

Additional Rules for the Distribution of Profit in Turkish Stock Companies

The Law on Reducing the Effects of the New Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Amendment of Certain Laws No. 7244 has been published in the Turkish Official Gazette No. 31102 dated 17 April 2020 ("Amendment Law"), which added a provisional Article 13 added to the Turkish Commercial Code No. 6102 ("TCC"). By Article 12 of the Amendment Law, certain restrictions were promulgated regarding the distribution of profit share and profit advance payments in Turkish stock companies.

Status Quo on Distribution of Profits during Covid-19 Pandemic

The Amendment Law ruled that until 30 September 2020 (i) Turkish stock companies could only resolve to distribute up to 25% of the annual net profit gained within the 2019 (ii) previous years' profits and free reserve funds shall not be subject to any distribution of profit (iii) the general assembly of shareholders shall not be entitled to authorize the board of directors to distribute any advance payment and (iv) any amount above 25% of the net 2019 annual profit shall be deferred if the shareholders have already adopted a resolution for the distribution of profit but not paid to the shareholders or the shareholders received a partial payment.

Communiqué on the Implementation of Provisional Article 13 of TCC

The Communiqué ruling the terms and conditions for the implementation of the provisional Article 13 regarding the distribution of profit shares and profit advance payment as above entered into effect as of 17 May 2020 upon its publication on the same date in the Turkish Official Gazette No. 31130 with the name "The Communiqué on the Implementation of the Provisional Article 13 of the Turkish Commercial Code No. 6102" (the "Communiqué"). The Communiqué includes certain exemptions deviating from the above restriction promulgated by the Amendment Law concerning the terms of profit share distribution and profit advance payment distribution along with specific rules for such distribution.

No Distribution of Previous Years Profits and Free Reserve Funds; Capital Increases with Internal Sources Allowed.

Under paragraph 1 of Article 4 of the Communiqué bearing the heading "*Terms for the distribution of profit shares and profit advance payments*", it has been stipulated that stock companies shall be entitled to distribute only 25% of their 2019 net profit in cash until 30 September 2020. In contrast, they shall not be allowed to distribute previous years' profits and free reserve funds. However, such restriction shall not apply to any capital increase contemplated as per Article 462 of TCC (capital increase with the addition of internal sources).

Authorization of the Board of Directors Suspended

Under paragraph 3 of Article 4 of the Communiqué, in circumstances where the general assembly of shareholders adopted a resolution to distribute profit before 17 April 2020, i.e. before the Amendment Law has entered into force, but no profit distribution has been made or the shareholders received a partial payment; any payments made more than 25% along with amounts constituting part of the fees not been paid yet (although a loss had occurred in the relevant accounting period but the profit was aimed to be distributed out of free reserve funds as per the general assembly resolution) shall be deferred until 30 September 2020. In the continuance of the paragraph as mentioned above of Article 4 of the Communiqué, no interest shall be applicable on the profit share payments deferred until 30 September 2020 being a different provision announced by the Amendment Law. However, in the existence of an authorization given to a board of directors before the Amendment Law entered into force, advance payments shall be deferred until 30 September 2020 as per paragraph 5 of Article 4 of the Communiqué.

Exceptions of exemptions!

The following companies shall not be subject to the restrictions mentioned above, i.e. "Exemptions on Profit Share Distribution" detailed under Article 4 of the Communiqué shall not be applicable on the following institutions.

- i. Companies resolved to distribute profits TRY 120,000 and below (EXCEPT FOR (a) employers hired employees benefiting from short-time working fund because of new type coronavirus as per Additional Article 2 and provisional Article 23 of Unemployment Insurance Law No. 4447 dated 25 August 1999 and/or cash salary fund due to non-paid leave as per provisional Article 24 of the same law along with (b) those utilized credits with the surety of Turkish Treasury and indebted with outstanding credit payments as per the Law No. 4749 on the Structuring of Public Financing and Debt Management dated 28 March 2002 and the related Decrees adopted in relation thereto).
- ii. Companies having resolved to distribute profit provided that more than half of such profit determined to be distributed shall be utilized per the provisions of TCC to pay in cash and whole against the capital commitment payables owed to another stock company.
- iii. Companies resolved to distribute profit to make cash payments for the reimbursement of their indebtedness to be due by the end of 30 September 2020 in connection with credit agreements or project financing agreements (Payments of amounts over any payment obligations have been deferred until 30 September 2020).

As per the exemption stated in Article 6 of the Communiqué bearing the heading "Obtaining Appropriate Opinion of the Ministry", it has been provided that any resolution to be discussed in the general assembly of shareholders about the distribution of profit shall be submitted to and require the appropriate opinion of the Turkish Ministry of Commerce where the required documents for such submission have been listed under the same article.

Which financial tables shall be used while calculating profit?

Article 7 of the Communiqué regulates “Financial Tables” to rely on while distributing of any profit within the above stated limits. Accordingly, stock companies required to issue their financial tables according to the standards brought by the Turkish Public Monitoring, Accounting and Auditing Standards Institute shall calculate their profits according to the financial tables to be prepared as per Article 88 of TCC. The rest of the stock companies shall rely on their financial tables made according to the Turkish Tax Procedural Law No. 213 dated 4 January 1961 while calculating their profits to be distributed by observing the above-specified restrictions. Last but not least, the Communiqué stipulates that any profit to be distributed so shall not exceed the total amount of sources subject to profit distribution registered with records held as per the Turkish Tax Procedural Law.