

# New Regulation on Notification via Electronic Means

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The Regulation on Notification via Electronic Means<sup>1</sup> (the “**Regulation**”) was published in the Official Gazette No. 30617 dated 6 December 2018. The Regulation aims to clarify the procedures and principles of electronic notification. The Regulation will come into force as of 1 January 2019 and abolishes the former Regulation on Notification via Electronic Means dated 19 January 2013<sup>2</sup> (the “**Former Regulation**”). This Client Alert summarizes the scope, procedures and principles of the electronic notification introduced by the Regulation.

## A. Background of Electronic Notification Implementation

The Law No. 6099<sup>3</sup> Amending Notification Law<sup>4</sup> and Certain Other Laws made it obligatory for joint-stock companies, limited liability companies and limited partnerships divided into shares to be notified electronically as of 19 January 2013. Although the Former Regulation was published in the Official Gazette on 19 January 2013, it could not be effective since setting up a substructure for such kind of technical notification took time. However, in 2016, the tax authorities started to send electronic notifications to their taxpayers for which it was compulsory to be notified electronically.

The Law No. 7101 Amending the Enforcement and Bankruptcy Law and Certain Other Laws<sup>5</sup> (the “**Amending Law**”) was published in the Official Gazette No. 30361 dated 15 March 2018<sup>6</sup>. The Amending Law made it obligatory for the notifications subject to the Notification Law (e.g., notifications made by courts and tax authorities) addressed to certain public and private legal entities and individuals to be made electronically. Among these addressees are local administrations, public economic enterprises, public notaries, all kinds of private companies, and lawyers who are registered to the bar.

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<sup>1</sup> Published in the Official Gazette No. 30617, dated 6 December 2018.

<sup>2</sup> Published in the Official Gazette No. 25833, dated 19 January 2013.

<sup>3</sup> Published in the Official Gazette No. 27820, dated 19 January 2011.

<sup>4</sup> Published in the Official Gazette No. 10139, dated 19 February 1959

<sup>5</sup> Published in the Official Gazette No. 30361, dated 15 March 2018.

<sup>6</sup> Please [click here](#) to see our Client Alert on this matter.

From this aspect, the Amending Law expanded the scope of the persons and institutions that are subject to electronic notification considering the terms of both the Law No. 6099 and the Former Regulation.

Following the amendments made to the Notification Law by the Amending Law regarding electronic notifications, the Regulation was published in the Official Gazette No. 30617 dated 6 December 2018 setting forth the procedures and principles of notifications to be made electronically.

## **B. Main Features of the Regulation**

### **1. Responsible Organization**

The Regulation provides for a National Electronic Notification System ("**NENS**") to be established and managed by Posta ve Telgraf Teşkilatı Anonim Şirketi ("**PTT**") through which the electronic notification transactions will be carried out.

PTT is responsible to establish, provide security for, and operate the NENS.

### **2. Scope of the Implementation**

The Regulation has made it obligatory for notifications subject to the Notification Law addressed to certain public and private legal entities and individuals to be made electronically, in the areas that follow:

- Public administrations that are indicated in the charts of I, II, III, and IV of the Public Finance Management and Control Law No. 5018<sup>7</sup> (the "**Law No. 5018**") and the institutions that are bound by these institutions operated by circulating capital,
- Local administrations under the Law No. 5018,
- Other public institutions and organizations established by private laws and funds and surety funds established by law,
- Public economic enterprises and affiliate companies, administrations and institutes of those enterprises,
- Other partnerships of which 50% of the shares of its capital belongs to the public,
- Professional Organizations with Public Institution Status and Supreme Institutions,
- All kinds of private legal entities including those established by law,
- Public Notaries,
- Lawyers registered to the bar,
- Registered mediators and experts, and
- Partnerships of which 50% of their shares, public economic enterprises or administrations belong to the public; the entity which the representatives are registered to and authorized to represent before the judicial and administrative authorities; and execution offices or arbitrators.

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<sup>7</sup> Published in the Official Gazette No. 25326, dated 24 December 2003.

Other than those legal persons, institutions and organizations, real persons or legal entities may obtain electronic notification addresses, if they wish to do so. Should they prefer obtaining such an address, it is obligatory for them to be notified electronically.

### **3. Obtaining Electronic Notification Address**

Persons and entities which are obliged to obtain an electronic notification address under the Regulation must apply to PTT within **one month** starting from the effective date, which is determined as **1 January 2019**.

Applications for private legal entities shall include a Central Registration System (MERSİS) number and system information and individuals shall apply with identity information including a Turkish Republic identity number. PTT may ask for additional information or documents from the applicants. PTT shall form a unique and single electronic notification address within one month from the application date and register it within the NENS.

### **4. Sending and Receiving Electronic Notifications**

Persons or entities which are authorized to deliver notifications shall prepare an electronic notification message and submit it to the NENS. The NENS will then deliver the notification to the addressee's electronic notification address, which is provided by PTT.

The notification shall be accepted to be made at the end of the **fifth day** following the delivery of the electronic notification to the addressee's electronic notification address.

The addressee can ask to be informed by PTT via SMS or e-mail whenever an electronic notification is delivered, which is optional for the addressee. This message or e-mail is solely for informative purposes and has no effect upon the validity of the actual electronic notification.

Users will be able to access the electronic notification address through secured electronic signature, the e-Government Gateway, or through a password to be given by PTT.

### **5. Evidence Records**

The NENS shall keep records of whether the electronic notification has reached the addressee and inform the sender of the evidence record immediately and no later than **24 hours**. These evidence records are accepted as material evidence unless otherwise proven.

### **6. Primary and Subsidiary Process Officials**

Legal entities subject to the Regulation (i.e., joint stock companies) shall determine **at least one and at most ten** primary process official(s) to carry out the activities regarding the electronic notifications on behalf of the entity and notify such authorization to PTT.

Primary process officials can appoint subsidiary officials to carry out certain activities regarding electronic notification and add and remove the subsidiary officials through the NENS.

### **7. Keeping of the Transactions Data and Evidence Records**

Article 15 of the Regulation states that the data of the transactions made through the NENS will be kept for certain periods. According to such article:

- Transactions data that are made by the addressees, competent authorities for sending notifications and system managers and operators shall be kept for **10 years**,
- The transactions data concerning unforeseen situations, threatening information security or sustainability of the transaction process shall be kept for **10 years**,
- Access records of the addressees shall be kept for **10 years**, and
- Evidence records shall be kept for **30 years**.

PTT is liable to submit all relevant records electronically, upon the request of the competent authorities.

## 8. Fees

The Regulation does not set forth any fee for applying for an electronic notification address. However, it is stated that PTT is entitled to a fee for the electronic notification sending services. The tariff shall be determined and announced on the PTT official website.

## C. Final Remarks

Although the Former Regulation regulated the obligation for joint-stock companies, limited liability companies and limited partnerships divided into shares to use electronic notification, this implementation never became widespread in practice. However, governmental authorities have recently been implementing means of electronic notification especially within the framework of tax legislation.

It can be said that with the establishment of a centralized and well-functioning system, namely the NENS, the new Regulation aims to implement a widespread usage of a mandatory electronic notification system managed by PTT. The fact that public notaries, lawyers, and all kinds of public and private persons will also be subject to the electronic notification shows that a unified practice is sought for the upcoming year in the practice of electronic notifications.

The Regulation does not specify the sanctions for noncompliance; however, it can be expected that some sanctions will be determined in the near future considering the wide scope of the Regulation.

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