

Turkey Amended the Principles and Procedures for Capital Loss and Financial Distress

5 Jan 2021

The Amendment Communiqué published in the Official Gazette, dated 26 December 2020 and numbered 3134 ("**Amendment Communiqué**"), amends certain provisions of the Communiqué on Procedures and Principles Regarding the Implementation of Article 376 of the Turkish Commercial Code number 6102 ("**Communiqué**") published in the Official Gazette, numbered 30536 and dated 15 September 2018.

Notable provisions of the Amendment Communiqué include:

- The language *due to loss* has been added to the title of Article 6 of the Communiqué, and the first paragraph of that provision now provides: *a loss equivalent to or in excess of half the sum of total capital and total legal reserves and less than two-thirds*.
- Article 7 of the Communiqué, as amended, provides that, where losses are equal to or in excess of half the sum of total capital and total reserves, and less than two-thirds, a shareholder resolution may be adopted, at a general shareholder meeting, to increase, reduce, or impair capital.

Article 8 of the Communiqué, as amended, provides, that, where losses equal or exceed two-thirds the sum of total capital and total reserves, a shareholder resolution may be adopted, at a general shareholder meeting, reducing capital to the lowest level possible, provided, however, that subsequently at least half the sum of total capital and total reserves is protected equity.

- For the purpose of explanation, the Amendment Communiqué modifies Article 9 of the Communiqué to provide that a capital impairment fund can only be used by offsetting losses.
- The Amendment Communiqué also amends Article 10, and Provisional Article 1 of the Communiqué:
- Article 10 of the Communiqué, as amended, provides that if, at a general shareholder meeting, prior to a resolution reducing capital in proportion to losses, a resolution is adopted increasing capital, then an amount equivalent to least half the sum of total registered capital and legal reserves must be paid in as protected equity prior to such capital increase. Furthermore, in such a situation, at the same general shareholder meeting it may be resolved to simultaneously decrease and increase share capital, in which case at least half the sum of total share capital to be registered and all legal reserves shall be protected equity.
- Provisional Article 1 of the Communiqué states that foreign exchange losses from contingent foreign currency liabilities are not to be taken into account in determining capital losses or That provision, as amended, now provides that half of the sum of expenses arising from leases, depreciations, and personnel expenses accrued in 2020 and 2021, are not to be taken into account in determining capital losses or insolvency.

The full text of the Amendment Communiqué, published in the Official Gazette, dated 26 December 2020, and numbered 31346 is available at this [link](#) (only available in Turkish).

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