

# YAZICILEGAL

## NEWSLETTER

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### **Communiqué Numbered 2018-32/48 Regarding Decree 32 on the Protection of Value of Turkish Currency**

On the Official Gazette dated September 4, 2018 and numbered 30525, the Ministry of Treasury and Finance has published the Communiqué numbered 2018-32/48 regarding Decree 32 on the Protection of Value of Turkish Currency (the “**Communiqué 2018-32/48**”). Communiqué 2018-32/48 sets forth the requirement to bring the export revenues to Turkey and to transfer them to the intermediary bank of the export activity. As a general rule, this process must be completed within 180 days, and a minimum of 80% of the export revenues are required to be sold to a bank.

Communiqué 2018-32/48 itemizes certain methods of payment in order to bring export revenues to Turkey which are payment with letters of credit, documentary collections, open Account, acceptance credited payment by letter of credit, acceptance credited documentary collections, acceptance credited open account and advance payment. It then contemplates specific periods for particular types of export other than the general rule of 180 days as stated above (i.e. 365 days for exports of contractor firms, 90 days for exports with credit or leasing and provisory exports).

As per the Communiqué 2018-32/48, it is the duty of the exporters to bring the export revenues to Turkey, sell it to banks and close the export accounts within the required periods; whereas the banks are also obliged to monitor the process and report any failure in bringing the export revenues to Turkey. Consequently, the intermediary banks are obliged to close the export accounts whose revenues have been duly brought to Turkey and report to the tax authorities those that have not been closed in this manner. Amounts such as deductions, expenses, and foreign exchange transfers for invisible transactions to be deducted from the export price are also subject to the evaluation of the intermediary banks.

The Communiqué 2018-32/48 will have effect for a period of 6 months starting from the date it was published.

### **Changes to the Communiqué on Distribution of Advance Dividends**

On the Official Gazette dated September 1, 2018 and numbered 30522, the Communiqué Amending the

Communiqué on Distribution of Advance Dividends (the “**Amendment**”) has been published by the Ministry of Commerce. The changes in the Amendment concern joint stock companies which are not subject to Capital Markets Law, limited liability companies and limited partnerships whose capital is divided into shares.

The Amendment sets forth a change in the mandatory indication of certain matters within the decision of the general assembly on the distribution of advance dividends. From now on, if loss occurs at the end of the related fiscal period, only free reserve funds shall be used for the deduction of the loss. Before the Amendment, general reserve funds were to be used for such deduction.

Furthermore, the calculation method for the amount of the advance dividend to be distributed has been changed in a way that, the amounts reserved for the privileged shareholders shall no longer be deducted from interim profit.

In addition, the privileges of the privileged shares shall be taken into consideration in the distribution of the advance dividends. The payment will be in proportion with the amount paid prior to distribution date to the company by the shareholder for their shares, unless otherwise provided in the articles of the company.

The Amendment has entered into force on the date it was published.

### **Data Protection Board Decisions Regarding Data Controllers Registry**

Certain decisions of the Data Protection Board regarding the registration obligation to the Data Controllers Registry have been published on the Official Gazette dated August 18, 2018 and numbered 30513.

The decision dated July 19, 2018 and numbered 2018/87 determines the entities to be exempt from the obligation to register to the Data Controllers Registry. Data controllers who have less than 50 employees and whose total annual balances are less than 25 million Turkish Lira, and whose principal activity is not the processing of sensitive data, are exempt from the obligation. In addition, mediators (pursuant to the decision dated July 5, 2018 and numbered 2018/75) and customs

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brokers who operate in accordance with the Customs Law no. 4458 and authorized customs brokers (pursuant to the decision dated 28.06.2018 and numbered 2018/68) are also exempt.

According to the decision dated July 19, 2018 and numbered 2018/88, the dates for the registration obligation are as follows:

- The commencement date for the obligation is October 1, 2018 for natural and legal person data controllers who have more than 50 employees or whose total annual balances are more than 25 million Turkish Lira and for Turkish non-resident individual and legal entity data controllers. They may register until September 30, 2019.
- The commencement date for the obligation is January 1, 2019 for natural and legal person data controllers who have less than 50 employees and whose annual balances are less than 25 million Turkish Lira, who process sensitive data as their main activity. They may register until March 31, 2020.
- The commencement date for the obligation is April 1, 2019 for data controllers of public institutions and organizations. They may register until June 30, 2020.

