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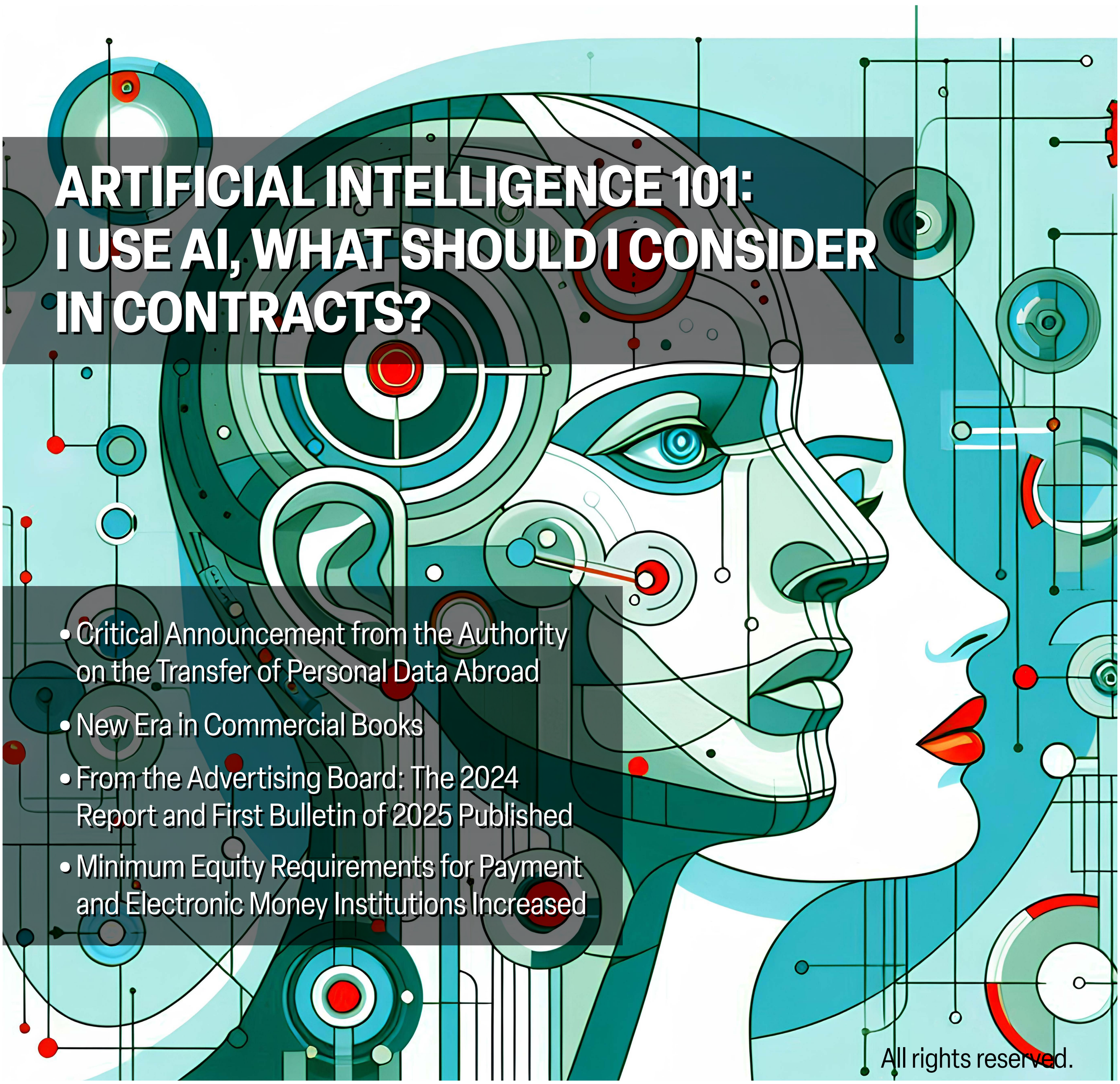
THE FINE PRINT

Answers. Not theories.



