition Law upon finding out that the company was earning 30% commission through its own payment system.

As a result of the investigation, the Authority has discovered that app developers are being prevented from providing information about different payment channels, such as their own websites. At this stage, the Authority will question whether this restriction limits access to lower prices. The Authority has also found out that links to alternative channels to the app are also being blocked. In this framework, the Authority will also investigate whether Apple restricts app developers' freedom of choice by forcing them to use its payment system and whether it blocks other payment systems from entering Apple's ecosystem.

Russia could pay €30bn climate reparations for its invasion of Ukraine.

The war that has been going on since February 24, 2022, when Russia invaded Ukraine, may cost the Moscow government around €30 billion due to its climate damage. A comprehensive report by the Initiative for Greenhouse Gas Accounting of War (IGGAW) argues that Russia's activities in Ukraine emit approximately 175 million tonnes of carbon dioxide, the equivalent of the annual use of 90 million cars.

A third of the emissions results from military activities, especially the billions of liters of fuel used by Russian vehicles. This is the greatest source of emissions, corresponding to around 35 million tonnes of carbon dioxide. Another third is attributed to the huge amounts of steel and concrete needed for reconstruction.

In 2022, a resolution taken by the UN General Assembly (UNGA) required Russia to compensate Ukraine for the war, and the Council of Europe established a registry of damage. The climate emissions report will also become a part of this registry. "Russia is harming Ukraine but also our climate," says the IGGAW lead author Lennard de Klerk, adding that the Russian Federation should be made to pay for this, a debt it owes Ukraine and countries in the global south that will suffer most from climate damage.

Johnson & Johnson Reaches Settlement in Talc Powder Lawsuit

Johnson &Johnson (J&J) has agreed to pay $700 million to settle an investigation by 42 US states due to allegations that its talc-based products "cause cancer". The settlement resolves allegations that J&J misled customers about the safety of its talc products. J&J has refused talc charges, arguing that its talc products are safe and do not cause cancer. The company has faced tens of thousands of lawsuits, mostly from women with ovarian cancer and some with asbestos-related mesothelioma. Last year, J&J ceased the global sales of its talc-based baby powder and started using corn starch as its main ingredient. The company has proposed a $6.48 billion settlement to resolve such lawsuits and is ready to pay $11 billion to compensate all talc-related claims. A company official says the company continues to pursue several paths to achieve a final resolution and that it will continue to address the claims of those who do not want to participate in its bankruptcy resolution through litigation or settlement.

News from Şengün

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News from Şengün

The Swedish Chamber of Commerce in Türkiye organized the “SCC’s 2nd Nordic Cocktail & Reception” event, hosted by the Scandinavian consulates in Türkiye, on 28 May at Soho House Istanbul.

In the event where the President of the Swedish Chamber of Commerce delivered the opening speech, representatives of Scandinavian countries with consulates in Türkiye talked about their countries’ presence policies and plans in Türkiye.

The participants from Şengün & Partners Attorney Partnership were Gülşah Güven (Managing Senior Associate) and Öykü Güldürmez (Associate).

Deniz Akvaryum by NEOHUB held Deniz Akvaryum Talks on 29 May as part of its series of talks that address business topics every month as led by the topics’ experts. In the event, entrepreneurship models in Türkiye were discussed by Alp Eren Gokturk (Eczacıbaşı Holding Entrepreneurship Projects Manager), Aziz Köse (NEOHUB Innovation and Ecosystem Assistant General Manager), Haluk Akcalı (Fark Labs & Ion Embranes General Manager), Altuğ Tüfekçioğlu (AMPHERR AG Co-Founder and Operations Director), Eren Bekin (Wyseye Co-Founder), and Serpil Karadağ (Ecomercek Founder).

The participants from Şengün & Partners Attorney Partnership were Gülşah Güven (Managing Senior Associate) and Öykü Güldürmez (Associate).

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News from Şengün

The Entrepreneurial Organizations Platform (“Girişimci Kurumlar Platformu”) held a meeting in Izmir at İZQ Entrepreneurship Center with the participation of other platform members who are entrepreneurs in Izmir and reflect the region’s dynamic nature.

