

April 10, 2020

RECENT MEASURES TAKEN AGAINST COVID-19 IN CORPORATE LAW

With the rapid spread of Covid-19 pandemic disease, measures are adopted to in order to effectively minimize the risk related to Covid-19 in corporate life. This article sets forth the overview of these measures until the date of this article.

I. Cancellation of General Assembly Meetings and Convening of Meetings in Electronic Environment

The General Directorate of Domestic Trade of the Turkish Ministry of Commerce published an announcement on March 20, 2020 ("**Announcement I**") regarding the holding of general assembly meetings of joint stock and limited liability companies.

Pursuant to the Turkish Commercial Code ("**TCC**") annual general assembly meetings of joint stock and limited liability companies shall be held within three months after the end of each financial year. As most of the companies does not adopt a specific period, most of the general assembly meetings should be held before end of march each year. Announcement I aim to ease the holding of general assemblies in these busy times by taking into account the spread of Covid-19 pandemic disease.

Announcement I states that, if the board of directors/managers of the joint stock or limited liability company called the general assembly to convene, this resolution can be cancelled with a resolution adopted by the board of directors/managers and without waiting for the general assembly to convene to resolve on postponing the meeting to a another date. For this, board of directors/managers shall make an application to the relevant Trade Registry Office and notify the shareholders.

Announcement I also advise the companies to hold their general assembly meetings in electronic environment in accordance with the Article 1527 of the TCC. Normally, only the companies which have the necessary provision in their articles of association to allow for electronic general assembly meetings and have procured the required technical system can hold their general assembly meetings in electronic environment pursuant to the Article 1527 of the TCC and its secondary legislation however, Announcement I states that even the companies which do not have the required provisions in their articles are allowed to hold their general assembly meetings in electronic environment. Announcement I sets forth that Companies should obtain support from the Central Securities Depository of Turkey and should amend their articles and insert the relevant provision to allow them to hold their general assembly meetings in electronic environment in the first general assembly meeting they hold.

II. Preservation of Equity of Trade Companies

The Union of Chambers and Commodity Exchanges of Turkey's published an announcement on April 1, 2020 by letter of the Ministry of Trade dated 31.03.2020 ("**Announcement II**") regarding dividend distributions. Aim of the Announcement is to underline the importance of protection and preservation of equity of trade companies amidst the Covid-19 pandemic.

The Announcement II is prepared pursuant to the Article 13/5 of the Regulation on Procedures and Principles of the Joint Stock Companies' General Assembly Meetings and Participating Ministry of Trade Representatives ("**GA Regulation**") where the Ministry of Trade is empowered with authority to give instructions to companies to include certain issues in their general assembly meeting agendas. With the Announcement II, all trade companies, except state-owned enterprises are instructed to:

Abdi İpekçi Cad., No:38/5, Nişantaşı, İstanbul-Turkey T: + 90 (212) 291 10 02 F: + 90 (212) 291 10 03

www.kayumdemir.com

- not distribute profits arising from previous years,
- only distribute a maximum of 25% of the net profit for 2019 fiscal year, and
- not grant board of directors of the Companies the right to distribute advance dividends

in cash dividend distribution resolutions to be adopted by general assembly meeting for the 2019 financial year that will be held this year.

It is not mandatory for the trade companies to follow all the instructions and recommendations of the Ministry of Trade due to a lack of legal basis as pursuant to the Article 13/5 of the GA Regulation, Ministry is only authorized to give instructions regarding adding of certain issues to agendas of general assembly meetings. Even the dividend distribution resolution is not subject to registration with Trade Registry Office, if such resolution is adopted with a resolution which is subject to registration with Trade Registry Office, it is quite likely that Trade Registry Office or Ministry officials to check whether the dividend distribution resolutions are following the instructions outlined in the Announcement II and if not, it is again quite likely that registration of resolutions to be rejected by the Trade Registry Office.

There is a draft bill which aims to amend certain laws including TCC published April 8, 2020 (“**Draft Bill**”). According to the current draft of the Draft Bill, a provisional article shall be added to TCC which set forth the restrictions on dividend distribution in line with the Announcement II. Accordingly, all trade companies, except state-owned enterprises shall be restricted to distribute more than of 25% of the net profit for 2019 fiscal year, and to grant board of directors of the Companies the right to distribute advance dividends until 31 December 2020 if the current draft of the Draft Bill enters into force.