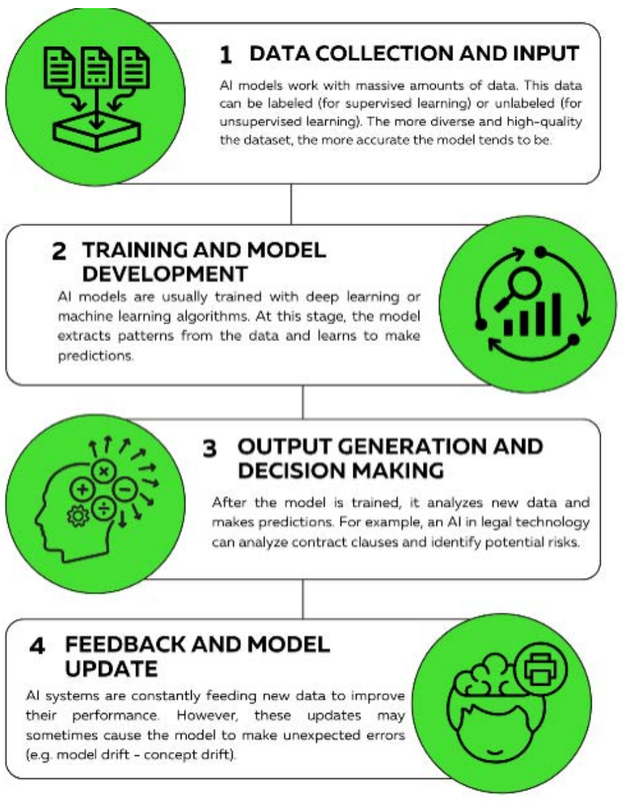
ARTIFICIAL INTELLIGENCE 101: I USE AI, WHAT SHOULD I CONSIDER IN CONTRACTS?

- Critical Announcement from the Authority on the Transfer of Personal Data Abroad
- New Era in Commercial Books
- From the Advertising Board: The 2024 Report and First Bulletin of 2025 Published
- Minimum Equity Requirements for Payment and Electronic Money Institutions Increased

Artificial Intelligence 101: I Use AI, What Should I Consider in Contracts?

Artificial intelligence **(AI)** has become one of the cornerstones of digital transformation through big data analysis, automation, and decision support systems. However, the inherent nature of AI, its continuous learning and dynamic evolution, raises critical legal questions, particularly regarding regulations and contract provisions. To address these questions, it is first essential to understand how AI operates.

AI can generally be defined as systems that can perform functions typically requiring human intelligence, such as perception, learning, communication, creativity, decision-making, reasoning, and development. Most AI models consist of four fundamental stages:



Each of these stages introduces considerations that must be addressed in contracts. Key issues include data usage, reliability of outputs, and model updates, all of which necessitate clear definitions of the parties' responsibilities.

Furthermore, the role of AI in a contract is crucial since it defines liability boundaries. AI can be used in various capacities, such as:

- As an independent software tool (e.g., a Q&A system),
- Integrated into a physical product (e.g., autonomous vehicle software),
- Enhancing a physical product's functionality without integration (e.g., AI-based medical imaging analysis systems),
- As a component of a larger system (e.g., decision-support systems in smart manufacturing).

These variations significantly impact the structure, rights, and obligations in contracts between AI developers and service recipients. Consequently, different contract types, such as software development agreements, R&D agreements, licensing agreements, or service agreements, may be necessary.

Regardless of the contract type, when AI is involved, the following key points must be considered:

- AI systems can make errors. They may produce "hallucinations-outputs" that appear correct but are actually incorrect. Therefore, contracts should clearly state that no guarantees are provided regarding the accuracy of AI decisions and explicitly define liabilities for incorrect results.
- AI-generated content may infringe intellectual property rights. AI systems process uploaded data and generate outputs, potentially creating IP risks. Contracts should clarify which data can be uploaded, who owns the AI-generated outputs, and how IP-related risks are allocated. Additionally, detailed provisions on handling input and output-related IP infringement should be included.
- AI often processes customer data for training purposes. Unauthorized use of such data could violate data protection laws like KVKK (Turkish Data Protection Law) and GDPR. Therefore, contracts must specify whether customer data can be used for training, whether customer consent is required, and under what conditions data usage is permitted. These issues should also be addressed through data processing agreements.
- Confidentiality and data protection are critical. The scope of confidential information, especially regarding inputs and outputs, must be clearly defined. Additionally, contracts should explicitly state that AI cannot use confidential information beyond the scope of the provided service.
- AI's dynamic and evolving nature may create risks or advantages. As AI systems are updated, contract risks may change. If certain conditions are met, contracts should allow for adaptation to changing circumstances. For instance, an unforeseen technological breakthrough could necessitate contract modifications.
- AI can be misused for unethical or illegal purposes. AI algorithms, such as those used in recruitment, may unintentionally introduce bias and discrimination, leading to legal challenges. Contracts should clearly define each party's responsibilities regarding AI's compliance with ethical and legal standards.

