

COMMUNIQUE ON THE PROCEDURES AND PRINCIPLES REGARDING IMPLEMENTATION OF PROVISIONAL ARTICLE 13 OF THE TURKISH COMMERCIAL CODE

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On 17 May 2020, the Ministry of Trade (“**Ministry**”) published the Communiqué on the Procedures and Principles Regarding Implementation of Provisional Article 13 of the Turkish Commercial Code No. 6102 (“**Communiqué**”). The Communiqué mainly sets forth the principles regarding profit distribution restrictions and the exemptions to these restrictions. The Communiqué has entered into force on its publication date.

The Provisional Article 13 was added to Turkish Commercial Code¹ (“**TCC**”) on 17 April 2020, with the Law on Reducing the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law Amending Certain Laws² (“**Omnibus Law**”), with an aim to ensure equity protection by the capital companies during Covid-19 pandemic. Accordingly, as per the Provisional Article 13, the profit amount to be distributed by the capital companies until 30 September 2020³ must not exceed 25% of the 2019 net profit amount.

The companies in which the State, special provincial administration, municipality, village and other public legal entities hold more than 50% of the shares and the companies, in which a public fund holds more than 50% of the shares, are excluded from the scope of these profit distribution restrictions.

Details of the Provisional Article 13’s implementation became clearer upon publication of the Communiqué.

- **Principles regarding profit and advance profit distribution**

From 17 April 2020 until 30 September 2020, the cash profit amount to be distributed by the capital companies must not exceed 25% of the 2019 net profit amount. The previous years’ profits and voluntary reserves shall not be subject to distribution. This limitation is not applicable to capital increase through internal resources.

Until 30 September 2020, the board of directors must not be authorized to distribute advance dividends.

If the general assembly has already adopted a profit distribution resolution before the entry into force of these restrictions (i.e. 17 April 2020); however, no payment has yet been made or partial payment has been made to shareholders, payments of the portion exceeding 25% of the 2019 net profit amount shall be postponed until 30 September 2020. If a voluntary reserves distribution resolution has been adopted

¹ Published in the Official Gazette dated 14 February 2011 and numbered 27846.

² Published in the Official Gazette dated 17 April 2020 and numbered 31102.

³ The President is authorized to extend this period for up to 3 months.

despite the loss in 2019 accounting period, the payments of the unpaid portion shall also be postponed until 30 September 2020. Interest on the postponed payments shall not be accrued.

If the general assembly has granted the board of directors the authority to distribute advance dividends, advance payments shall be postponed until 30 September 2020.

- **The exemptions regarding profit distribution**

Without prejudice to the provisions regarding the Ministry's affirmative opinion, the above-mentioned restrictions do not apply to the following companies:

- The companies which resolve to distribute profit amounting to less than 120,000 Turkish Liras (including this amount), except the ones which (i) employ those who benefit from short-time working allowance due to novel coronavirus (COVID-19) as force majeure under Additional Article 2 and Provisional Article 23 of the Unemployment Insurance Law⁴ and/or those who took unpaid leave and benefit from allowance support under Provisional Article 24 of the Unemployment Insurance Law, and (ii) use Treasury-backed loan surety under Provisional Article 20 of Public Finance and Debt Management Law⁵ and still have an outstanding debt balance.
- The companies which resolve to distribute profit, provided that more than half of the profit amount resolved to be distributed will be used by the shareholders for full and cash payment of the capital undertaking to another capital company.
- The companies which resolve to distribute profit, provided that the profit amount resolved to be distributed will be used by the shareholders for performance, in cash, of the liabilities within the scope of the executed loan agreements or project financing agreements, which will become due until 30 September 2020. In these companies, the payments exceeding the liability amounts of the shareholders shall also be postponed until 30 September 2020.

- **Affirmative Opinion of the Ministry**

In order to discuss the profit distribution at the general assembly meetings based on the above-mentioned exceptions, the relevant companies must obtain an affirmative opinion from the Ministry upon submitting the evidencing documents as listed in the Communiqué.

- **Financial Statements to be taken into account while Calculating the Profit Amount**

While calculating the profit amount, the companies that are subject to independent auditing requirement must take the financial statements prepared in accordance with Article 88 of the TCC (i.e. the Turkish Accounting Standards) as basis; whereas the remaining companies must take the financial statements prepared in accordance with Tax Procedure Law⁶ as basis.

In any case, the amount of profit envisaged to be distributed must not exceed the total amount of the sources subject to profit distribution as per the records kept in accordance with the Tax Procedure Law.

⁴ Published in the Official Gazette dated 8 September 1999 and numbered 23810.

⁵ Published in the Official Gazette dated 9 April 2002 and numbered 24721.

⁶ Published in the Official Gazette dated 10 January 1961 and numbered 10703.

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