

## COMMUNIQUE

From the Competition Authority:

### **COMMUNIQUE ON THE PAYMENTS TO BE MADE BY JOINT-STOCK AND LIMITED COMPANIES PURSUANT TO THE ACT NO 4054**

**(COMMUNIQUE NO: 2017/4)**

#### **Purpose**

**ARTICLE 1** – (1) The purpose of this Communiqué is to determine the principles of the payments to be made pursuant to Article 39.1(c) of the Act on the Protection of Competition dated 7.12.1994 and numbered 4054.

#### **Scope**

**ARTICLE 2** – (1) This Communiqué covers the payments to be made pursuant to Article 39.1(c) of the Act on the Protection of Competition dated 7.12.1994 and numbered 4054.

#### **Grounds**

**ARTICLE 3** – (1) this Communiqué has been prepared on the bases of Articles of 27 and 39 of the Act no 4054.

#### **Definitions**

**MADDE 4** – (1) In the implementation of this Communiqué,

- a) the Authority refers to the Competition Authority,
- b) Payment refers to the payment of 0.04% that must be made according to Article 39.1(c) of the Act no 4054,
- c) Receipt refers to the document issued as a proof of payment by the units authorized to collect the trade registry fees corresponding to the 0.04% payments, or by the banks making collections on behalf of the aforementioned units,
- ç) Partnership refers to joint stock and limited companies, banks, insurance, finance and similar companies, public economic enterprises in the nature of joint stock companies falling under the framework of the Statutory Decree No. 233, including subsidiaries and affiliates,
- d) Capital increase refers to an increase of capital implemented via cash capital increase, capital increase due to the takeover of the individual enterprise or of companies according to Article 136 of the Turkish Commercial Code, dated 13.1.2011 and numbered 6102, injecting capital in kind or adding all kinds of internal resources to the capital.

#### **Payment to be made during formation and capital increase**

**ARTICLE 5** – (1) Of the capitals of all newly formed partnerships with the status of a joint stock and limited company as well as the of the amount increased in case of capital increases, 0.04% is collected by the units authorized to collect trade registry fees on behalf of the Authority. Weekly collections against receipts are transferred to the Authority accounts until the end of the second working day of the next week at the latest. Other issues regarding the implementation are determined by the protocols drawn between the Authority and the relevant collection unit (Annex: RG-25/04 / 2017-30048) or the Union of Chambers and Commodity Exchanges of Turkey<sup>1</sup>. The execution of formation and capital increase transactions shall be based on the receipt against payment to be issued by the collection unit. The receipt must state the trade name of the partnership, the amount of payment, and that these funds were deposited to the name of the Authority.

(2) It is obligatory to submit the receipt showing that the payment has been made together with the other requested documents in the applications made for registration to the Trade Registry Offices. If this receipt is not included in the application documents, registration will not be processed.

(3) In the event that there is a capital increase due to the acquisition of the partnerships subject to this provision in accordance with Article 136 of the Law No. 6102, a payment of 0.04% shall be made only over the increased amount. The same principles are also valid in case of change of type.

Changes in title and type that do not cause capital increase are not covered by the aforementioned provision.

#### **Payment in partnerships subject to the registered capital system**

**ARTICLE 6** – (1) The principles herein are also valid for capital increases made by those partnerships benefiting from the registered capital system in the upper limit of capital registered with the trade registry.

(2) Partnerships falling under this framework are obliged to submit the receipt to the Trade Registry Directorate together with the registration certificate issued by the Capital Markets Board. If there is no receipt, registration will not be processed by the Trade Registry Directorates.

#### **Abandonment of formation or capital increase and incorrect deposit of the 0.04% payment**

**ARTICLE 7** – (1) If the formation or capital increase is abandoned, an application must be made to the Authority with a petition for the refund of the payment made. The receipt, notarized desistance decision, and a document drawn by the Trade Registry Directorate stating that the registration was not made are attached to the petition.

(2) In case of underpayment, the deficit will be deposited to the authorized unit and both receipts are submitted to the relevant Trade Registry Office. In case of overpayment, upon the written request of the partnership, the amount to be returned will be determined by the relevant Trade Registry Office and the applicant is notified in a letter. The requesting partnership submits the a copy of the receipt and the aforementioned letter to the Authority as an attachment to a petition.

(3) As a result of the examination to be conducted, the amounts that are determined to be paid excessively and inappropriately are returned to the depositors.

#### **Responsibility of the unit authorized for collection**

**ARTICLE 8** – (1) The unit authorized to collect is obliged to transfer the amounts collected pursuant to Article 39.1(c) of the Act no 4054 to the Authority's accounts in a timely and accurate manner, and to send to the Authority the notification list regarding the collection within the period specified in the protocol to be signed.

#### **Responsibility of the Trade Registry Office**

**ARTICLE 9** – (1) The Trade Registry Office is liable to investigate and check that the payment is made completely and correctly and that the receipt is issued in accordance with these principles. Trade registry officers are responsible for non-payment and / or incomplete payments pursuant to the relevant articles of Law 6102 as a result of the registration procedures contrary to the clause (c) of the first paragraph of the article 39 of the Law 4054 and the provisions of this Communiqué.

#### **Legislation repealed**

**ARTICLE 10** – (1) Principles on the Payments to be Made by Joint Stock and Limited Companies under the Act no 4054, published in the Official Gazette dated 1.10.2004 and numbered 25600, as well as the Communiqué on Payments to be Made by Joint Stock and Limited Companies under the Act no 4054 (Communiqué No: 2010/5) published in the Official Gazette dated 5.10.2010 and numbered 27720 has been repealed.

#### **Transitional provision**

**PROVISIONAL ARTICLE 1** – (1) Until the entry into force of the protocol to be signed between the Authority and the relevant collection unit (**APPENDIX: RG-25/04/2017-30048**) or the Union of Chambers and Commodity Exchanges of Turkey<sup>ii</sup>, as specified under Article 5.1 of the Communiqué herein, the provisions of the Principles on the Payments to be Made by Joint Stock and Limited Companies under the Act no 4054, published in the Official Gazette dated 1.10.2004 and numbered 25600, as well as the Communiqué on Payments to be Made by Joint Stock and Limited Companies under the Act no 4054 (Communiqué No: 2010/5) published in the Official Gazette dated 5.10.2010 and numbered 27720, both of which were repealed with Article 10 of the Communiqué herein, will continue to be implemented

#### **Entry into Force**

**ARTICLE 11** – (1) This Communiqué enters into force on the date of its publication.

## Execution

**ARTICLE 12** – (1) The provisions of this Communiqué are executed by the President of the Competition Authority.

### LIST OF AMENDING COMMUNIQUES

Official Gazette Date	Official Gazette No	Communiqué
24.5.2017	30048	<u>Communiqué (no 2017/5) amending the Communiqué (no 2017/4) on the Payments to be Made by Joint-Stock and Limited Companies Pursuant to the Act no 4054</u>

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<sup>i</sup> The phrase " Union of Chambers and Commodity Exchanges of Turkey" has been added after the phrase "relevant collection unit" in the third sentence of Article 5.1.

<sup>ii</sup> The phrase "or Union of Chambers and Commodity Exchanges of Turkey" has been added after the phrase "relevant collection unit" in the first sentence of the first paragraph of the Provisional Article 1.