These are fundamental considerations for AI-related contracts, but additional critical points may arise depending on the business model, AI usage method, and objectives. Ultimately, in the fast-paced world of technology, it is important to recognize that using AI inherently involves a chain of contractual relationships.

Critical Announcement from the Authority on the Transfer of Personal Data Abroad

On 5 February 2025, the Personal Data Protection Authority published a public announcement regarding key considerations in standard contractual clauses **(SCCs)** used for transferring personal data abroad.

As previously noted, the Authority's first announcement of the year was the Guideline on the Transfer of Personal Data Abroad, which provided detailed explanations on the cross-border transfer of personal data. This latest

announcement builds upon the Guideline, focusing specifically on important aspects of SCCs that must be notified to the Authority within the scope of such transfers.

Key highlights of the announcement:

- SCCs must be signed by individuals who are duly authorized to represent the parties to the transfer. Supporting documents proving such authorization must be submitted to the Authority. The Authority underscored that these documents must include the names of the signatories and confirm their valid authorization. Otherwise, the SCCs may be deemed invalid.
- If SCCs are executed in a foreign language, the signatures of the parties must appear on the Turkish text. Even if the contract is drafted in a bilingual format with two columns, signatures must still be included in the Turkish section.
- In light of amendments to the KVKK, full compliance with the revised legislation was expected by 1 September 2024. Consequently, some SCCs have been backdated to ensure compliance with this deadline. However, the Authority explicitly stated that retroactive statements such as "effective date: ..." cannot be included, even if the parties sign the SCCs at a later date.
- The Authority emphasized that the signing date must be clearly stated in the SCCs. This requirement appears to be aimed at ensuring compliance with the 5-business-day notification period for SCCs.
- The announcement reaffirmed the requirement for an apostille on official documents and the necessity of a notarized Turkish translation for documents prepared in a foreign language.

For further details, you can access our TFP, December issue, here. In it, we cover developments in Turkey's personal data protection legislation for 2024.

You can access the Announcement here. *(Only available in Turkish)*.

New Era in Commercial Books

The Ministry of Trade's digitalization process for keeping commercial books electronically has been in the spotlight for a long time. The green light was finally given and the Communiqué on Keeping Commercial Books Not Related to the Accounting of the Business in Electronic Environment **(Communiqué)** was published in the Official Gazette on 14 February 2025.

The Communiqué regulates the procedures and principles regarding the electronic storage of (i) share ledger, (ii) board of directors' decision book for joint stock companies, (iii) board of directors' decision book for limited liability companies and (iv) general assembly meeting and negotiation book, which are considered as commercial books.

Within the scope of the Communiqué:

- companies registered in the trade registry as of 1 January 2026,
- joint stock companies whose incorporation and amendments to the articles of association are subject to the permission of the Ministry

are obliged to keep their ledgers electronically. Companies not covered by the Communiqué will only be able to keep their Ledgers electronically if they prefer it.

Ledgers will be managed through the Electronic Ledger System **(System)** created by the Ministry of Trade. We have compiled striking issues regarding the System below.

- For companies that will keep their ledgers electronically since their establishment, the ledgers will be created and activated in the System simultaneously with the registration of the company to the trade registry.
- Companies that are subsequently included in the scope of this obligation will be required to apply to a notary public within two months at the latest, and companies that wish to keep their ledgers in electronic environment on a voluntary basis will be required to apply to a notary public within the accounting period in which this decision is taken, and have the closing approval of their physical Ledgers.
- Ledgers will be kept by the Ministry. The Ministry will be responsible for the safe storage, confidentiality, accessibility and recording of the information of each transaction.
- Material errors will be corrected by the System user and the correction will be indicated in the relevant field in the System.
- Pursuant to the provisions of the Communiqué, companies that have started to keep their Ledgers in an electronic environment will not be able to keep the said Ledgers in physical environment again for any reason.

The Communiqué will enter into force on 1 July 2025.

The impact of digitalization in all areas of law is becoming increasingly evident each day. This regulation aims to raise the information security standards of companies, ensure both verifiability and accessibility of commercial records, and reduce bureaucracy.

You can reach the relevant Communiqué here . *(Only available in Turkish)*.

From the Advertising Board: The 2024 Report and First Bulletin of 2025 Published

Turkish Advertising Board **(Board)** was in the spotlight last year with its striking decisions and active work. We have closely followed the Board's work and highlighted its prominent decisions in our previous issues. The Board's 2024 Report, compiling these activities, has now been published. Additionally, the Board's latest bulletin, No. 343, which includes crucial decisions, has also been released.

