

Turkey Introduces Principles and Procedures for Capital Loss and Financial Distress

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Turkey's Ministry of Trade has issued a communiqué outlining principles and procedures for companies with share capital to follow in cases of capital loss or financial distress. It applies to joint stock companies, limited liability companies and commandite companies with equity shares. Accordingly, companies can now choose to omit foreign currency losses from their calculations arising out of their outstanding foreign currency liabilities until 1 January 2023.

The communiqué details the role of shareholders and management, and remedial actions to be considered in cases where half or two-third or all of the share capital and legal reserves is not covered due to losses, which are primarily regulated under Article 376 of the Turkish Commercial Code.

Notable aspects of the communiqué include:

- Until 1 January 2023, it is possible to exclude foreign currency losses arising out of outstanding foreign currency liabilities from calculations made to identify the capital loss or financial distress.
- If shareholders inject cash to impair the share capital to cover losses, the supplemented amounts are not refundable to shareholders and cannot be facilitated as capital advance in prospective share capital increases. Each shareholder may participate to the commitment pro rata to their shareholding. If capital cannot be impaired, this would not impede any shareholder to voluntarily make payments for impairment of capital. Payments contributed for the impairment of the capital must be recorded as equity in the "capital impairment fund" account.
- If the company carries out a capital decrease in the amount of the losses as well as a simultaneous capital increase, an amount corresponding to at least one-fourth of the increased capital must be paid before registration.
- If the company carries out a capital increase, without decreasing in the amount of the losses, an amount covering half of the capital must be paid before registration.
- If half or two-thirds of the share capital and legal reserves are not covered due to losses, the shareholders' general assembly must discuss the issue, even if it is not included in the meeting agenda.

The Communiqué on Principles and Procedures on Implementation of Article 376 of the Turkish Commercial Code numbered 6102 was announced in Official Gazette number 30536 on 15 September 2018, entering into force on the same date.

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

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