

LATEST COVID-19 MEASURES TAKEN IN TURKEY AS OF 14.04.2020

This note aims to provide a brief update on the latest official measures taken in Turkey as of 14.04.2020 to deal with the effects of the current COVID-19 crisis.

Please note that the below list of measures is not exhaustive and has been selected by the author as the most significant. There are many other regulations addressing specific needs/sectors. Therefore, before taking any action based on the COVID-19 measures that have been implemented so far in Turkey, specific legal advice should be sought.

Decision of the Board of Judges and Prosecutors dated 30.3.2020 and numbered 2020/51 regarding additional COVID-19 measures

The Board of Judges and Prosecutors (the “Board”) has been authorized by the Provisional Article 1 of the Law on Amendment of Certain Laws, Numbered 7226 (“Law No. 7226”) effective as of 26.03.2020 to take additional COVID-19 measures. Accordingly, in the said Decision, the Board, among others, decided to postpone hearings, negotiations and on-site inspections before the first instance judicial and administrative courts and the district judicial and district administrative courts except for imprisonment (only to review the imprisonment status as a legal requirement) and urgent matters, investigation and prosecution files with statute of limitations nearly expiring, requests for issuance of stay orders and other matters and transactions that may be deemed urgent until 30.4.2020 (including such date).

The Board also decided that that the said postponement shall not constitute a total halt of judicial services. Criminal law notices and complaints shall be further processed and the judges and prosecutors shall follow their files and transactions and perform their obligations (review of files, issuance of decisions in due time and other mandatory judicial services) by working remotely from home as much as possible.

Circular of the Presidency of the Republic of Turkey dated 1.4.2020 and numbered 2020/5 regarding the effect of COVID-19 on public procurement contracts

According to the said Circular, in agreements signed at the end of tenders concluded under the scope of the Public Procurement Law Numbered 4734 dated 4.1.2002 (“Law No. 4734”) and in transactions that have been excluded from Law No. 4734, contractors shall apply to the administration that is the party to the said agreement, in case the work becomes impossible (temporarily or permanently) to perform (entirely or partially) due to the effects of the COVID-19 outbreak provided that they prove the same. The said applications shall be evaluated under the Law No. 4734 and the opinion of the Ministry of Treasury and Finance shall be taken. As a result, if it is decided that the situation is of no fault of the contractor, prevents the contractor from performing the work and the contractor is not able to overcome it, there may be an extension or the agreement may be terminated.

Letter of the Union of Chambers and Commodity Exchanges of Turkey dated 1.4.2020 to all Trade Chambers and the relevant provision in the Draft Legislation regarding the Law on Minimization of the Economic and Social Effects of the New COVID-19

Pandemic and Amendments to be made on Certain Laws regarding distribution of dividend by Turkish companies

On 31.03.2020, in accordance with Article 13/5 of the “Regulation on the Procedures and Principles of the General Assembly Meetings of Joint Stock Companies and the Representatives of the Ministry of Trade who will be Present at Those Meetings”, the Turkish Ministry of Trade, by emphasizing the importance maintaining equity during the COVID-19 crisis, requested the Turkish Union of Chambers and Commodities Exchanges of Turkey to make an announcement to Turkish companies.

Consequently, the Turkish Union of Chambers and Commodities Exchanges sent a letter to all the Trade Chambers on 01.04.2020 to have them notify their member companies of the following decision of the Ministry of Trade:

“In the general assembly meetings for the 2019 fiscal year, the companies cannot distribute previous years’ dividend; for the 2019 fiscal year, they can only distribute dividend in an amount up to 25% of their distributable dividend and they cannot give authority to their board of directors to distribute advance dividend.”

The Draft Legislation regarding the Law on Minimization of the Economic and Social Effects of the New COVID-19 Pandemic and Amendments to be made on Certain Laws presented to the Turkish National Assembly on 14.4.2020 (“Draft Legislation”) stipulates the above restriction on dividend distribution in its article 11 adding the following provisional article 13 to the Turkish Commercial Code numbered 6102:

“Provisional Article 13- (1) Distributable dividends in cash to be distributed by joint-stock companies until 30/9/2020 shall not exceed the 25% of the net profit for the year 2019, profits of the previous years and the distributable reserves shall not be subjected to distribution, the general assembly shall not give the board of directors the authority to distribute advance dividend. The companies, in which the government, provincial special administrations, municipalities, villages and other public legal entities and funds, where more than fifty per cent of the capital belongs to the public, directly or indirectly own more than fifty per cent of the capital shall be exempt from this provision. The President shall have the authority to increase or decrease the terms stipulated in this paragraph for three months.

(2) If the general assembly has decided to distribute dividends for the 2019 fiscal year but the shareholders have not been paid yet or have been paid in part, the payments exceeding 25% of the net profit for the year 2019 shall be postponed until the date set forth in the paragraph above.”

The developments regarding this Draft Legislation should be followed.

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