

To Retail or not to Retail! Turkey Introduces New Retail Trade Law

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Turkey has enacted the Law on Regulation of Retail Trade numbered 6585 ("**Retail Trade Law**"), ratified on 14 January 2015 and published in the Official Gazette numbered 29251 on 29 January 2015, to be effective on the same date (except for provisions which are subjected to the transitory provisions listed in the Provisional Article 1 of the Retail Trade Law, discussed as relevant below). The Retail Trade Law addressed the incorporation and activities of retail businesses, as well as various adjustments to how shopping malls operate.

The new Retail Trade Law promulgates groundbreaking rules. These apply to large shops, chain stores, retail dealers, franchises, and other retailers, as well as tradesmen and craftsmen (Article 3 of the Retail Trade Law) which provide a wide range of goods and services, including fast moving consumer goods ("**FMCG**"), textiles and clothing, electronics to furniture and household equipment. The law also applies to their suppliers and producers, as well as the shopping malls and shopping mall operators which indirectly unite numerous retailers. However, businesses in the service sector which are subject to regulation under special laws regarding opening and/or operating processes are excluded from this scope.

This article provides information about the new requirements introduced by the Retail Trade Law, how these will affect the retail industry, and the industry's initial reactions to the new regulations.

The new retail information system (PERRIS) is formed as a centralized system for business license applications.

The Retail Trade Law introduces a new electronic information system ("**PERBIS**") which will be established within the Turkish Ministry of Customs and Trade ("**Ministry**"). The aim is to monitor unlicensed businesses, as well as to provide a central and cost efficient system which in turn saves businesses from the complicated bureaucratic proceedings involved in applying for permission to open and operate. The Retail Trade Law outlines a framework for application procedures. However, establishment of the PERBIS and further details regarding the information to be processed will follow in secondary regulations.

Under the new system, retail businesses will be able to submit business license (i? yeri açma ve çal??ma ruhsat?" applications, either directly to administrations which are authorized to grant such license, or through the PERBIS system. Article 3 of the Retail Trade Law defines authorized administration to mean municipalities, provincial special administrations, and other administrations ("**Authorized Administration**"). The Authorized Administration definition does not point to a specific administration, but rather refers to the already existing administrations which are authorized to issue business licenses. Authorized Administrations will enter the applications they receive into the PERBIS system.

Authorized Administrations will conduct a pre-assessment of whether the application file is appropriate or not. If the file is deemed appropriate, the Authorized Administration must forward applications through the PERBIS system within three days. These applications are sent to the institutions that are authorized and in charge of completing the

procedures to establish a retail business. These institutions will process the information, issue the necessary licenses, and share these documents with the Authorized Administration through the PERBIS system. Authorized Administration will accordingly issue business licenses to applicants via the PERBIS system. Applicants who are deemed inadequate will be informed of this decision within 30 days of their application, including the grounds for the decision. Current business licenses will remain valid under the new system. Information about current retail businesses will be transferred to this PERBIS system by Authorized Institutions. The information must be transferred within one year of the PERBIS system being established. The Authorized Administrations and relevant institutions must adopt necessary changes to synchronize their information systems with PERBIS. The Ministry is empowered to extend this period up to two times, for periods up to 12 months long. Until the establishment of PERBIS, procedures for establishment and operation of retail businesses will continue to be carried out in line with past practices.

Arbitrary premiums and other contributions applied to producers and suppliers are prohibited.

In practice, large shops, chain stores, retailers, or franchise businesses may demand arbitrary premiums from the suppliers and producers of the products, such as contribution payments for opening or alteration or maintenance of stores, contribution to turnover deficit, or debit and credit cards contributions. The Retail Trade Law aims to prevent these large shops, chain stores, retailers, or franchise businesses from abusing the market power they have over producers and suppliers. The law restricts the terms of any demands for contributions by prohibiting them from imposing arbitrary contribution payments on producers and suppliers which do not have a direct effect on product demand.

The Retail Trade Law also prohibits retail businesses from requesting premiums or other means of contributions of any nature from producers or suppliers with regard to services which have a direct effect on product demands (such as advertisement, announcements, or shelf space allocation services). The exception to this is where the contribution's type and ratio is specified under their contractual relationship. In such cases, contributions must be limited to the duration of contract, and the product which is the subject of such contribution must remain on the shelf during the respective term.

These new rules are game changing, especially for franchise systems which rely on premiums calculated over turnover or those requested for store opening. Franchisors themselves may be willing to grant these contributions to franchisees in return of establishing a long and sustainable franchise relation.

Minimum duration for payment in Sales Contracts for the procurement of certain FMCG by small scale producers and suppliers to large scale retailers cannot exceed 30 days.

The Retail Trade Law protects weaker businesses against stronger ones by limiting the parties' freedom of contract. It includes a provision restricting payment terms in some circumstances, in particular the due date for payments. According to the Article 7 of the Retail Trade Law, payments for transactions between producers or suppliers and retailer businesses must be made on or before the date which the parties have agreed under their specific contractual arrangement. However, in situations where the producer or supplier is a small-scale business and the retailer is a large-scale business, the payment period for FMCG (defined under Article 3 of the Retail Trade Law as food, beverage, cleaning and personal care products) whose shelf life is limited to 30 days, can also not exceed 30 days following the goods' delivery. This even reduces the 60 day minimum duration set forth by Article 1530 of the Turkish Commercial Code numbered 6502 ("TCC") for all small and medium sized creditors in commercial transactions. Article 7 of the Retail Trade Law notes that Article 1530 of the TCC will apply to issues which are not covered thereunder.

Store Branded Goods are no longer anonymous.

