TURKEY: DIVIDEND RIGHT CERTIFICATES

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I. INTRODUCTION

Turkish Commercial Code No. 6102 ("**TCC**") sets forth that in accordance with the articles of association or by changing the articles of association, general assembly of shareholders of a joint stock company may decide to issue dividend right certificates in favor of the owners, creditors or those related to the company for a similar reason. In this article, we will focus on the purpose and types of dividend right certificates within the framework of Article 348, 502 and 503 of the TCC.

II. TYPES OF DIVIDEND RIGHT CERTIFICATES

There are 3 (three) types of dividend right certificates as founder's dividend right certificates, ordinary dividend right certificates and participation dividend right certificates. As per Article 502 of the TCC, dividend right certificates, including those issued for the founders, may be issued in form of promissory or bearer.

Founder's dividend right certificates are the certificates issued to be given to the founders in return for the effort they spent while establishing the company. These certificates can only be issued if it is written in the articles of association of the company. In other words, the founder's dividend right certificates cannot be issued after the establishment of the company and/or by amending the company's articles of association.

III. RIGHTS GRANTED TO HOLDERS OF THE CERTIFICATES

Shareholders of joint stock companies may decide to issue dividend right certificates, provided that it is written in their articles of association.

According to Article 503 of the TCC, dividend right certificates in joint stock companies are securities that do not represent the share but grant certain rights to its owner. In other words, dividend right certificates do not give their holders any shareholding rights, but as per the mentioned article, give the rights to participate in the net profit, to receive the amount remaining as a result of the liquidation, or the right to purchase the newly issued shares.

Unlike share certificates, dividend right certificate does not give its owner the right to vote in the general assembly of the company. In addition, such owners do not have the right to object to the general assembly and the decisions of the general assembly, and they cannot benefit from the shareholding rights. Such owners also cannot intervene in the management of the company, and they do not have any right to demand unless the company makes a profit or a liquidation surplus arises or new shares are issued by increasing the capital.

Pursuant to Article 348 of the TCC, the payments to be made to the owners of dividend right certificates can be made as a maximum of one tenth of the remaining from distributable profit after the reserve fund stipulated in the law and 5% (five percent) dividend for the shareholders has been segregated. In addition, again according to the mentioned article, if there is a profit that can be distributed, even if the company has decided not to distribute the profit, the founder's dividend rights certificate owners receive the dividends stipulated in the articles of association.

Joint stock company shareholders cannot cancel or change usufruct rights attached to the certificates by changing the articles of association without obtaining the approval of the beneficial owners. Dividend right certificates expire with the dissolution of the company. There are certain exceptions to this rule. For instance as per Article 348/2 of the TCC, joint stock companies may cancel the dividend right certificates that they have issued, without paying any price before offering their shares to the public; otherwise, the dividend right certificates are automatically deemed invalid.

IV. CONCLUSION

Dividend right certificates in joint stock companies are regulated separately from the share certificates and unlike the share certificates, as per the TCC, these certificates do not give their holders any shareholding rights such as the right to attend the general assembly or the right to vote, but as per the TCC, give rights to participate in the net profit, to receive the amount remaining as a result of the liquidation, or the right to purchase the newly issued shares.

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