

RESOLUTIONS OF THE SHAREHOLDER DISPUTES UNDER TURKISH LEGISLATION



GRATA
INTERNATIONAL

RESOLUTIONS OF THE SHAREHOLDER DISPUTES UNDER TURKISH LEGISLATION



Gökmen Başpınar
Senior Partner

T: +90 (532) 511 70 00
E: gokmen.baspinar@gratanet.com



Ahmet Furkan Öztürk
Associate

T: 90 543 513 96 10
E: furkan.ozturk@gratanet.com



Gülendam Tüylüoğlu
Associate

T: +90 501 064 99 53
E: gulendam.tuyluoglu@gratanet.com

As per the Turkish Commercial Code (“TCC”), there are 2 primary types of Companies. These are, Joint Stock Company “Anonim Şirket” and Limited Liability Companies “Limited Şirket”. There are also 2 other Company types which, in practice, are not commonly seen or established. These are Collective Companies “Kollektif Şirket” and Commandite Companies “Komandit Şirket”. In practice, Joint Stock Companies and Limited Liability Companies are established whereas Collective and Commandite Companies are not often established.

THE TCC ESTABLISHED THE RIGHTS AND OBLIGATIONS OF THE SHAREHOLDERS FOR ANY COMPANY TYPE. THE METHODOLOGY OF THE LAW IS TO EXPLAIN THE RULES FOR THE JOINT STOCK COMPANIES AND STATE THE DIFFERENCES FOR LIMITED LIABILITY COMPANIES WHERE APPLICABLE. THUS, THE SCOPE OF THIS WILL BE PRIMARILY FOCUSED ON THE SHAREHOLDER DISPUTES ARISING WITHIN THE JOINT STOCK COMPANIES.

SHAREHOLDERS’ RIGHTS AND POTENTIAL DISPUTES 1

The rights and obligations of a shareholder are regulated by the TCC. As per the articles mentioned therein, the shareholders have certain rights towards each other and towards the Company. In addition, the shareholders who have at least 10% shareholdings in a Company have special rights as they are considered a “minority”.

Shareholders who constitute at least 10% of the Company’s capital, or 5% for public companies, are defined as a minority in the TCC. Apart from the TCC, it is also possible to grant rights to minorities through the articles of association of the Company or other agreements between shareholders, in other words, not all rights of the minority are included in the Law. The share ratios of the shareholders to be referred to as minority may be decreased, but not increased, by the articles of association.

A. The Right to Vote and Attend to the General Assembly (“GA”)

All shareholders have the right to attend to the GA of the Company. The Company is obligated to provide timely notices for any GA meetings. If the Company does not adhere to the notice requirements, the GA resolutions may be annulled by the Court.

Furthermore, all shareholders have the right to cast their vote on the GA agenda items. Each share in a Company will correspond to at least one vote. However, certain shares may be allocated with more votes if they are designated as “favored shares”. Provision of such shares are regulated by the TCC and are subject to strict conditions.

In practice, the disputes relevant with this right arise from either lack of proper notices, or physical prevention of attending to the GA. In case of lack of proper notices, the shareholder who could not attend to the hearing (or chose to strategically not attend to the hearing) may file a petition before the Court to have the meeting and the decisions therein annulled.

Another problem arises when the Company does not ever hold GA’s. As per the TCC, the ability to call for a GA meeting is provided to the Board of Directors (“BoD”). Aside from certain circumstantial exceptions, no one else can decide on holding a GA meeting. The exceptions to this rule are as follows. (i) The minority may request from the BoD to call for a GA, and if the BoD does not call for a GA meeting without proper reasoning, the minority may request the Court so that they may call for a GA meeting instead, (ii) a single shareholder may request from the Court after demanding the BoD to call for a GA, if the term of the BoD has expired but no GA has been called yet, so that they may call for a GA meeting instead, (iii) the liquidation officer who acts in place of the BoD may call for a GA meeting.

