

POSTPONEMENT OF GENERAL MEETINGS IN JOINT STOCK AND LIMITED LIABILITY COMPANIES DUE TO CORONAVIRUS (COVID-19) PANDEMIC

The Turkish Commercial Code numbered 6102 (“TCC”) provides that joint stock and limited liability companies must hold ordinary general meetings within three months following the end of each financial year. As it is a common practice for companies to align their financial year with the calendar year, most companies convene ordinary general meetings by the end of March.

Due to the Coronavirus pandemic, the Turkish Ministry of Commerce (“Ministry”) announced certain measures on March 20, 2020, including the postponement of general meetings in joint stock and limited liability companies: companies are allowed to cancel ordinary general meetings if the company’s governing body previously invited the shareholders in accordance with the the TCC and the company’s articles of association. The authorized bodies to cancel an ordinary general meeting are the management board in joint stock companies and the managing directors in limited liability companies (here together: “board of directors”). In line with the announcement of the Ministry, the mentioned governing bodies may issue a decision in the form of a resolution to postpone the meeting that has already been announced with a resolution; such decision shall be transmitted to the Turkish Trade Registry Gazette Directory and published in the Trade Registry Gazette. Governing bodies of companies are also allowed to postpone the general meetings that have not been announced yet.

Article 1527 of the TCC also provides companies with the opportunity to adopt an electronic general meeting system. The Ministry advises for companies whose articles of associations include provisions allowing such system to hold their general meetings electronically with the physical attendance of a minimum number of shareholders in order to maintain social distancing, which is essential to prevent the spread of Coronavirus.

If a company does not have any provision in its articles of association to adopt an electronic general meeting system, such company may still be able to hold its meetings through the “Electronic General Meeting System” (“e-GEM”) and “Electronic Board of Directors System” (“e-BDS”) within the framework of the Ministry’s measures. This opportunity will be provided by the Merkezi Kayıt Kuruluşu Anonim Şirketi (“MKK”) which is the central securities depository of the Turkish capital markets. In this case, companies would be obliged to provide their shareholders with the opportunity to attend meetings electronically. It is also encouraged that companies amend their articles of association by adopting the possibility of holding general meetings electronically.

According to Article 1527 of the TCC, it is mandatory for Borsa Istanbul listed companies to provide a system which enables their shareholders to attend the general meeting by electronic means. e-GEM was launched on October 1, 2012, and is designed for all the joint stock companies in Turkey, but is optional for companies which are not listed. On e-GEM, issuers, shareholders, proxy holders, and intermediary institutions perform all the transactions before, during, and after the general meeting by using their digital signatures. e-GEM allows shareholders to do transactions without share blockage, give vote instructions, appoint a representative, watch the meeting live, ask questions and express opinions, cast their votes, and receive instant notifications relating to all these procedures from everywhere with an internet connection.

e-BDS aims that board of directors' meetings are held electronically in a secure manner and enables participation to meetings via audio and/or video broadcasting, casting of votes, sending of opinions and recommendations, signing of decisions on the secure electronic environment, and reducing costs. Companies may opt to enable electronic signing of the decisions of board of directors without having to hold an electronic meeting.

Under Article 390(4) of the TCC, the decisions of the board of directors can be made by taking the written consent of the majority of the total number of members, on the proposal of one of the members of the board, in the form of a decision, unless one of the members wants to hold a meeting. The validity of such decisions, generally referred to as circular decisions or votes, depends on the submission of the proposal to the approval of all board members. According to the first paragraph of the same article, the procedure will also apply if a company holds its meetings of board of directors electronically. Therefore, it will be possible to make circular decisions electronically.

The Ministry's measures allowing the postponement of general meetings are particularly important within the framework of Article 553 of the TCC which holds company founders, members of board of directors, managers, and liquidators liable if they fail to fulfil their obligations arising from the law or the articles of association unless they prove that they are not at fault. In normal circumstances, a member of the governing body, who causes a loss due to his/her failure to convene the general meeting, may be subject to a claim for indemnification. However, in the current situation, a governing body member would not be held liable for not calling the shareholders to the general meeting within the legally required time because the postponement of such meeting is allowed by the Ministry's announcement.

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