Amendments to the Communiqué with respect to Capital Loss and Negative Equity

The Communiqué Amending the Communiqué on the Procedures and Principles Regarding Implementation of Article 376 of the Turkish Commercial Code No. 6102 (the "Amending Communiqué") was published in the Official Gazette on December 26, 2020, and entered into force on the same date.

Article 376 of the Turkish Commercial Code (the "TCC"), which is also known as the provision for technical bankruptcy, provides mandatory measures to be taken by companies in the event of capital loss or negative equity. It sets out the actions under three categories depending on the financial status of the company in question. In this regard, the Communiqué on the Procedures and Principles Regarding Implementation of Article 376 of the Turkish Commercial Code No. 6102 (the "Implementation Communiqué") was published in the Official Gazette and became effective on September 15, 2018. Having said that, the Amending Communiqué dated December 26, 2020, now introduces certain amendments to the Implementation Communiqué, some of which comprise significant changes likely to impact the practice, whereas there also are explanatory arrangements.

The most remarkable amendment was made to the Provisional Article 1 of the Implementation Communiqué by Article 6 of the Amending Communiqué. Prior to that amendment, Provisional Article 1 of the Implementation Communiqué regulated that foreign exchange losses arising from liabilities in foreign exchange not performed yet might be not considered in the calculation of capital loss or negative equity. To ease the private sector amid the recent Covid-19 outbreak, the Ministry of Trade now broadens the scope of exclusions to include half of the sum of the expenses arising from leases, amortization, and personnel expenses accrued in 2020 and 2021. The Provisional Article will remain in effect until January 01, 2023.

Moreover, under the amended version of Provisional Article 1, calculations must be made without duplication while determining these amounts. Regarding the calculations to be made within the Provisional Article's scope,

no records will be included in the financial statements and the calculations will be shown in the footnotes for information purposes.

Except that, Article 3 of the Amending Communiqué provides that companies that have lost at least two-thirds of their share capital and legal reserves may settle with "the remaining share capital" rather than "one-third of the share capital" as stated by the former version of Article 8 of the Implementation Communiqué. The amendment eliminates the practical ambiguities due to the controversial wording of the former statement in Article 8, and it thereby allows room for companies that have lost more than two-thirds of their share capital and legal reserves to settle with the remaining amount, which will be less than one-third.

Article 3 of the Amending Communiqué also sets forth an additional statement to the first paragraph of Article 8 of the Implementation Communiqué and stipulates that if a company has lost at least two-thirds of its share capital and legal reserves, its share capital may be decreased up to the minimum share capital amount, provided that at least half of the sum of the share capital and legal reserves are preserved in the equity. This amendment ensures that companies will not be experiencing capital loss as per Article 376 of the TCC after decreasing their capital in this regard.

Article 5 of the Amending Communiqué further clarifies the implementation of capital increase as per Article 10 of the Implementation Communiqué and requires the payment of the amount that will provide that at least half of the sum of the share capital to be registered and legal reserves are preserved in the equity before the registration of the capital increase. Article 10 of the Implementation Communiqué formerly stipulated that the amount that will meet at least half of the share capital be paid before the registration.

The Amending Communiqué also enables companies that fall within the scope of Article 376 of the TCC to increase their share capital and then decrease it in the same general assembly meeting without being bound by the above requirements provided that the increased amount is fully paid and that at least half of the sum of the share capital to be registered and the legal reserves are preserved in the equity in consequence of such operations. This amendment

also ensures that companies' financials comply with the thresholds provided under Article 376 of the TCC after decreasing the capital.

As concerns the explanatory points, the Amending Communiqué provides that Article 10 of the Implementation Communiqué on capital increase shall apply without any prejudice to the provisions of the capital market legislation for public joint-stock companies and that the share capital completion fund may only be used by way of offsetting the losses.

In consideration of above, it has become crucial for board members to evaluate the financial statements based on the foregoing changes adopted under Amending Communiqué before taking the necessary steps regulated under Article 376 of the TCC.

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