

## THE REGULATION ON THE REGISTRATION AND THE REGISTRY OF RAILWAY VEHICLES

Until recently, the whole Turkish railway market has been controlled, owned and administered by the Turkish State Railways, a state-owned institution. Turkish railway sector and the relevant legislation have been undergoing a significant transition since 2003, with the aim of promoting a competitive market and harmonizing with the European Union legislation.

The Law regarding the Liberalization of Railway Transportation in Turkey No. 6461 (“**Liberalization Law**”), which came into force on 1 May 2013, paved the way for the liberalization of the railway transportation market. However, further regulations based on the Liberalization Law were required before the privatization of the sector could be achieved. The following transportation events have been kept outside the scope of this Regulation: (i) transportation work performed according to international conventions and the legislation applicable in times of war and states of emergency, (ii) the transportation of hazardous materials belonging to the Turkish Armed Forces, provided that all security and safety precautions have been taken by military bodies or relevant police forces (Gendarmerie General Headquarters and Security General Directorate) and (iii) transportation of hazardous materials undertaken by factories, depots and facilities located in industrial zones on junction lines which are within the borders of these facilities. Within this context, “The Regulation on the Registration and the Registry of Railway Vehicles”, “Regulation on Railway Transportation of Hazardous Materials” and “Regulation on Survey and Investigation of Railway Accidents and Incidents” have been published on the Official Gazette numbered 29418 and dated 16.07.2015.

“Regulation on Survey and Investigation of Railway Accidents and Incidents” has been published with the aim of determining the procedures and principles to be applied with respect to carrying out the surveys and investigations regarding railway accidents and incidents. The scope of this regulation covers (i) accidents and incidents which take place on railway lines linked to national railway infrastructure network and on lines linked to inner-city mass transit rail system and (ii) accidents and incidents which take place on the railway lines of foreign countries’ railway infrastructures and which railway vehicles operated by train operators who have obtained a license from Turkey and railway vehicles designed or produced in Turkey have been involved in. The regulation was published on the Official Gazette numbered 29418 on 16 July 2015 and entered into force on the same day.

“Regulation on Railway Transportation of Hazardous Materials” has been published with the aim of ensuring the safe and secure transportation of hazardous materials via railway without causing damage to human health, other living creatures and nature, and determining the procedures and principles to be applied with respect to rights, liabilities and responsibilities of the persons involved in these activities. The scope of this regulation covers transportation of hazardous materials via railway, as well as those who send, receive, pack, load, discharge hazardous materials, railway infrastructure operators and personnel who are employed in the transportation of hazardous materials, and packaging and cargo transport units to be used in transportation of hazardous materials. It has been determined that Article 1 titled Purpose, Article 2 titled Scope, Article 3 titled Basis and Article 4 titled Definitions and abbreviations entered into force on 16.07.2015, while its other provisions shall enter into force on 01.01.2016.

Lastly, as is mentioned above, “Regulation on the Registration and the Registry of Railway Vehicles (“**Regulation**”) was published on the Official Gazette numbered 29418 on 16 July 2015 and entered into force on the same day.

The most significant of these three consecutive regulations with regards to the liberalization and privatization of the railway sector is the Regulation on the Registration and the Registry of Railway Vehicles which will be explained in detail.

### **1. Scope**

The Liberalization Law enabled the public entities and private companies registered with the trade registry to run businesses as railway operators and to be granted with the authority to build and access the railway infrastructure. The procedures and principles to be applied with respect to the registration and the registry of railway vehicles which will be operated on the national railway infrastructure have been stipulated under the mentioned Regulation which was drafted by the Ministry of Transport, Maritime Affairs and Communications (“**Ministry**”).

Railway vehicles which are operated outside of the national railway infrastructure network, the procedures and principles applicable to registration of the inner city, subway and suburban railway vehicles and the procedures and principles applicable to the type approval of railway vehicles are excluded from the scope of the Regulation.

### **2. Registration requirement regarding railway vehicles**

Pursuant to the Regulation, railway vehicles which have been produced in Turkey or imported in the national railway infrastructure network in accordance with the legislation in force are required to be registered in line with the provisions of the Regulation.

Similarly, railway vehicles which have been imported under a lease agreement and which will be operated in the national railway infrastructure network for more than 3 months shall also be registered.

On the other hand there is no registration requirement for the following vehicles;

(i) Passenger and cargo wagons which carry the conditions set out under RIV (International Wagon Regulations), RIC (Agreement on Mutual Use of Passenger Wagons in International Traffic) or RID (Regulation on International Railway Transportation of Dangerous Goods) and which have been brought from outside the country under a lease agreement to operate on national railway infrastructure network for less than 3 months within the same year,

(ii) Railway vehicles, apart from passenger and cargo wagons, which have been brought from outside the country under a lease agreement to operate on national railway infrastructure network for less than 3 months within the same year, provided that documents evidencing that they have been produced in accordance with TSI (Technical Specification for Interoperability)/UTP (Uniform Technical Instructions accepted by OTIF [Intergovernmental Organisation for International Carriage by Rail] Technical Experts Commission) have been submitted, and,

(iii) Passenger and cargo wagons used in international traffic belongs to foreign countries and with mark of TEN (Mark which is written onto the railway vehicle and indicates that the vehicle complies with the UTP/TSI conditions), RIV, RIC or RID.