B. The Right to Obtain Information

Another right of each shareholder is to obtain information on Company’s operations. As per the TCC, this right is used within the GA, meaning that the shareholder cannot force the Company to provide information on the operations outside the GA. In accordance with the TCC, the Company should provide the financial tables and budget before any ordinary GA where the financial tables will be approved.

In practice, the financial tables and budget do not fully reflect the actual operations of the Company. For example, details and terms of the signed contracts, lease agreements, credit lines or any other agreement is not fully reflected in these documents. In addition, the BoD may intentionally or negligently omit certain important information in the operational report that they issue for the shareholders.

In such cases, the shareholder must file a petition before the Court and request that their questions that they have asked in the GA meeting to be responded accordingly. By a decision rendered by the Court, the shareholder can then physically review the relevant documents of the Company.

C. The Right to Request a Private Audit

All shareholders may request a private audit to be conducted in the Company, so that they may understand the actual operations and details conducted by the Company. This right may only be invoked after using the right to obtain information via the decision of the Court. Requests to use this right before invoking right to obtain information are refused by the Court as per the TCC.

D. The Right to Dividends

All shareholders have the right to dividend. This right is a monetary right arising from the shareholding. However, distribution of dividends is not mandatory, except for once in at least 5 years. Decisions on dividend distribution is taken by the GA, and if the GA does not decide on distributing any dividend for 5 continuous years, the requesting shareholder may request the Court to annul the decision indicating so.



However, if the Company may justify that they have a valid reason for not distributing any dividends, the request of the shareholder may be refused. For example, a Company may decide to invest in certain assets or commodities relevant with their area of operations and the net profits of the Company may be directed towards these investments, instead of being distributed as dividend.



E. The Right of First Refusal

If a Company raises its capital and issues new shares as a result, all the shareholders have the right of first refusal pro rata with the number of shares they already own, and the number of new shares issued.

An issue that arises tangential to this right is the case of dilution. In certain cases, a majority shareholder who has the shareholding percentage to increase the Company capital by their own vote may decide to increase capital without proper justification knowing that the other shareholders cannot use their right of first refusal simply because they lack financial capability, so that their shareholding can be diluted. This is especially important as such dilution may reduce a shareholders' shareholding percentage to the point where they lose their rights and status as the minority. In these cases, the decision to increase the capital may be annulled by the Court upon application of the shareholder.

F. Disputes Arising from the Ownership of the Shares

Having indicated the rights arising from the shareholding, the very essence of "owning" a share must also be discussed. As per the TCC, validity of a share transfer is subject to different conditions based on the Company's type. For Joint Stock Companies, share transfer can be made via a simple written contract, and would be valid upon registration to the shareholders' ledger of the Company. For Limited Liability Companies, the share transfer is subject to a notary's approval, and a registration before Commercial Registry is mandatory.

In either case, an action of the BoD is necessary. As per the TCC, a Company's shareholders' ledger is held by the BoD. If the BoD refuses to register the shareholder to the ledger for any reason or does not apply to the Commercial Registry to register the share transfer; the shareholder must apply to the Court to have themselves registered as the rightful owner of the shares.

In such an event, if any GA meetings are held after the date of acquisition of the shares and the actual date of registration can be annulled as the shareholder's composition will not be correct. In other words, such late registration as a shareholder, caused by the unjust actions of the Company will have a retroactive applicability.

2

LEGAL REMEDIES AGAINST OBSTRUCTION OF A SHAREHOLDERS' RIGHTS

As indicated in the previous section, obstruction of a shareholders' rights arising from their shareholding generally arise from the decisions taken or not taken in the GA, or not having GA meetings held at all. In any case, a shareholder can apply to the Court to have the GA meeting annulled in its entirety, or have certain decisions annulled. To be able to apply to the Court, the shareholder must indicate their request in the GA meeting, and once refused, must annotate their express objections to the GA meeting minutes. In case where they are not allowed to annotate their objections, they must at least indicate their objections, when they are provided with the attendance sheet as much as they could, and if all else fails, must issue a document with willing witnesses indicating that they were not allowed to annotate their objections.

A.

