

## **IMPLEMENTATION OF THE RESTRICTION ON DIVIDEND DISTRIBUTION CLARIFIED BY THE MINISTRY OF TRADE**

Earlier this year in April 2020, the Turkish Parliament enacted an Omnibus Law<sup>1</sup> that restricted companies from distributing dividends exceeding 25% of the net profit pertaining to the 2019 financial year. This temporary restriction will be in force until 30 September 2020. In an effort to provide further guidance on the implementation principles of this restriction as well as introducing certain exemptions, the Ministry of Trade published the Communiqué<sup>2</sup> on the Procedures and Principles of the Implementation of Temporary Article 13 of the Turkish Commercial Code on 17 May 2020 (the "Communiqué").

### **GENERAL RESTRICTION ON DIVIDEND DISTRIBUTION**

#### ***Dividends***

Companies are only allowed to distribute up to 25% of the net profits of the 2019 financial year<sup>3</sup> as dividend between 16 April 2020 and 30 September 2020. Similarly, no dividends arising from previous financial years' profit or reserve funds can be distributed until 30 September 2020. If a resolution on dividend distribution has already been approved by the general assembly prior to 16 April 2020, but no dividend payment more than 25% of the distributable amount has been made to the shareholders until such date, the outstanding amount exceeding 25% of dividends can only be paid after 30 September 2020. Similarly, payments of dividends arising from previous financial years' profit or reserve funds must be postponed until 30 September 2020, even if such resolution has already been adopted by the general assembly prior to 16 April 2020. No interest can accrue on such postponed payment.

#### ***Advance dividend payments***

The Omnibus Law also restricted making advance dividend payments to the shareholders. Therefore, any authorization to the governing body of the company by the general assembly in that regard is prohibited, and if such authority was given prior to 16 April 2020, it cannot be used until 30 September 2020.

#### ***Carve-out for public legal entities***

The restriction on dividend distribution is not applicable to companies majority of whose share capital is directly or indirectly held by the state, governorships, municipalities, villages, public legal entities or by funds whose majority capital is owned by the government.

### **EXEMPTIONS UNDER THE COMMUNIQUÉ**

The Communiqué introduced certain exemptions to the dividend distribution restriction. Accordingly, companies which satisfy the below criteria can be exempted from such restriction, provided that the prior approval of the Ministry of Trade is obtained:

- Companies distributing dividends in an amount below TRY 120,000 provided that:

<sup>1</sup> Please refer to our earlier briefing on details of the Omnibus Law (Law No: 7244) published in the Official Gazette dated 17 April 2020 and numbered 31102 regarding [dividend distribution](#).

<sup>2</sup> Published in the Official Gazette dated 17 May 2020 and numbered 31130.

<sup>3</sup> For companies with a different financial years than the calendar year, all references to 2019 financial year must be construed as their most recent financial year.

- none of their employees are benefiting from the wage support or short-term working allowance due to unpaid leaves for Covid-19 related matters, and
- they do not have any outstanding loan repayment obligation if they have benefitted from credit guarantees supported by the Turkish Treasury;
- Companies whose shareholders will utilize more than 50% of the dividends to fulfill their share capital payment obligations in other companies; and
- Companies whose shareholders will utilize the distributed dividends to fulfill their payment obligations under loan or project finance agreements, which will become due until 30 September 2020. This exemption is only applicable for dividend payments up to the relevant loan repayment amount becoming due until 30 September 2020.

### **Approval of the Ministry of Trade**

In order to obtain the approval from the Ministry of Trade, companies must submit documents evidencing that they qualify for the exemptions set out under the Communiqué.

### **SANCTIONS**

Neither the Omnibus Law nor the Communiqué sets forth an explicit sanction or penalty for failing to comply with the restrictions. However, shareholders, members of governing bodies of the relevant company and the Ministry of Trade may invoke invalidity of the relevant general assembly resolution pursuant to the general principles under the Turkish Commercial Code. In such case, the shareholders who have illicitly received dividend payments may be required to return such payments to the company.

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