

THE NEWLY PUBLISHED COMMUNIQUÉ PRESENTS OPTIONAL REMEDIAL MEASURES TO COMPANIES IN CAPITAL LOSS OR IN SEVERE DEBT

INTRODUCTION

Ministry of Trade published “Communiqué on the Rules and Procedures Regarding the Implementation of Article 376 of the Turkish Commercial Code (“Code”)” on 15 September 2018 (hereinafter will be referred to as the “Communiqué”).

The purpose of this Communiqué is to set out the remedial measures and the rules and procedures to be followed by joint stock companies, limited liability companies and limited partnership companies divided into shares (hereinafter will collectively be referred to as “Company”) which are i) suffering from capital loss, or ii) are in severe debt.

A) NOVELTIES BROUGHT BY THE COMMUNIQUE

1. Remedial Measures in case the Company is in Capital Loss

If “1/2” or “2/3” of the accumulation of a Company’s Capital Value and Statutory Reserve is unreciprocated due to the borne losses, as per the Code, such Company is deemed as suffering from “capital loss”. In the occurrence of such cases, as per article 376 of the Code, the Management Body of the Company shall invite the General Assembly to conduct a meeting to accordingly inform the Company’s shareholders and to resolve on the necessary measures. The Communiqué presents different measures for the following situations:

a) In case “1/2” of “Capital Value + Statutory Reserve” is unreciprocated due to borne losses:

- The Management Body shall invite the General Assembly to conduct a meeting.
- The Management Body presents the latest balance sheet and the remedial measures it deems appropriate to the General Assembly – such as, payment of the lost capital, capital increase, shutting down some of Company’s operations, sales of subsidiary companies, amendment to the Company’s marketing strategies.
- The General Assembly may accept such proposed measures as are presented, may accept them by way of amendment or take completely different measures.

b) In case “2/3” of “Capital Value + Statutory Reserve” is unreciprocated due to borne losses:

- The Management Body shall invite the General Assembly to conduct a meeting.
- In the General Assembly meeting, it may be resolved to:
 - Continue with 1/3 of the Company’s capital and therefore decrease the capital
 - Complement the missing capital, or
 - Increase the capital
- If the General Assembly of the Company resolves to:
 - Decrease capital: The capital may be decreased down to 1/3 of the Company’s current capital. In such cases, pursuant to the Communiqué, the Company may refrain from making payments to the Company’s creditors or collateralizing their rights and receivables.
 - Complement the missing capital: The Company shareholders shall pay the missing amount pro rata their shares. In this case, the shareholders will not be endowed with the right to request reimbursement and the paid amount will not qualify as “debt”, “capital injection” or “amount assumed to be deducted in a capital increase to be made in the future”. In the financial tables, the referred payments get recorded and tracked under the account of “capital compensation fund”.
 - Increase capital: then such increase may be realized in 2 methods:

- 1) Simultaneous decrease and increase of the capital: With this method, the capital gets decreased in the amount of the borne losses and simultaneously, the capital gets increased to the intended amount. In these cases, at least 1/4 of the increased capital shall be paid by the shareholders in cash.
- 2) Mere Capital Increase: With this method, the capital of the Company gets increased without compensating the losses borne due to the capital loss; and in these cases, at least 1/2 of the increased capital shall be paid by the shareholders in cash.

- If the Company does not take any of the above-explained remedial measures when 2/3 of its capital is unreciprocated, then such Company automatically would liquidate.

2. Remedial Measures in case the Company is in Severe Debt

If the accumulation of the Company's capital and statutory reserves are found totally unreciprocated due to the borne losses via annual/interim financial tables or audit report or by the Management Body, then under the Code, such Company would be titled as a "company in severe debt".

In case "Capital Value + Statutory Reserve" is totally unreciprocated due to borne losses:

- The Management Body shall prepare interim financial table; and relying on these tables, if determines that "Capital Value + Statutory Reserve" is totally unreciprocated and that the actives of the Company are unable to reciprocate the Company's passives, the Management Body may;
 - Take the remedial measures (capital decrease, complementation or increase) or
 - File a lawsuit at the Court to declare the Company's bankruptcy.

3. Merger of the Company (either in Severe Debt or in Capital Loss) with another Company

Pursuant to the Communiqué, Company which is either in capital loss or in severe debt may be merged with another Company provided that the acquiring Company has sufficient amount of

equity to cover the losses and such sufficiency has been verified by Independent Accountant Financial Advisor or Certified Public Accountant reports.

4. Exemption from the losses that may arise due to Currency Exchange

Pursuant to provisional Article 1 of the Communiqué, while evaluating if the Company is in severe debt/capital loss, the losses that the Company will borne -due to fluctuations in currency exchange in its payment liabilities in foreign currency- may be disregarded until 1 January 2023.

5. Final Notes

The Communiqué has been drafted considering Turkey's financial conjuncture and it presents remedial measure options to Companies which are in capital loss or are in severe debt- which would be assistive to prevent bankruptcy and increase financial sustainability of the Companies. With this purpose, the Communiqué introduces new rules for the implementation of the Article 376 of the Code and essentially demonstrates measures for restituting the Company's financial standings.

CONTACT

Eryürekli Attorney Partnership

T: +90 212 365 9600

info@eryurekli.com

ABOUT THIS PUBLICATION

ERYUREKLI is a law firm incorporated in the form of an attorney partnership and registered by Union of Turkish Bar Associations with registration number 245.

This publication is provided by ERYUREKLI as a news reporting service to clients and colleagues. The information given in this publication does not necessarily cover every aspect of the topics with which it deals and should not be construed as legal advice.

Should you have any questions on issues reported in this publication, please contact your own counsel or [ERYUREKLI](#) for further information.