In the event where a variety of business topics were discussed, including entrepreneurship journey, innovation trends and gender equality, Şengün & Partners Attorney Partnership was represented as a member of the platform by Nedim Korhan Şengün (Founder and Attorney), Prof. Dr. Caner Yenidünya, Betül Önal (Executive Associate), and İrem Öztürkmen (Associate), all of whom contributed to the exchange of views on the business world.

TOBB UYUM A.Ş., a subsidiary of the Union of Chambers and Commodity Exchanges of Türkiye, and Şengün & Partners Attorney Partnership and Şengün Strategic Management Services have signed a cooperation protocol, which has been an ongoing effort for some time and is expected to affect the Turkish private sector. Our Founder and Chairman Nedim Korhan Şengün and Dr. Onur Yüksel, the General Director of TOBB UYUM A.Ş., attended the signing ceremony held at TOBB UYUM Mediation and Dispute Resolution Center in Ankara. We believe that this cooperation will be significant for the Turkish private sector.

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Our Founder Nedim Korhan Şengün’s first book “UZAKLIK VE ZORLUK” is now available in stores.

In this book, Nedim Korhan Şengün guides his readers with his deep insights and experience and inspires them in many aspects.

We believe that this book will offer readers an inner journey where they will discover their power. “UZAKLIK VE ZORLUK” is now available in bookstores and online sales platforms.

Şengün & Partners Attorney Partnership’s Associate Betül Önal got married on Sunday, 30 June 2024, at Keyif Bahçesi Kır Düğünü Salonu in Aydın.

Nedim Korhan Şengün (Şengün & Partners Attorney Partnership Founder and Attorney), Birgi Kuzumoğlu (Izmir Office Coordinator and Senior Associate) and her husband Mustafa Kuzumoğlu (Attorney at Kuzumoğlu Law Firm), İrem Öztürkmen (Associate at our Izmir office) and her husband Hasan Öztürkmen, Elif Gür (Attorney at Gür Legal Hukuk & Danışmanlık) and Zehra Ayşen (Q Yatırım Bankası) were present in the wedding.

We wish a life full of happiness to our firm’s dear associate Betül Önal and her husband Utku Payze.

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News from Şengün

“Türkiye: A Leading Hub for Startups and Tech Companies in EMEA” report presentation event was held on 2 July 2024 at TÜSİAD Headquarters.

The event’s opening speeches were delivered by A. Burak Dağlıoğlu (Head of the Investment Office of the Presidency of the Republic of Türkiye), Orhan Turan (Chairman of TÜSİAD), and Dr. İzel Levi Coşkun (Board Member of TÜSİAD). Then, the report was presented by Barış Özistek (Co-Chair of TÜSİAD Entrepreneurship Ecosystem Working Group), Berç Çubukciyan (Partner at Maven Insights), and Deniz Kayahan (Senior Director at Maven Insights).

Some of the sector’s notable names that contributed in the panel to discuss the developments in Türkiye’s entrepreneurship ecosystem and the related forecasts included Ahu Büyükkuşoğlu Serter (Farklabs Founder), Barış Karakullukçu (Group President of İş Bankası Yeni Nesil Girişimcilik), Berktuğ İncekaş (Eczacıbaşı Momentum Investment Manager), and Berrak Kutsoy (Esas Holding Corporate Communications and External Relations Director).

In the event, Şengün & Partners Attorney Partnership was represented by Güzin Şengün (Managing Partner Attorney), Gülşah Güven (Managing Senior Associate) and Yiğit Okuldaş (Associate). They met different stakeholders of the entrepreneurship ecosystem at the networking cocktail organized following the event and exchanged valuable views.

Nedim Korhan Şengün (Founder and Attorney of Şengün & Partners Attorney Partnership) and Berfin Nida Gültekin (Senior Associate and Ankara Office Coordinator) held a meeting. They made evaluations regarding Ankara and regional strategies and conversed with business circles.

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June - July 2024 | E-Bulletin