

Procedures and Principles regarding Restriction of Distribution of Profit due to COVID-19 Pandemic has been Determined

21 May 2020

Provisional article 13 regarding restriction of the distribution of profit has been added to the Turkish Commercial Code numbered 6102 ("**TCC**") by the Law numbered 7244. The implementation procedures and principles of this article were published under the Communiqué on Procedures and Principles Regarding Implementation of Provisional Article 13 of the Turkish Commercial Code numbered 6102 ("**Communiqué**") in the Official Gazette dated 17 May 2020 and numbered 31130.

Restrictions on Profit and Advance Profit Distribution

According to article 4 of the Communiqué;

- From the date of entry into force of provisional article 13 of the TCC until 30 September 2020, commercial companies may decide to distribute up to 25% of their net distributable profit for the financial year 2019. However, they shall not distribute previous years' profits or any distributable capital reserves. This restriction shall not be applied to the capital increase through internal resources as per article 462 of the TCC.
- Until 30 September 2020, the general assembly shall not authorize the board of directors for advance profit distribution in commercial companies.
- If a general assembly resolution was adopted to distribute profit before the entry into force of provisional article 13 of the TCC but no payment to the shareholders or partial payment has been made, the payments exceeding the abovementioned limit of 25% shall be postponed until 30 September 2020. In addition, in case a general assembly resolution was adopted to distribute distributable capital reserves although the company made a loss in the relevant accounting period, the payment of the remaining unpaid amount shall be postponed until 30 September 2020. No interest shall accrue on the postponed payments.
- If the board of directors was authorized by the general assembly for advance profit distribution, such advance payments shall be postponed until 30 September 2020.

Exceptions and Obligation to Obtain Affirmative Opinion of the Ministry of Trade

According to article 5 of the Communiqué, article 4 of the Communiqué shall not be applied to the companies, which fulfill the requirements indicated below.

Such companies are obliged to obtain the affirmative opinion of Turkey's Ministry of Trade ("Ministry") in order to discuss the profit distribution in the general assembly. Below documents shall be submitted to the Ministry General Directorate of Domestic Trade during the application:

- Companies, which carry out profit distribution of TRY 120,000 or less, excluding those who benefited from short-term working allowance and/or unpaid leave as per the Law numbered 4447 due to a force majeure caused by the COVID-19 and those who used Treasury-backed loan bail and have unpaid credit debt balance:

- The document evidencing that it did not benefit from such financial support is required to be submitted during the application.
- Companies, which carry out profit distribution, provided that more than 50% of the profit decided to be distributed is used for payment of the capital commitment in another capital company in cash and in full within the scope of the provisions of the TCC:
 - The document evidencing the obligation regarding capital commitment in another capital company is required to be submitted during the application.
- Companies, which carry out profit distribution, provided that the profit decided to be distributed is used in cash for the performance of its obligations become due until 30 September 2020 within the scope of the signed loan agreements and project financing facility agreements:
 - The document evidencing the payment obligations within the scope of the loan agreement and project financing facility agreements are required to be submitted during the application.
 - The amount of payment, which exceeds the shareholders' payment obligations, is postponed until 30 September 2020.

Companies, which are exempt from the abovementioned restrictions, are obliged to submit **(i)** the notarized copy of the board of directors' resolution regarding the general assembly, **(ii)** company's financial statements for the accounting period and **(iii)** company's profit or loss statement along with the abovementioned documents evidencing their current status during their applications to Ministry General Directorate of Domestic Trade.

This Communiqué was entered into force on its issuance date, 17 May 2020.

Please see this [link](#) for the full text of the Communiqué (only available in Turkish).

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