

Client Alert

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Amendments to the Personal Data Protection Law

On 12 March 2024, the Amendment Law on Code of Criminal Procedure and Certain Laws (the "**Amendment Law**") which introduces amendments to certain provisions of the Personal Data Protection Law ("**PDPL**") has been published. The recent changes to the rules regarding cross border data transfers, the processing of sensitive personal data and the appeal process against the Personal Data Protection Board's (the "**Board**") decisions are expected to have significant impacts on the data controllers using cloud systems. These amendments are summarized below:

- In terms of processing sensitive personal data, new legal grounds are introduced with the Amendment Law, such as explicit provisions in laws or the requirement to process sensitive personal data for the establishment, exercise, or protection of a right, in addition to the explicit consent as a legal basis.

Under the previous provisions, health data and criminal records could only be processed by the human resources departments with the explicit consent of the employee. Following the new legal grounds stated in the Amendment Law, human resources departments can process sensitive personal data without obtaining the explicit consent of the employee; provided that such processing is limited to fulfilling obligations related to employment, occupational health and safety, social security, social services, and towards individuals receiving social aid.

- Under the Amendment Law, legal grounds for cross border data transfer have been amended. Accordingly, personal data can be transferred abroad under the below conditions:
 - (i) If an adequacy decision is adopted by the Board regarding the country, international institution, or industries in the country to which the data will be transferred, and the requirements regulated under Articles 5 or 6 of the PDPL are met, personal data can be transferred abroad.

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(ii) If there is no adequacy decision adopted by the Board, but the requirements regulated under Articles 5 or 6 of the PDPL are met, the data subjects can exercise their rights, including the right to appeal, and one of the following conditions also exist, personal data can be transferred abroad:

- an agreement, which is not of international agreement nature between Turkey and the relevant foreign public authorities, international institutions, or professional organizations with public institution status and the approval of the Board,
- the establishment of binding corporate rules in relation to data transfers by companies within the enterprise engaged in joint economic activities,
- signing of the standard contractual clauses declared by the Board between the parties and the notification of these clauses to the Board within five days,
- without the signing of the standard contractual clauses, signing of an undertaking between the parties, and the approval of the Board.

According to the Amendment Law, in the event of the parties signing the standard contractual clauses, if these clauses are not notified to the Board within five days, both data controllers and data processors breaching their notification obligation are subject to administrative fines ranging from TRY 50,000 to TRY 1,000,000.

- The Amendment Law regulates that the competent court for judicial review of the Board decisions will be administrative courts instead of criminal courts of peace.

The new regulations stipulated under the Amendment Law will enter into force on 1 June 2024. However, the existing provisions regarding cross border data transfer, along with the amending provisions, will remain in effect until 1 September 2024.

Please contact us at any time if you wish to obtain more detailed information about the regulations introduced by the Amendment Law.