

Developments on Signature Specimen and Signature Circular

Amendments Related to Signature Specimen

The Amending Law Related to the Technology Development Zones and Certain Other Laws (the "Law No. 7263") was published in the Official Gazette on February 3, 2021 and entered into force on the same date. Article 22 of the Law No. 7263 amended Article 40 of the Turkish Commercial Code with respect to issue of signature specimen.

In this regard, the amendment provides that signature samples of real person merchants and authorized signatories of companies, which are previously obtained and exist in the databases of public institutions and organizations, will also be recorded to the registry file in the centralized common database. Therefore, obligation to issue signature specimen is abrogated for cases where signature samples are available in the databases of public institutions and organizations. It has been emphasized that signature specimen will still be requested when there is no signature record in the respective database and the Ministry of Trade will adopt further regulations on this matter.

The said provision of the Turkish Commercial Code was amended on March 10, 2018. The previous amendment required signature specimen to be issued before the registries only and abrogated the authorities of notaries to issue the same. The new amendment dated February 3, 2021 has abolished the explicit provision stating that the signature specimen can be issued by giving a written statement before authorized officials of the trade registry directorates. Still, the Ministry of Trade's authority to issue a secondary regulation has been limited to the procedures and principles regarding the submission of signature specimen documentation to trade registry directorates and other procedures and principles regarding the implementation of the respective Article 40.

Within the scope of the amendment to the Turkish Commercial Code, the Ministry of Trade has amended its Communiqué on Execution of Articles of Association before Trade Registry Directorates ("the Communiqué") and the amendments are effective as of February 20, 2021.

Significant amendments to the Communiqué are as follows:

- The Communiqué stipulates that signature data of real person merchants and authorized signatories of the legal entity merchants including companies will electronically be obtained from the databases of public institutions and organizations and recorded to the Central Registration System ("MERSIS") by the trade registry directorate during the registration of such individuals' signature authorities. In this regard, protocols to be concluded between the Ministry of Trade and the relevant institution or organization will determine how such data will be obtained. Therefore, in principle, after integration of the relevant databases within the framework of these protocols, those who will be appointed as authorized signatories to companies will not have to issue signature specimen provided that their signature samples exist in the database of any public institution or organization party to the protocol.
- If there is no signature record in the relevant database or the relevant records are not obtained, except for the establishment of limited liability companies, the Communiqué regulates that the signature specimen may be physically issued before notary publics too. Although the registry directorates' duties and powers continue, notary publics also become authorized again although their authorization was not clearly mentioned under the Law No. 7263. However, Provisional Article 1 of the Communiqué foresees that the practice of issuing physical signature specimens will continue in the transition period until the Ministry obtains signature data in the databases of the respective public institutions and organizations. Yet, this provisional article provides that physical signature specimen will be submitted to trade registry directorates. Consequently, it is not very clear whether notary publics will have authority to issue signature specimen in the transition period until the Ministry of Trade announces that the process is completed. Since the main principle under Law No. 7263 is to submit signature specimen to registry directorates, the amendments to the Communiqué may be interpreted to a narrow extent. On the other hand, we believe it will be a more appropriate solution if the notary publics have authority in the transition period too. We are of the opinion that the implementation will also be in this direction. the validity of signature specimens issued

- Concerning the establishment of limited liability companies, it has been adopted that if the signature record is not electronically available, physical signature specimen can only be issued before trade registry directorates. That being said, it is considered that this exception for limited liability companies is only for establishment procedures, and appointments to the existing limited liability companies can be registered with notarized signature specimens.
- There is no change about issue of signature specimen by representatives who are outside Turkey. Such signature specimen can be approved by a Turkish consulate in the country where the signatory is resident or by the competent authorities of the respective country according to applicable legislation in that country. The signature specimen issued by foreign authorities shall still be required to be approved by the respective Turkish consulate or in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. The relevant signature specimen shall be submitted to the registry directorates along with their notarized Turkish translations.
- In cases where an individual is appointed as authorized signatory to a company and its one or more branches, there will be no need to submit separate signature specimens for each, provided that the company or the relevant branches are within the competence of the same registry. However, this article means that separate signature specimen will be required for the branches located within the competence of different registries in Turkey. In our opinion, it would be a more appropriate approach to ensure that other registries electronically access the signature specimen submitted to any trade registry in Turkey and to find a solution that does not require submitting separate signature specimens for each registry, considering the efforts of the Ministry of Trade to minimize the problems that submission of physical signature

Discussions Related to Signature Circular

However, the said clause is for the document requests by public institutions and organizations. In practice, although they are not regulated under the Turkish Commercial Code, signature circulars are preferred mostly due to their ease to confirm the relevant individuals' signature samples and signature authorities in one single document. Therefore, in our opinion, signature circulars will continue to be preferred in practice for transactions between private enterprises to provide transaction security unless the signature samples of the authorized signatories are recorded in a database open to the public and therefore accessible by the transaction parties (which is not expected either as such a practice will also raise discussions in terms of the Personal Data Protection Law).

Signature circulars are not absolute and definitive documents in terms of the scope of signature authorities. They only indicate the relevant person's authority when the signature sample is notarized based on the decisions (registered by the registry until then). Therefore, companies and real person merchants should not execute transactions based solely on the signature

