



TURKEY: STATUTORY AND PRACTICAL STEPS FOR JOINT-STOCK COMPANIES WHILE DECREASING SHARE CAPITAL

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I. General Information

In order to recover a joint-stock company's loss indicated in such company's balance sheet or to return some of the capital of the joint-stock company to its shareholders through new shares, companies may opt to decrease their share capital. Turkish Commercial Code No. 6102 ("TCC") regulates capital decrease and sets forth the requirements that need to be fulfilled in order to complete the share capital decrease process. Under Turkish laws, capital decrease consists of several statutory steps. In this article, we will explain these steps of capital decrease process and share some practical input as to the process.

According to Article 5 of the Communiqué on the Procedures and Principles Relating to Implementation of Article 376 of TCC published in the Official Gazette dated 15 September 2018 and numbered 30536 ("Communiqué"), board of directors is obliged to call the general assembly for a meeting immediately in case that (i) half of the sum of the capital and legal reserves, as per last annual balance sheet, become uncovered due to losses, (ii) two-thirds of the sum of the capital and legal reserves, as per the last annual balance sheet, become uncovered due to losses. If it is discovered that half of the sum of the capital and legal reserves become uncovered due to losses, board of directors must share its suggestions regarding reformatory measures and the last balance sheet with the general assembly. If it is discovered that two-thirds of the total capital and the legal reserves are, according to the last annual balance sheet, no longer covered due to losses, the general assembly may decide (i) to decrease the capital, (ii) to complete the capital or (iii) to increase the capital as remedies.

II. Legal Proceeding for Capital Decrease

Articles between 473 and 475 of the TCC will be applied if the general assembly of the company whose two-thirds of the sum of the share capital and legal reserves, as per the last annual balance sheet, become uncovered due to losses, decides to decrease the capital. The capital of the company may be decreased down to the minimum statutory amount of TRY 50,000 in joint-stock companies, with the condition that at least half of the sum of share capital and legal reserves is preserved in the equity.

According to Article 473 of the TCC, a report prepared by the board of directors must be approved during the general assembly meeting; registered before trade registry and announced in the Trade Registry Gazette. The report must include the purpose and scope of the capital decrease and the procedures which will be carried out. Along with the report of the board of directors, a report indicating that there are enough assets to cover the rights and receivables of the creditors despite the capital decrease must be prepared by a sworn-in certified public accountant or the independent accountant and financial advisor or the auditor must be approved during the general assembly meeting; registered before trade registry and announced in the Trade Registry Gazette.

In light of the above, the shareholders of the company must convene general assembly and adopt a resolution approving the capital decrease by reviewing and approving the above-stated reports. In order to adopt approving resolution, affirmative votes of shareholders or their representative owning shares which represent at least 75% of the capital of the company must be obtained unless the articles of association requires a higher quorum. Also, a representative of the Ministry of Commerce must attend the general assembly meeting to be held for capital decrease. The minute of general assembly meeting must include the purpose of the capital decrease type of capital decrease and procedures that will be followed for the capital decrease process.

III. Invitation to the Creditors

According to Article 474 of the TCC, a company shall notify its creditors of a share capital decrease in order for the creditors to notify their receivables and request to have their receivables paid or secured. Following taking the general assembly resolution for capital decrease, the board of directors will make an application to the trade registry which the company is registered in, to make an announcement to the creditors. The creditors will be invited 3 (three) times at intervals of 7 (seven) days through the Trade Registry Gazette. In addition, the board of directors must send invitation letters to the creditors whose addresses are already known and the announcement must also be made on the website of the company if the company is obliged to launch a website in accordance with TCC.

For implementation of capital decrease resolution, the receivables which are due and payable must either be paid or secured. Accordingly, creditors' receivables which are due and payable by the end of 2 (two) months period following the third announcement published in the Trade Registry Gazette will be paid off and those which are not due and payable by then will be collateralized. After 2 (two) months following the third announcement made to the creditors through the announcement published in the Trade Registry Gazette, a report must be prepared by the board of directors showing the list of the creditors who applied to the company to have their receivables paid or secured. If any creditor has not applied to the company within the 2 (two) months period, such report of the board of directors will state that no creditor has applied to the company.

In addition to the above, in case that the capital decrease is for recovering the company's loss indicated in the balance sheet of the company and the capital is decreased in the amount of such loss; the board of directors may decide not to follow the procedures of notifying the creditors and paying or securing their receivables, in its own discretion.

IV. Performing the Decisions

The capital of the joint-stock company can only be decreased if all the receivables that declared by the creditors within the provided period, are covered or secured. In case that the creditors' receivables are not paid or secured, the creditors can apply to a court for the cancellation of the general assembly resolution regarding the capital decrease within 2 (two) years subsequent to the publication of the resolution in the Trade Registry Gazette.

If it is necessary to decrease the amount of the share certificates by change or stamping or in any other way for the capital decrease decision to be implemented, the shares which are not returned despite the notice, may be cancelled by the joint-stock company. If the amount of share certificates returned to the

company for replacement by the shareholders is insufficient to change, these shares will be cancelled and the new share certificates to be given in return are sold and the amount of their shares is kept in the company.

Finally, an application must be made to the trade registry for the capital decrease and required documents must be submitted to the trade registry.

V. Simultaneous Capital Decrease with Capital Increase

Capital decrease may also be made concurrently with the capital increase where fully paid new shares will be issued in the amount of the decreased capital. Before amending the relevant law by the Communiqué, one-fourth of the increased amount must be paid as a pre-payment before the registration. As per the Communiqué, there is no longer any particular payment ratio. It is important to note that, simultaneously at the same general assembly, the capital increase must be performed first and then the capital should be decreased.

VI. Technical Bankruptcy

The Communiqué sets forth the procedures and principles regarding implementation of Article 376 of the TCC which regulates corporate remedies available in the event of over-indebtedness and loss of capital and sets the obligations of the company's board of directors in such times. In case that the company is fully in debt, the board of directors must prepare an interim balance sheet based on assets using a going concern concept and the contingent sale prices and must immediately call the general assembly to a meeting and propose remedies. If interim balance sheet shows that the assets do not cover the receivables of the company's creditors and the company does not any one of the measures indicated in Article 7 of the Communiqué (capital decrease, capital complete and capital increase), the board of directors must notify the situation to commercial court at the address of the company's headquarters and request bankruptcy of the company.

VII. Conclusion

As a result, decreasing capital is one of the ways to recover the joint-stock company's losses along with the other remedies briefly explained under this article and joint-stock companies may decide to decrease their capital as a remedy in order to recover their losses indicated the balance sheet prepared the board of directors. In order to complete capital decrease process successfully, necessary procedures must be followed. In this article, we tried to explain such steps for the capital decrease and other options which can be taken rather the capital decrease.

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