



THE COMMUNIQUÉ AMENDING THE COMMUNIQUÉ ON THE PROCEDURES AND PRINCIPLES REGARDING THE IMPLEMENTATION OF ARTICLE 376 OF THE TURKISH COMMERCIAL CODE NUMBERED 6102 HAS BEEN PUBLISHED.

With the "Communiqué on the Amendment of the Communiqué on the Procedures and Principles Regarding the Implementation of Article 376 of the Turkish Commercial Code No. 6102", which entered into force through publication in the Official Gazette dated 08.11.2022 and numbered 32007, the provisional article 1 of the Communiqué on the Procedures and Principles Regarding the Implementation of Article 376 of the Turkish Commercial Code No. 6102 ("**Communiqué**"), which entered into force through publication in the Official Gazette dated 15.09.2018 and numbered 30536, has been amended.

This information note ("**Information Note**") contains important issues regarding the amendment made by the Communiqué on the Amendment to the Communiqué on the Procedures and Principles Regarding the Implementation of Article 376 of the Turkish Commercial Code No. 6102.

I. EXECUTIVE SUMMARY

The issues addressed in this Information Note can be summarized as follows:

- (i) *The phrase "1/1/2023" in the first paragraph of the provisional article 1 of the Communiqué is extended until "1/1/2024" with the communiqué published in the Official Gazette dated November 8, 2022 and numbered 32007.*
- (ii) *According to the amendment in the provisional Article 1 of the Communiqué, in the calculations to be made in terms of capital loss and insolvency, it is ruled that all of the foreign exchange losses arising from foreign currency liabilities that have not yet been fulfilled and half of the total of the expenses, depreciation and personnel expenses arising from the leases accrued in 2020 and 2021 will not be taken into account until 1/1/2024.*

II. REGULATION WITHIN THE COMMUNIQUÉ AMENDING THE COMMUNIQUÉ ON THE PROCEDURES AND PRINCIPLES REGARDING THE IMPLEMENTATION OF ARTICLE 376 OF THE TURKISH COMMERCIAL CODE NO. 6102

The Communiqué on Procedures and Principles Regarding the Implementation of Article 376 of the Turkish Commercial Code No. 6102 ("**Code**" or "**TCC**") published in the Official Gazette dated September 15, 2018 and numbered 30536 regulates the procedures and principles to be followed in cases of capital loss or insolvency. The phrase "1/1/2023" in the first paragraph of the provisional article 1 of the Communiqué is extended until "1/1/2024" with the communiqué published in the Official Gazette dated November 8, 2022 and numbered 32007. According to the amendment in the provisional Article 1 of the Communiqué, in the calculations to be made in terms of capital loss and insolvency, it is ruled that all of the foreign exchange losses arising from foreign currency liabilities that have not yet been fulfilled and half of the total of the expenses, depreciation and personnel expenses arising from the leases accrued in 2020 and 2021 will not be taken into account until 1/1/2024.

Provisional Article 1 of the Communiqué aims to prevent the triggering of the obligations under TCC 376 by the decreases in shareholders' equity due to exchange rate fluctuations until the foreseen period. However, losses arising from foreign exchange differences on foreign currency liabilities will continue to be recorded in the balance sheet or statutory books. In this context, in the year-end financial statements to be prepared, all foreign currency liabilities in liabilities should be calculated at the relevant exchange rates and the results should be transparently recorded in the statements.

There is no explicit regulation in the Communiqué on how to calculate foreign exchange losses. It is concluded that the loss can be calculated by taking into account the exchange rates at the date the foreign currency liability enters the company's balance sheet and the last valuation date. In addition, the Communiqué excludes situations where there is a loss arising from foreign currency denominated assets of the company.

Our assessments in this newsletter do not constitute legal recommendation or legal opinion and Aksu Çalışkan Beygo Attorney Partnership may not be hold responsible depending on these assessments. It is recommended to obtain legal opinion for your inquiries within the scope of this memorandum.

Please contact us for detailed information.

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