

CORONAVIRUS: TIP SHEET FOR BOARDS OF DIRECTORS IN TURKEY

We live in uncertain times, where many companies face challenges brought about by the sudden and wide-ranging economic impact of Coronavirus (COVID-19). Whilst the Turkish government is implementing various measures to relieve certain financial consequences, including the suspension of enforcement proceedings, encouraging banks to postpone loan repayments (as well as making new available credit lines) and deferment of taxes, it is inevitable that many boards face unprecedented situations and challenges ahead. This tip sheet is prepared to give examples of best practice in these difficult circumstances.

What should be the level of duty of care during the outbreak?

Directors must carry out their duties with the same diligence as a prudent director would carry out that duty. Directors are deemed compliant with their duty of care obligation, if the board has adopted a decision based on reasonable research relevant to that particular situation and obtained information from relevant persons/experts (i.e. makes an informed decision).

What are top-ten tips for directors?

Here are our "top ten" practical steps that directors can take during Coronavirus (COVID-19) outbreak in order to manage the risk and protect their companies as well as themselves from potential liability:

- 1. Stay informed and meet regularly:** The Turkish government is taking new measures to tackle the crisis almost every day. It is very important to stay on top of the new regulations and lead the company based on these measures. In addition, keeping appropriate minutes of each board meeting is a particularly important way of demonstrating directors have complied with their duties. Turkish Commercial Code (the "TCC") enables electronic board meetings provided that this is regulated under the company's articles of association. Physical meetings are not required to record the meeting minutes, directors may resolve through a circulated decision.
- 2. Seek professional advice:** Obtaining expert advice relating to waivers, standstills, new finance, employee obligations, customer and supplier arrangements, compliance (including continuing disclosure obligations), and restructuring or insolvency proceedings can help reduce the scale of any losses, minimise the risk of directors' liability, and avoid management being distracted by the consequences of non-compliance.
- 3. Consider whether to continue trading:** It is likely that COVID-19 and global and Turkish governmental precaution measures adopted to fight the spread of the virus will limit the movability of goods, services and people. This new situation might, result in interruption of supply chains and affect the capability of the company to perform its duties under its existing contracts. Directors should carefully assess existing and future obligations and rights under these contracts in deciding whether to continue trading. Please revisit our client briefing on COVID-19's impact over commercial contracts.¹
- 4. Consider (re-)budgeting and protecting equity:** The budget prepared by the board of directors should be reviewed to better reflect the prospective impacts of global outbreak on their business. Companies should also reconsider any plan to make dividend distributions. Most of the companies in Turkey were expected to have their ordinary general assembly meetings in March/April. In its recent announcement, based on the letter of the Ministry of Trade, the TOBB (Turkish Union of Chambers and Commodity Exchanges) has advised companies to take equity protection measures by limiting dividends distributions.² Although the process and implementation of this announcement is not certain, companies planning to hold

¹ [Coronavirus Client Briefing – Impact on Commercial Contracts](#)

² Based on the Ministry of Trade's letter dated 31 March 2020, the Turkish Union of Chambers and Commodity Exchanges requested the commercial chambers to advise the companies (that are not owned by the state) to consider and add an agenda item for the general assembly meetings the following: (i) not to use previous financial years' profits for dividend distributions; (ii) not to distribute any profit that is more than 25% of the net profit for the 2019 fiscal year; and (iii) not to grant their boards of directors the authority to distribute advance dividends.

general assemblies for the 2019 fiscal year should consider the announcement when taking resolutions regarding dividend distribution.

5. **Be cautious of the company's financial needs:** COVID-19 might lead to global economic distress if the outbreak continues. In this uncertainty, the company's cash flow (including within the company's group) might be affected. That is why, the directors might consider re-arranging the timing of long-term investment projects which may bring financial burden over the company, calling for shareholder loans before entering into other types of facility agreements to satisfy the company's cash need and preparing lists of assets that can be quickly liquidated in time of need. Directors should review group's existing arrangements, as the risk of financial distress (and ultimate insolvency) might limit the company's ability to borrow or make available intra-group funding or enter into intra-group transactions.
6. **Consider restructuring and evaluate existing loan financings:** In case of uncertainty, exploring restructuring options (having obtained professional advice) is a good way of demonstrating compliance with director's duties. Directors should also assess terms and conditions of the existing loan financings. Please revisit our client briefing on some practical tips in loan financings to consider.³
7. **Keep in mind that under the TCC, directors have special duties in case of financial distress :** If the financial statements indicate that the financial standing of the company is at risk, directors should be mindful about their fiduciary duties. The TCC provides three scenarios in which a company will be considered to be in technical bankruptcy and provides separate remedial actions for each scenario. These are: (i) loss of half of the share capital and legal reserves, (ii) loss of two-thirds of the share capital and legal reserves and (iii) loss of the entire share capital and legal reserves. Please refer to our client briefing explaining in detail the measures and remedial actions required to be taken in case of financial distress.⁴
8. **Consider new working arrangements for employees:** Due exceptional spread capability of the virus, employers shall be extremely cautious to maintain a healthy work environment for their employees. This may include to adopt remote working and provide necessary office equipment to employees to conduct their duties from home. Employers have duties to provide a safe place of work and take reasonable care of the health and safety of their employees. The Law on Occupational Health and Safety requires employers to take any and all measures necessary to provide a safe workplace for its employees including measures that are not specifically prescribed by law. To mitigate the risks of spreading illness, available precautionary measures and relevant information should be considered, continually monitored, and actioned upon to protect the health and well-being of employees. Please revisit our client briefing on the possible challenges for employers during the outbreak for further guidance.⁵
9. **Ensure proper records are kept and timely reporting:** Ensure company's books and records are being properly kept up to date, regular financial and operational reporting, and timely escalation of issues.
10. **Think carefully before resigning:** Resignation will not discharge directors' responsibility for any previous conduct. Remaining on the board to drive a successful resolution may be the most effective means of mitigating risk.

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³ [Coronavirus Client Briefing: Issues Relating to Loan Financings](#)

⁴ [Client Briefing New Communique on Technical Bankruptcy Rules Flexibility on FX Liabilities](#)

⁵ [Coronavirus Client Briefing: Challenges for Employers](#)