The Retail Trade Law requires that a supplier's name, trade name, or brand be mentioned on the labels of store-branded fast moving consumer goods which are manufactured in Turkey. The supplier's name is required in addition to the retail business' trade name and brand.

Shopping Malls - New Definition, New Licensing and Minimum Thresholds of Rental Space for Some Groups are determined!

The Retail Trade Law introduces definitions for shopping malls, large shops, and chain stores. Generally, it was a matter of debate whether marketplaces or buildings where retail trade businesses collectively exist should appropriately be considered to be shopping malls. According to the definition introduced by Retail Trade Law, shopping malls are buildings or any area with entirety, which have a central management, and contain large stores and business complexes. The definition states that the stores and business complexes must meet nourishment, clothing, entertainment, cultural, and similar needs.

Therefore, the Retail Trade Law requires shopping malls to allocate areas for social and cultural activities, as well as to form common areas such as emergency units, prayer rooms, baby care rooms, and playgrounds. Shopping malls which do not currently comply with the new requirements must make the necessary adjustments by 29 January 2016 (one year after the Retail Trade Law's effective date).

Shopping malls are further required to allocate at least:

- 5% of the available rental area to the businesses of tradesmen and craftsmen at the market rental rate, and
- 3% of the available rental area to persons that conduct rare businesses, holding traditional, cultural or artistic value. The rental price cannot exceed 25% of the market rental rate.

The area reserved for tradesmen and craftsmen may be rented to other businesses if a sufficient demand does not exist, or a vacancy announcement is not responded to within 20 days. For shopping malls which do not currently meet the above listed requirements, available places must be leased to the respective business owners until the percentages are met.

The Retail Trade Law includes further provisions addressed to shopping malls. As per Article 5(7) of the Retail Trade Law, the competent authority to grant building licenses, building use licenses and business licenses to shopping malls located within big cities are the Metropolitan Municipalities. While granting building license for shopping mall projects, the opinions of the Union of Chambers and Commodity Exchanges of Turkey, and the Confederation of Turkish Tradesmen and Craftsmen will be obtained. However, Provisional Article 1 makes an exception to this regulation for shopping malls which have acquired building licenses, but not business licenses, prior to the Retail Trade Law's effective date.

Sale Campaigns, Continuous Discount Sales, Durations, "Outlet stores", and Shopping Festivals are regulated.

The Retail Trade Law introduces regulations and restrictions on sales campaigns and continuous discount sales. The motivation for these regulations and restrictions is to prevent businesses from adopting deceptive commercial practices, creating unfair competition, and harming consumers. Conducting sales campaigns and continuous discount sales is allowed under the Consumer Protection Code numbered 6502. However, such activities are now subject to time limitations as per Retail Trade Law. Accordingly, sales campaigns may last for up to three months for business openings, transfers, closings, or changes to activity; and in line with the TCC, six months in the event of liquidation.

The Retail Trade Law defines continuous discount sales as the sale for discounted or wholesale prices of end of line products, end of season products, export excesses, defective products, or similar products. Retail Trade Law allows retailers to place signs regarding such discounts provided that:

- Shopping malls may use such signs only if all retail businesses therein are practicing continuous discounts; or
- 70% or more of the products being sold by a retail business (whether located inside or outside of a shopping mall) fall within the scope of the definition above.

The aim is to prevent retail businesses referring to themselves as "outlets", even though such heavily discounted products constitute only a small percentage of the products being sold. Businesses are given two years from the Retail Trade Law's effective date to comply with the terms of the Retail Trade Law. Further details will be published in secondary regulations.

It is allowed under the Retail Trade Law to organize shopping festivals on a local, regional or national scale provided that the Ministry to be informed about dates, schedules and location of shopping festivals in advance. The details of this process is expected to be regulated in more details under secondary legislation, as there are no further regulations on the conduct of shopping festivals.

Working Hours - Enforced Sunday Closure of Shopping Malls was Not Adopted

During the drafting of the Retail Trade Law, the most debated topic was the proposal to force closure of shopping malls on the weekends in order to boost small businesses. While small business owners would benefit from such a restriction, it was deemed to contradict both consumer demands' and the interests of shopping malls. Accordingly, the Retail Trade Law does not include such a provision.

However, the Ministry becomes empowered to determine the working hours of retail businesses at a regional or national scale. The Ministry would make such a decision on the joint proposals of the Union of Chambers and Commodity Exchanges of Turkey, and the Confederation of Turkish Tradesmen and Craftsmen. The Regional Governors will also be entitled to determine the working hours for all or a part of the retail businesses in a region based on occupational, seasonal or tourism requirements, upon receiving the joint proposals of the Unions of the Chambers of Tradesmen and Craftsmen and the Chambers of Commerce and Industry, the Chambers of Commerce.

The Law Numbered 394 required businesses which operate on Sundays to obtain a working permit. The Retail Trade Law now revokes this provision in favor of retail businesses, releasing retail business owners from having to obtain such a permit and the costs involved in this process.

Conclusion

It is not yet known whether the Retail Trade Law will ultimately result in improvements for small and medium sized businesses, nor whether it will encourage competition between such businesses and shopping malls at an appropriate or desirable level. It appears that discussions on this topic will continue, particularly given the negative opinions of the Retail Trade Law which are held by some leading industry groups.

As a final note, the Ministry of Customs and Trade has been granted with authority to regulate secondary legislation for further detailing the rules and regulations as imposed under the law. Although this new set of rules provides regulation in general terms on how retail and retail related businesses will be performed, the secondary legislation is expected to shed light into the debated and unclear provisions of the law.

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