

High Speed and Fair Price in Turkish Railways!

Law Nr. 6461 on the Liberalization of the Turkish Railway Transportation (the “**Law**”) has been published on 1st of May in the Turkish Trade Registry Gazette with Nr. 28634. This Law aims to make available passenger and freight transportation with the most suitable, effective and feasible rates, taking service quality into account.

With the passing of this Law, the General Directorate of Turkish Republic State Railways will be restructured as a railway infrastructure operator and a joint stock company with the title “**Turkish Republic State Railways Transportation A.S.**” having the nature of a railway train operator will be established which will become the fourth subsidiary of the General Directorate of Turkish Republic State Railways. The Law will enable public entities and those companies registered with the trade registry i.e. all type of companies that can be registered with trade registries, to build railway infrastructure and to make its services available. Thus, the mentioned public entities and companies will be entitled to be a railway infrastructure operator and railway train operator. The scope of the Law is extended to the railway infrastructure operators and railway train operators that will be performing activities on the national railway infrastructure network.

Any public entity and private company which would like build and/or operate their own railways or those railways owned by other companies have to be authorized by the Turkish Ministry of Transport, Maritime Affairs, and Communications (the “**Ministry**”) in accordance with the Law. These entities and companies have to determine the usage fee of the railway infrastructure they own or operate on equal terms and avoiding any discrimination between the train operators. If the companies would like to build a railway infrastructure system, any real estate required for the construction of such infrastructure will be expropriated by the Ministry by collecting the required fee for such expropriation from the company upon which a right of easement will be constituted on the real estate in favour of the company for a term of 49 years. At the end of such term, any asset built on such real estate will be passed into the ownership of the Turkish Treasury without paying any compensation or fee in consideration thereof.

In order to maintain the provision of railway passenger transportation services on a specific line on which any railway train operator cannot provide services on commercial terms, the Ministry would assign an operator to provide such services by authorizing the latter under an agreement. For such purpose, the operating company will have to enter into an agreement with the Ministry in order to perform such “**public service obligation**”. It seems that the term, the length of the transportation line, number of train traffic, applicable passenger transportation fees, and payment terms will be determined under a separate regulation.

There is no doubt that this Law, will increase the service quality and speed of the Turkish Railway System by authorizing private companies to renew and re-build the infrastructure of Turkish railways, however, Turkish State Railways will be still holding its monopoly to manage the railway traffic over the national railway network. Furthermore, Turkish State Railways will own a certain percentage of Turkish railway infrastructure of which operation will be within the responsibility of Turkish State Railways. Despite of the critics claiming that this Law will result in the privatization of Turkish Railways, General Directorate of Turkish Republic State Railways defends that the monopoly of the directorate will not cease and be transferred to third parties by the enactment of this Law and it further argues that the Law will enable the usage of national railways in full capacity by making an advantage in favour of the railways among other transportation system. ¹

Didem Ataün
Senior Associate
Güzeldere Law Office

¹ Extracted from the news published at www.milliyet.com.tr on April 1st, 2013