

# THE MINISTRY OF COMMERCE'S ANNOUNCEMENT ON PROFIT DISTRIBUTIONS DURING COVID-19 SITUATION

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Several chambers of commerce in Turkey made announcements on 2 April 2020 and stated that on 31 March 2020, the Ministry of Trade (“Ministry”) sent a letter to the Union of Chambers and Commodity Exchanges of Turkey (“TOBB”), underlining the importance of equity protection by the capital companies during Covid-19 situation and requesting announcement of the following to the capital companies, as per Article 13/5 of the Regulation on Procedures and Principles of Joint Stock Companies’ General Assembly Meetings<sup>1</sup> (“Regulation”).

“Except for the state-owned companies, the capital companies, during their general assembly meetings to be held within this year for 2019 financial period, must comply with the following with respect to cash profit distribution decisions:

- Not distribute the previous years’ profits,
- The amount to be distributed must not exceed 25% of the 2019 net profit amount, and
- The Board of Directors must not be authorized to distribute advance dividends.”

Article 13/5 of the Regulation, which constitutes ground of these restrictions, authorizes Ministry to include agenda items to the general assembly meetings of the joint stock companies. However, the shareholders are free to resolve on the agenda items which may be

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<sup>1</sup> Published in the Official Gazette dated 20 November 2012 and numbered 28481.

included by the Ministry and as per the Turkish Commercial Code<sup>2</sup>, resolving on the profit distribution is one of the non-assignable duties and authorities of the general assembly. Thus, literal interpretation of the announcement seems it is a suggestion rather than a legal obligation. However, the implementation of the foresaid announcement will yet to be seen.

The Ministry's letter to TOBB was dated 31 March 2020; whereas TOBB's letters to the trade and industry chambers of Turkey was dated 1 April 2020 and the announcements to companies were made on 2 April 2020. Thus, the enforceability date of these restrictions is not certain either.

We trust that the implementation of this announcement would become clearer in the following days. Meanwhile, the companies planning to hold a general assembly meeting and distribute dividends should take the announcement into account and consult with the Ministry and the relevant trade registry before holding their general assemblies.

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<sup>2</sup> Published in the Official Gazette dated 14 February 2011 and numbered 27846.