



Review of The Communiqué on Procedures and Principles Regarding the Application of Provisional Article 13 of the Turkish Commercial Code Numbered 6102

The Law on Reducing the Effects of the New Coronavirus (Covid-19) Epidemic on Economic and Social Life and the Amendment of Certain Laws (“**Law**”) has been published in the Official Gazette Numbered 31102 on 17 April 2020.

By the article 12 of the Law, provisional article 13 has been added to the Turkish Commercial Code numbered 6102 (“**TCC**”), regarding the restrictions on dividend distribution in capital companies. The procedures and principles on the application, limitations and exceptions of the related Article are regulated by the Communiqué (“**Communiqué**”) on the Procedures and Principles Regarding the implementation of the Provisional Article 13 of the Turkish Commercial Code numbered 6102 which was published in the Official Gazette numbered 31130 on 17.05.2020.

I. REGULATIONS PROVIDED BY LAW NUMBERED 7244

The Provisional Article 13 added to the TCC numbered 6102 by article 12 of the Law is as follows:

PROVISIONAL ARTICLE 13 - (1) In capital companies, until the date of 30/09/2020, only up to twenty-five percent of the net profit of fiscal year 2019 can be distributed, previous years' profits and free reserve funds cannot be subjected to the distribution of dividend and finally the board of directors cannot be authorized to distribute advance dividends by general assembly. The provisions of this paragraph do not apply to the companies that directly or indirectly owned by more than fifty percent of their capital by the state, provincial administrations of state, municipality, villages and other public legal entities and companies that by the funds which more than fifty percent of their capital are publicly owned. The President of the Republic is authorized to extend and shorten the period specified in this paragraph for three months.

(2) In case the general assembly has issued a resolution to distribute dividends for the fiscal year 2019, but the shareholders have not yet been paid or partial payments have been made, payments for the part exceeding twenty-five percent of the net profit of 2019 are postponed until the end of the period specified in the first paragraph.

(3) The Ministry of Trade is authorized to determine the exceptions and the procedures and principles for companies that fall under the implementation scope of this article, by taking the opinion of the Ministry of Treasury and Finance.”

The above-mentioned provisional article regulates **the amount of the cash dividend which capital companies can distribute until 30 September 2020, cannot exceed 25% of the net profit of 2019, the previous year profits and unrestricted reserves cannot be subject to distribution, and the general board cannot be authorized to distribute dividend advances.** This provision does not apply to the companies that directly or indirectly owned by more than %50 percent of their capital by the funds of the state, special provincial administration, municipality, village and other public legal entities, or by the funds which more than %50 percent of their capital are publicly

owned. Accordingly, the capital companies which are not covered by the exception as stated and which have not issued a resolution to distribute dividends in 2019, should comply with this article. The date stipulated in the article can be extended or shortened for a three-month-period by the President of the Republic.

In the continuation of the article, it is stated that, if the general assembly has decided to distribute dividends for the 2019 fiscal year, but the payments were not made to the shareholders or only partial payments were made, **payments of the part exceeding 25% of the net profit of 2019** shall be postponed until the date of 30 September 2020.

In the last section of the article, it is stated that The Ministry of Trade is authorized for determining the exceptions and the procedures and principles regarding the application of limitation of the dividend distribution. On this regard, the **Communique** concerning the procedures, principles, limitations and exceptions of the said article, has been published by the Ministry of Trade.

II. PRINCIPLES AND LIMITATIONS PROVIDED BY THE COMMUNIQUE

1. Scope

Article 1/II of the Communique, in parallel with above- mentioned provisional Article 13, excludes the companies that directly or indirectly owned by more than %50 percent of their capital by the funds of the state, special provincial administration, municipality, village and other public legal entities, or by the funds which more than %50 percent of their capital are publicly owned. The limitations in the communique shall not be applied for the said legal entities.

2. Limitations on Distribution of Dividend and Advance Dividend

According to the Article 4/I of the Communique, from the enforcement date of 17.04.2020 until the date of 30.09.2020; it will be allowed to decide to distribute up to only 25% of the net profit of 2019. Previous year profits and free reserves shall not be subject to distribution.

According to Article 4/II of the Communique, the authorization of the distribution of advance dividend shall not be given to the board of directors by the general assembly until the date of 30.09.2020.

The event regarding the decision to distribute dividends by the general assembly before 17.04.2020, which is the date of the entry into force of Provisional Article 13, is regulated in the Article 4/III of the Communique. Accordingly, **if the general assembly has decided to distribute dividends for the 2019 fiscal year, but the payments were not made to the shareholders or partial payments were made, “payments exceeding 25% of the net profit of 2019”; in case of the decision of distribution has been taken from the free reserves even though it made loss in the accounting period, all payments related to the unpaid part**, shall be postponed until 30.09.2020. It is also envisaged that no interest will be charged on deferred payments.

In the Article 4/IV of the Communique, it is stated that if the authorization for the distribution of advance dividend has been given to the board of directors, the advance payments shall be postponed until 30 September 2020 as well.