### **Communiqué on the Procedures and Principles for the Application of Article 376 of the Turkish Commercial Code**

Due to the weakening of Turkish Lira, the debts of a considerable number of companies with debts in foreign currency, have surpassed their share capitals. As a consequence, the Communiqué on the Procedures and Principles for the Application of Article 376 of the Turkish Commercial Code (the “**Communiqué**”) has been published by the Ministry of Commerce, in the Official Gazette No. 30536 dated September 15, 2018. The Communiqué essentially regulates the application of Article 376 of the Turkish Commercial Code (the “**TCC**”), which concerns the capital loss and technical bankruptcy.

The Communiqué aims to outline the remedies in the event that the sum of assets does not meet the liabilities of a company. According to Article 5 of the Communiqué, in case at least half of or two third of the aggregate of share capital and statutory reserves is uncovered due to loss, the board of directors must immediately invite the general assembly - to convene. Board of directors is obliged to explain the proper remedial precautions in this respect to the general assembly. The general assembly may either completely approve these precautions or approve with any revisions or resolve to take precautions other than the ones suggested by the board of directors.

Article 7 of the Communiqué continues to elaborate on the situation of uncovered share capital and statutory reserves due

to losses, in the amount of at least two thirds of the aggregate. In these circumstances, the general assembly must be convened immediately and the shareholders must take the most convenient measure listed on Articles 8, 9 and 10 as:

- Capital decrease, due to the decision of the general assembly on being contended with one-third of the capital.
- Completion of the capital, to compensate the balance sheet loss with payment of certain amounts, by the shareholders. The payment may be made by some or all of the shareholders. The Communiqué further notes that this payment shall not constitute a capital injection, a loan or an advance payment to be set-off in a future capital increase.
- Capital increase, either with the simultaneous increase following the capital decrease which requires the payment of at least a quarter of the capital; or without any decrease in the amount of the loss and directly increasing the capital which requires the payment of at least half of the capital prior to the registration of the capital increase.

In the case of the loss of the two thirds of the capital, if the general assembly fails to take the precautions listed above, the company gets terminated automatically; in such case, the liquidation procedures of the company shall be conducted in accordance with the relevant provisions of the TCC.

According to Article 12 of the Communiqué, technical bankruptcy takes place when a company’s assets cannot meet its liabilities. In case it is suspected that the company’s liabilities do not meet its liabilities, the board of directors must prepare an interim balance sheet based on the continuity of the business value and based on the assets’ potential sales value.

Should the board of directors decide that the interim balance sheet will fail to meet the debts of the company or fails to take the precautions stipulated under Article 7 of the Communiqué as explained above, the board of directors is obliged to file a bankruptcy application to court.

The Communiqué further clarifies the procedures and principles regarding mergers concerning companies in capital loss or severe debt; accordingly, such a company, may merge with another company provided that the second company has sufficient amount of equity to cover the losses.

In its Provisional Article 1, the Communiqué adds that, foreign exchange losses arising from any outstanding debts in foreign currencies may be disregarded by the companies in the calculations regarding capital loss and/or technical bankruptcy until January 1, 2023.

The Communiqué is applicable to joint stock companies, limited liability companies and limited partnerships whose capital is divided into shares.

### **Financial Restructuring Framework Agreement**

Pursuant to the Regulation on Restructuring of Debts to Financial Sector published in the Official Gazette numbered 30510 and dated August 15, 2018; the Financial Restructuring Framework Agreement (the “**Framework Agreement**”) dated September 11, 2018 has been published on the website of Banking Regulation and Supervision Authority (the “**BRSA**”).

As mentioned in the press release of the BRSA, the Framework Agreement has been prepared by the Banks Association of Turkey, and approved by the BRSA. The Framework Agreement will be used to determine the qualifications of the companies to benefit from restructuring (e.g. the Framework Agreement concerns the debtors whose principal debts exceed 100 million Turkish Lira); and the Banks and other creditor

institutions will draft separate restructuring agreements to be signed with each debtor, taking into consideration the conditions of the debtors within the minimum requirements in the Framework Agreements.

The Framework Agreement has entered into force and as mentioned in the Regulation on Restructuring of Debts to Financial Sector, Restructuring Agreements can be executed between the debtors and the relevant creditor institutions within the two-year period following the approval of the Framework Agreement by the BRSA.

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Yours faithfully,  
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