### **3. Legislation and certification which have to be followed during the receiving of registration certificate**

Railway vehicles which produced in Turkey or imported from the outside of the country as of the date in which the Regulation has entered into force shall satisfy the conditions mentioned in the Regulation along with the technical and administrative conditions of the TSI which has been published by the European Commission.

The Regulation also stipulates that the railway machines for road maintenance, repair and measurement which have not documented their conformity to the TSI cannot be registered unless it is certified that they comply with the standards of IUR (International Union of Railways) and EN (European Norm).

### **4. Registration of Railway Vehicles, Renewal of Registration and Suspend of Registration**

It has been stipulated in the Regulation that the application for the registration shall be evaluated and concluded in 20 working days provided that all the documents and information which have been mentioned in the Regulation are included in the application.

The Regulation also stipulates that the registration shall be renewed in the event that (i) the owner and person or institution which has the right to use of the railway vehicles has changed, (ii) modification and/or type change for the vehicle/vehicles has occurred and (iii) the institution/unit responsible for the maintenance has changed.

In the event that the person or institution who has the right to use the railway vehicle or the owner of the vehicle has changed, there is an obligation to inform the Ministry in 5 working

days at the latest for those who are shown on the records as the person or institution who have the right to use the railway vehicle or the owner of the vehicle.

An administrative fine in the amount of 25,000 (twentyfivethousand) Turkish Liras shall be imposed, for each vehicle separately, on the railway operator who does not conform to the time requirements and the rules stipulated in the Regulation.

The registration of a railway vehicle can be suspended and its operation on national railway network can be terminated for the following reasons, by notifying the infrastructure operator:

a) Non-fulfilment of the technical controls, inspections, maintenance and servicing requirements which have been specified under the UTP/TSI, record conditions and/or RID or exceeding the time limits specified thereunder,

b) Failure to notify the Ministry with respect to a damaged railway vehicle within 5 days,

c) Failure to notify the Ministry within time in relation to the changes made on the features of a railway vehicle that have already been registered,

Additionally, an administrative fine in the amount of 15,000 (fifteenthousand) Turkish Liras will be imposed for each of the above situations.

## **5. Cancellation of the Registration**

Article 12 of the Regulation specifies the circumstances in which the registration of a railway vehicle shall be cancelled. Within this context, the owner of a railway vehicle may request the cancellation of the registration of a heavily damaged railway vehicle, subject to a technical report to be issued regarding the status of the vehicle. The cancellation of the registration may only be permitted if there are no encumbrances such as liens, mortgages or attachments on the vehicle or an approval from the beneficiary of such encumbrances is obtained.

The registration of vehicles whose registrations have been suspended may be cancelled in the event that the reasons for their suspension have not been remedied within the time period provided by the Ministry.

The issuance, suspension, renewal, amendment and cancellation of registration certificates shall be notified to the infrastructure operator and relevant railway train operator. Moreover, the cancellation and suspension shall be published on the website of the Ministry.

## **6. Maintaining the Registry for Railway Vehicles and Scope of the Registry**

Pursuant to the Regulation, the registry for railway vehicles is kept and published by the Ministry based upon the National Vehicle Registry published and updated by OTIF Technical Experts Commission.

It is stated that all data included in the registry will be archived as a hard or soft copy and indefinitely maintained. However, the period for maintaining the information with respect to

railway vehicles which have been deleted from the registry is restricted to 10 years. It is also provided that upon cancellation of the registration of a railway vehicle, it is also deleted from the registry.

Liens or attachments established by competent authorities shall be registered on the registry upon written notification by these authorities. These liens or attachments can only be lifted from the registry of a railway vehicle upon the notification of the competent authorities.

## **7. Entry into force**

The Regulation has come into force on its date of publication on Official Gazette, 16 July 2015. With the Regulation's entry into force, "The Regulation on Freight Wagon Produced by Third Persons in Turkey and Technical Acceptance of Major Component of Wagon" which was published on the Official Gazette numbered 27628 and dated 01.07.2010 has been abrogated. However, pursuant to Provisional Article 1 of the Regulation, the network notifications for 2015 and 2016 may be made by Turkish State Railways Directorate General without taking the time limits stated under the Regulation into consideration.

Although the enactment of the Regulation with regard to the registration and registry of railway vehicles to be operated in national railway infrastructure network is an important improvement in relation to the liberalization of the market, further secondary legislations concerning sufficiency of railway operator companies and insurance are also expected to be enacted in the future.

*\* The views expressed in this memo are those of the authors and aimed only at providing brief information on the subject matter. This memo does not constitute a legal document and does not constitute any legal opinion or legal advice. Please do not hesitate to contact our offices should you require more detailed information on any issue mentioned hereunder.*