3. Capital Increase from Internal Resources

It is also regulated in the Article 4/I of the Communiqué that the restrictions on “*the amount of cash dividend which can be distributed until 30 September 2020 should not exceed 25% of the net profit of 2019 and the distribution cannot be subjected to the previous years' profits and free reserves*” **will not apply to the capital increases to be made from internal sources.**

Accordingly, reserve funds which are reserved by the Articles of Incorporation or a general assembly decision and not reserved for a specified purpose, and also unrestricted parts of the legal reserve funds can be transformed into capital increase from internal resources by converting the funds which the legislation allows to be added to the balance sheet and added to the capital. **In other words, if the dividend will be added to the capital, there will be no restrictions on the distribution of the dividend.**

III. EXCEPTIONS SET OUT IN THE COMMUNIQUE

1. Capital Companies Under the Exception

In the Article 5 of the Communiqué regulating the exemptions related to dividend distribution, it is stated that the dividend restriction regulated in the Article 4 of the Communiqué will not be applicable for the capital companies which have specified qualifications. In this context, the qualifications of the capital companies which are required to be under the exception are listed as follows:

- a) **According to sub-clause (a) of the Article 5 of the Communiqué: Companies which have decided to distribute dividends up to TL 120,000; excluding those Companies which have benefited from short-time work allowance and/or unpaid leave due to compelling reason originating from the new Coronavirus (Covid-19) and the employer of the ones who benefits from cash wage support in accordance with Provisional Article 24 of Law Numbered 4447 and; those who use Treasury guaranteed loan bail in accordance with the provisional article 20 of Public Finance and Debt Management Law No. 4749 and the companies which have an open credit debt balance,**
- b) **Sub-clause (b) of the Article 5 of the Communiqué: Companies which have decided to distribute dividends by its shareholders; **provided that more than half of the dividend decided to be distributed fully in cash and at the performance of the debt to another capital company** within the framework of the provisions of the Law,**
- c) **Sub-clause (c) of the Article 5 of the Communiqué: Companies which have decided to distribute dividends; provided that the **dividend** decided to be distributed **to the shareholders will be used in the performance of the liabilities which become mature until 30.09.2020 within the scope of the loan agreements or project financing agreements** which are signed by the shareholders. In accordance with the Article 5/II of the Communiqué; for these companies listed in subparagraph c, payments related to the amount exceeding the shareholders' performance obligations were postponed until 30 September 2020.**

2. Obligation to Obtain the Assent of the Ministry of Trade

Article 6 of the Communiqué regulates that in order to discuss the dividend distributions to be made by the capital companies listed within the scope of the exemption, it is stipulated that the assent of the Ministry of Trade is required to be acquired first.

For the applications, **i) the notarized copy of the decision of the Board of Directors regarding the General Assembly, ii) the financial statement of the company for the accounting period and iii) the statement of profit or loss** is demanded. In addition, it is stated that the documents below, which show that the company is within the scope of the exemption, should be submitted to the General Directorate of Domestic Trade of Ministry of Trade.

- a) For companies where dividend distribution will be made in accordance with the exception regulated in the sub-article (a) of Article 5 of the Communiqué; **a document from the relevant institutions evidencing the absence of the supports specified in the aforementioned paragraph should be obtained,**
- b) For companies where dividend distribution will be made in accordance with the exception regulated in the sub-article (b) of Article 5 of the Communiqué; **a document evidencing the capital commitment of those who have the right to receive more than half of the dividend to be distributed to another capital company,**
- c) For companies where dividend distribution will be made in accordance with the exception regulated in the sub-article (c) of Article 5 of the Communiqué; **document evidencing the performance obligations within the scope of loan contracts and project finance contracts.**

IV. OTHER PROVISIONS OF THE COMMUNIQUE

1. Basis of the Financial Statements

Under the Article 7 of the Communiqué, it is stated that; in the calculation of the dividends within the scope of the restrictions imposed by this Communiqué; capital companies which have to prepare their financial statements in accordance with the standards set by the Public Oversight, Accounting and Auditing Standards Authority, the financial statements prepared according to Article 88 of the TTC numbered 6102 shall be used for the calculation. Other capital companies which should prepare the financial statements in accordance with the Tax Procedural Law numbered 213, those financial statements shall be basis for calculation.

According to the following section of the Article 7 of the Communiqué; it is also regulated that **the amount of dividend which is intended be distributed shall not exceed the total amount of the resources subject to dividend distribution** in the financial records prepared according to the Tax Procedural Law numbered 213.

2. Enforcement

All provisions of the Communiqué entered into force as of the date of publication of the Communiqué in the Official Gazette, which is 17.05.2020.

V. CONCLUSION

By the above-mentioned Provisional Article 13 which is added to the Turkish Commercial Code numbered 6102 by the Law numbered 7244; it is aimed to eliminate the negative effects of Covid-19 outbreak on economic activities by regulating certain restrictions on the distribution of dividends for capital companies. In the Communiqué, which was published in the Official Gazette and entered into force on 17 May 2020; principles on the implementation of the Provisional Article 13 are specified. Also, related specification is made by regulating the principles and procedures of the restrictions imposed on dividend distribution, defining which companies will be outside of the scope of these restrictions and explaining the basis of the financial statements.

It is crucial for capital companies which plan to take decisions regarding dividend distribution for the period of 2019 to consider the restrictions and principles set forth under the Provisional Article 13 and the Communiqué.

If you have any questions regarding the Communiqué or other issues, please do not hesitate to contact us.

