



Turkey: Further Clarifications to the Recent Restrictions on the Distribution of Dividends amid COVID-19

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The Communiqué on Procedure and Principles of Implementation of Provisional Article 13 of the Turkish Commercial Code No. 6102 (“**Communiqué**”) has been published in the Official Gazette on May 17, 2020 and entered into force on the same date.

The Communiqué regulates principles of and exemptions on the restrictions on the distribution of dividends and financial statements that need to be taken into consideration during distribution of dividends.

Under Article 4 of the Communiqué, in all stock companies (*e.g.* joint-stock companies, limited liability companies, limited partnerships in which capital is divided into shares) other than state-owned enterprises (“**Companies**”), from April 17, 2020 (when Provisional Article 13 of the Turkish Commercial Code No. 6102 (“**TCC**”) has entered into force) to September 30, 2020, general assemblies of the Companies (i) may resolve to distribute only 25% of the net profit gained in the fiscal year 2019, (ii) cannot resolve to distribute previous years' profits and free reserves and (iii) cannot grant board of directors the right to distribute advance dividend. It is also regulated in the Communiqué that the restrictions will not apply to share capital increase transactions from internal sources.

Pursuant to Article 4 of the Communiqué, if the general assemblies of the Companies have resolved to distribute dividend for the fiscal year 2019 before entry into force Provisional Article 13 of the TCC, but the payment has not been made yet or partial payment has been made to the shareholders, then, (i) the payments exceeding 25% of the net profit for 2019 and (ii) (*in case it has been resolved to distribute free reserves, even though the Company incurred loss in the fiscal year 2019*) the payment, which has not been made, have to be postponed until September 30, 2020. Additionally, if the general assemblies of the Companies have resolved to grant board of directors the right to distribute advance dividend before entry into force Provisional Article 13 of the TCC, then, distribution of advance dividend have to be postponed until September 30, 2020. The Communiqué also regulates that no interest can be applied on postponed payments.

Under Article 5 of the Communiqué, save for the provisions related to obtaining approval from the Ministry of Trade as required by Article 6 of the Communiqué, following Companies are exempted from the restrictions on the distribution of dividends in the event of the following circumstances:



- (i) If it will be resolved to distribute dividends in the amount of less than TRY 120,000, provided that (a) they have not benefitted from short-time working allowance and/or unpaid leave, monetary wage support due to COVID-19 in line with the relevant legislation and (b) they have not utilized credit surety supported by the Treasury and still have open credit-debt balance;
- (ii) If it will be resolved to distribute dividends, on the condition that the shareholders will use more than half of the dividend for payment of the share capital commitment against another stock company in line with the TCC;
- (iii) If it will be resolved to distribute dividends, on the condition that the shareholders will use the dividend for fulfilling the obligations arising from credit agreements or project finance agreements which will be due until September 30, 2020. *(In these Companies, the payments exceeding the amount of obligations have to be postponed until September 30, 2020.)*

Article 6 of the Communiqué stipulates that in order for the Companies to benefit from the abovementioned exemptions, it is required to obtain prior approval from the Ministry of Trade. In these applications, it is required to submit the following documents to the Ministry of Trade: (i) board of directors' resolution on convening the general assembly meeting (agenda), (ii) financial statements and profit-loss table regarding the fiscal year 2019 and (iii) all other documents proving the foregoing circumstances.

According to Article 7 of the Communiqué, in calculation of the dividend, following financial statements must be taken into consideration: (i) financial statements prepared in line with the standards determined by Public Oversight, Accounting and Auditing Standards Authority as per Article 88 of the TCC and (ii) financial statements prepared in line with the Tax Procedural Law No. 213 for the Companies which are not within the scope of number (i) of this paragraph. Lastly, the dividend amount to be distributed cannot exceed the total amount of sources kept in line with the Tax Procedural Law No.213.

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