According to the report, a total of 277,664,783 Turkish lira in administrative fines were imposed in 2024, and 22,299 applications were reviewed, with violations detected in 89% of the cases. The number of cases involving legal violations is remarkably high. Notably, 89.7% of these cases involved advertisements published online, highlighting the significant impact of digital media advertising.

The highlights from the 2024 decisions are as follows:

- Greenwashing and Unsubstantiated Environmental Declarations
- Unauthorized Memberships and Transferred Personal Data
- Unrealistic Reviews and Fake Stars/Points
- Shadow Prices and Deceptive Discounts, Banned Ads
- Dark Commercial Designs and Manipulative Outcomes

Dark Commercial Designs was one of the key topics. You can find our detailed article on the subject in the October issue of TFP here.

At its first official meeting of the year on 16 January 2025, the Board examined advertisements and unfair commercial practices that deceive and mislead consumers and misuse their lack of information. One of the outstanding issues at the meeting was the scrutiny of financial markets. Especially in the banking sector, some examinations were made to prevent advertisements that may mislead consumers about environmental consciousness.

In its relevant decisions, the Board highlighted the following key points:

- In the advertisement for **"Green Housing Loan"** on a website, the statement reads; *"Decide on the electric or hybrid vehicle you want to buy, whether it is zero kilometer or second-hand, and **take advantage of our advantageous vehicle loan** with terms of up to 48 months and favorable interest options..."*, meanwhile in the advertisement of ***"Green Vehicle Loan"**, there is a statement such as **"Privileged loan** for houses with Energy Identity Certificate is at ..."*.

As a result of the examinations, it was determined that the relevant advertisements created the impression of a positive environmental impact on the environment, but the loans in question did not provide any actual environmental benefit, additionally, consumers were not adequately informed about the advantages such as interest rates or loan options mentioned in the advertisements, and the main commitment conveyed by the phrase "privilege advantage" in the advertisement was unclear and incomprehensible. In light of this assessment, the Board concluded that the advertisements were misleading to consumers and imposed a suspension penalty.

- It was stated that some campaign advertisements included the phrases ***"...12 month maturity and interest starting from 0.99%...** and **many more advantages..."***, however, it should be mandatory to disclose the total cost of the loan and the annual cost rate in the advertisement; otherwise, this omission would make it difficult for consumers to choose the most suitable loan offer and hinder fair competition.

- It was stated that the consumer comments on an intermediary service provider platform were repeatedly posted, and in this context, similar positive statements presented as templates, disrupting the integrity of meaning were presented as templates. In this context, the Board determined that were being directed to leave positive reviews and ruled that this practice constituted an unfair commercial practice. This issue, which is frequently encountered across various platforms, has also come under the Board's scrutiny.

- The Board decided to block access to the relevant website on the grounds that some social media platforms contained statements such as such as ***"Let an Expert Lawyer Write Your Petitions", "Get Support from an Expert to Avoid Any Victimization in the Writing of Petitions"*** regarding legal transactions that only lawyers registered with the bar association can perform, but that the advertisements were misleading and deceptive to the average consumer on the grounds that the person was not authorized in this field.

The 2024 Report is available here and the bulletin containing the relevant decisions of the Board here. *(Only available in Turkish)*.

Minimum Equity Requirements for Payment and Electronic Money Institutions Increased

The Regulation on the Reassessment of Minimum Equity Requirements for Payment and Electronic Money Institutions was published in the Official Gazette on 30 January 2025.

The minimum equity requirements for payment and electronic money institutions operating under Law No. 6493 on Payment and Securities Settlement Systems, Payment Services, and Electronic Money Institutions have been revised as per the Regulation. Accordingly:

- The minimum equity requirement for payment institutions exclusively providing services for bill payment transactions has increased from 10 million Turkish lira to 15 million Turkish lira.

- For other payment institutions, excluding those offering services that provide consolidated information on users' payment accounts held with different payment service providers via online platforms, the minimum equity requirement has been raised from 20 million Turkish lira to 30 million Turkish lira.

- The minimum equity requirement for electronic money institutions has increased from 55 million Turkish lira to 80 million Turkish lira.

These increased amounts will come into effect as of 30 June 2025. Existing payment and electronic money institutions are required to adjust their equity levels in compliance with the new minimum requirements by this date.

You can access the full text of the regulation here. *(Only available in Turkish)*.

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About us

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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