

**MINISTRY OF COMMERCE PUBLISHED A COMMUNIQUE REGARDING THE PROFIT DISTRIBUTION RESTRICTION TO BE APPLIED TO CAPITAL COMPANIES IN 2020**

The Ministry of Commerce has published a communiqué in the Official Gazette dated May 17, 2020 regarding the implementation principles of the profit distribution restriction regulated in the provisional article 13 of the Turkish Commercial Code numbered 6102 (“Communiqué”). This Communiqué essentially determines the companies that will not be subject to the profit distribution restriction.

The provisional article 13 of the Turkish Commercial Code numbered 6102 constitutes the legal basis of the profit distribution restriction to be applied in capital companies (joint stock and limited liability companies) until September 30, 2020. This restriction entered into force on April 17, 2020 with the Law No. 7244 published in the Official Gazette dated April 17, 2020.

Accordingly, in capital companies, only twenty-five percent of the net profit of the year 2019 can be decided to be distributed in cash from April 17, 2020 until September 30, 2020. Previous years’ profits and distributable company reserves cannot be subject to distribution. The general assembly cannot authorize the board of directors or company managers to distribute advance dividend until September 30, 2020. If such authorization has already been granted to the board of directors, advance dividend payments shall be postponed until September 30, 2020.

If the ordinary general assembly has already decided to distribute dividend relating to the fiscal year 2019, but such dividend has not yet been paid to the shareholders, dividend payments relating to the portion exceeding twenty-five percent of the net profit of the year 2019 shall also be postponed until September 30, 2020.

**Companies that will not be subject to the profit distribution restriction**

Companies that will not be subject to the profit distribution restriction are determined in the Communiqué as follows;

- a) Companies taking a profit distribution resolution in the amount of 120,000 TL or less are exempt from the profit distribution restriction. Therefore, companies that will distribute more than 120,000 TL dividends are subject to the profit distribution restriction.

However, companies employing those who benefit from short-time work allowance and /or cash wage support for leave without pay due to Covid-19 force majeure event are subject to the profit distribution restriction even if they decide to distribute profit in the amount of 120,000 TL or less.

In addition, companies benefiting from Treasury-backed loan guarantees and having unpaid loan balances are also subject to the profit distribution restriction even if they decide to distribute profit in the amount of 120,000 TL or less.

- b) Companies taking profit distribution resolution are exempt from the profit distribution restriction provided that more than half of the profit decided to be distributed to the shareholders is used to fulfill capital commitment to another capital company.
- c) Certain companies making profit distribution are exempt from the profit distribution restriction provided that the profit decided to be distributed to the shareholders is used for payment of debts of loan or project financing agreements to be paid until September 30, 2020. Dividend payments exceeding the amount of debt to be paid are postponed until September 30, 2020.

## **Documents required for exemption from the profit distribution restriction**

In order for the companies, which will not be subject to the profit distribution restriction, to be able to discuss distribution of profit at the general assembly meeting, they need to obtain a permission letter from the Ministry of Commerce's General Directorate of Domestic Commerce.

Following documents should be added to the application petition for the said permission letter:

- a) Notarized copy of the decision of the board of directors regarding the general assembly meeting and the company's balance sheet and profit-loss statement for the year 2019. Additionally,
- b) For companies which will take profit distribution decision in the amount of 120,000 TL or less; a written letter issued by Turkish Employment Agency (İŞ-KUR) regarding short-time working allowance and cash wage support program due to Covid-19 that the company has not benefited from such allowances and support programs. Also a written letter issued by the Ministry of Finance and Treasury stating that the company has not used Treasury-backed loan guarantees from the Turkish government,
- c) For companies having shareholders who have capital contribution obligation to another capital company; those who have the right to receive more than half of the dividend to be distributed must submit certified documents regarding the capital contribution obligation to the other capital company,
- d) For companies making profit distribution to be used for the payments of debt obligations of loan and project finance agreements; certified documents as to the liabilities within the scope of the loan and project finance agreements

should be attached to the application petition.

The amount of profit to be distributed cannot exceed the total amount of the distributable resources determined in the official books and records kept in accordance with the provisions of the Tax Procedural Code.

Financial statements prepared in accordance with the standards determined by the Public Oversight, Accounting and Auditing Standards Authority (*KGK*) are taken into account for the calculation of profit to be distributed. In companies, which are not subject to the standards set by *KGK*, financial statements prepared in accordance with the Tax Procedural Code are taken as the basis.

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