

LEGAL ALERT

Subject: Ministry of Customs and Trade Communiqué on Interim Dividend Distribution for Closely Held Companies

Date: August 15, 2012

The former Turkish Commercial Code, numbered 6762 (the 'Former TCC'), was repealed and replaced by the new Turkish Commercial Code, numbered 6102 (the 'New TCC'), on July 1, 2012.

Under the Former TCC, closely held limited liability companies were not legally permitted to distribute interim dividends, while publicly held companies, which are subject to the Capital Markets Law, numbered 2499, were free to distribute interim dividends as per Article 15 par.4 of the said Law and in accordance with the Communiqué Serial: IV No: 27 issued by Capital Markets Board with respect to the principles governing interim dividend distribution.

A new provision to Turkish Law, introduced by Article 509 par.3 of New TCC, now authorizes the Ministry of Customs and Trade (the 'Ministry') to determine the principles which shall govern interim dividend distribution with respect to closely held companies.

In line with this authorization, the Ministry has issued a Communiqué on Interim Dividend Distribution (the 'Communiqué'), published in the Official Gazette, numbered 28379 and dated August 9, 2012, which grants the right to distribute interim dividends to closely held joint stock companies, limited companies and limited partnerships divided into shares, and regulates the principles and procedures that shall be observed in interim dividend distributions.

The Communiqué defines interim dividends as amounts to be calculated according to the methods stated in the Communiqué with respect to profits generated as per interim financial

statements, and to be deducted from dividends of the relevant accounting year to be calculated on the basis of the final annual balance sheet and financial statements. According to that method, the interim dividend to be distributed over the amount remaining following the deduction from the interim period profits the following: losses of previous years, if any, taxes, funds and financial provisions, reserves that need to be set aside pursuant to law and articles of association, and receivable amounts of, if any, privileged shareholders, usufruct certificate holders, and other persons sharing the profit. The interim dividend to be paid cannot be more than half of the amount calculated by this method.

If a profit is generated in the following interim periods but within the same accounting period, the interim dividend to be distributed will be calculated by also deducting the interim dividends paid in the previous interim period(s), in addition to the above-stated deductions from the relevant interim period profits. The interim dividend to be paid in this case also cannot be more than half of the amount remaining following the deductions made by this method.

Pursuant to the Communiqué, in order for companies to distribute interim dividends:

- (i) The general assembly of the shareholders must pass a resolution for the distribution of interim dividends. In joint stock companies with a meeting quorum requiring the representation of at least one fourth of the capital, a decision on the distribution of the interim dividend needs to be agreed on by the majority of the votes present at the meeting. In limited companies a simple



majority of the votes present at the meeting is needed to enable the distribution of interim dividend.

- (ii) The company must have profited in the interim period in which the interim dividend is to be distributed, and the profit must be indicated by the interim financial statements.
- (iii) The interim dividends paid before the relevant accounting period must be deducted from the net profits of the year that it pertains to.

The general assembly of the shareholders resolution must take into consideration, as well as the distribution of interim dividend, the following matters:

- a) If, at the end of the relevant accounting period, a net profit which is sufficient to cover all the interim dividends distributed during the year is not generated, the interim dividends exceeding the net profits of the period shall be off-set against the previous year's free reserves, if any, and in a case where the free reserves are not sufficient to cover the interim dividend distributions, then the shareholders are to return the interim dividends paid in excess of the total net profit generated to the company, with the notification of the management organ.
- b) If a loss occurs at the end of the relevant accounting period, (1) the statutory reserves and free reserves from the previous year's balance sheet, if any, will be used to off-set the loss, and in case such reserves are not sufficient to cover the loss, then the shareholders are to return all of the interim dividends to the company, with the notification of the management organ, and (2) following the off-setting of the loss from the general statutory reserves and free reserves, the remaining free reserves will be deducted from the distributed interim dividends, and if, as a result of the deduction, the interim dividends distributed during the year exceeds the remaining free reserves, then the shareholders are to return the excess interim dividends to the company, with the notification of the management organ.

Pursuant to the Communiqué, the interim dividends will be distributed to the shareholders in proportion to their shares; the dividend privileges will not be taken into consideration in distribution of interim dividends. Interim dividends will not be distributed to usufruct certificate holders, members of the management body that are not shareholders and other non-shareholder persons sharing the profit. In case one of the shareholders is indebted to the company, apart from his obligation to invest capital, then that debt will be off-set against the interim dividend.

Once it is resolved by the general assembly of shareholders that an interim dividend will be distributed, the management body of the company;

- (i) prepares a report on interim dividend distribution, meeting the detailed contents outlined in the Communiqué,
- (ii) resolves the payment of the interim dividend determined in the report and determines the procedure of distribution, and
- (iii) pays interim dividends within six weeks.

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