Application to the Court for Convening a GA or Adding an Item to the Agenda



In the event of the request of the minority regarding the call for meeting or placing an item on the agenda is rejected by the BoD or if the request is not responded positively within 7 (seven) business days, the minority has the right to request the commercial court of first instance in the place where the Company headquarters is located to call the GA for a meeting. The court examines the request and, if it finds the reasons for convening the meeting to be justified, appoints a trustee to call the meeting and to organize its agenda.

B.

Application to the Court in Case the Right to Obtain and Examine Information is Violated

As explained above; each shareholder has the right to obtain information from the BoD regarding the affairs of the Company. In this context, the shareholder whose request for information is rejected by the BoD has the right to apply to the commercial court of first instance where the Company headquarters is located within 10 (ten) days from the date of rejection or within a reasonable period of time if there is no rejection decision.

C.

Application to the Court for the Appointment of a Private Auditor

If the GA approves the shareholders' request for the appointment of a private auditor, the Company or each shareholder may, within 30 (thirty) days, request the appointment of a private auditor to the Company from the commercial court of first instance where the Company headquarters is located.

If the GA rejects the private audit request, the shareholders who constitute at least one tenth of the capital, or the shareholders whose shares have a total nominal value of at least one million Turkish liras, have the right to request the appointment of a private auditor from the commercial court of first instance where the Company headquarters is located within 3 (three) months.

FILING A LAWSUIT FOR DISSOLUTION OF THE COMPANY 3

Pursuant to Article 531 of the TCC, minority shareholders are entitled to request the dissolution of the Company from the commercial court of first instance where the Company headquarters is located.



However, in order to exercise this right, there must be a justified reason. The term "justified reason" is not defined within the scope of the legislation, therefore the meaning and the scope of it shall be evaluated by the doctrine through judicial decisions and the final authority to decide whether the reasons asserted are justified reason or not shall be the Court.



The generally accepted situation is that a lawsuit could be filed to dissolve a Company if the Company is on the verge of bankruptcy, if the capital is lost or the capital is uncovered, if the Company cannot make a profit for many years, or even if it makes a profit, the profit is not distributed to the shareholders in the operating periods in a continuous manner or is distributed incompletely, if the Company becomes unable to fulfill its business and purpose, if the BoD and the GA or other decision-making bodies of the Company cease to function as a result of deadlocks arising from disputes between shareholders, etc.. A lawsuit may be filed on the grounds of the above-mentioned circumstances or similar circumstances, the Judge will decide whether there is a justified reason and whether the Company should be dissolved under their discretion. Therefore, justified reason may differ for each dispute.

ACCORDING TO THE GENERALLY ACCEPTED VIEW IN THE DOCTRINE, THE REASON FOR TERMINATION, WHICH IS QUALIFIED AS JUSTIFIED REASON, MUST BE OBJECTIVE AND INDEPENDENT FROM THE SHAREHOLDER'S PERSONALITY.

Therefore, the reason subject to the request for dissolution must be such that the continuation of the Company cannot be expected from the shareholder who filed the lawsuit according to the rule of honesty and trust, and it must be to the extent that it may affect other shareholders. In the presence of these conditions, the dissolution of the Company may be decided as a "last resort" without disturbing the balance of interests, taking into account the rights of other shareholders. Therefore, upon application to the court for dissolution, the court is not bound by the request for dissolution.

In addition to dissolution, the court may decide, in line with the request of the minority, to remove the shareholders from the Company by paying the current value of the shares of the shareholders requesting dissolution, or to decide on another solution suitable for the situation.

ANNULMENT OF THE GA RESOLUTION PURSUANT TO THE CAPITAL MARKET LAW ("CML") 4



Considering the shareholding rates of the shareholders represented by the members of the BoD, the BoD is generally elected by the majority shareholders and the capital increase decisions taken by the members of the BoD may affect the interests of the minority shareholders.

In order to protect the rights of minority shareholders, the CML provides that the members of the BoD or the shareholders whose rights have been violated may file an action for annulment against the decisions taken by the BoD within the framework of the principles set forth in the relevant article, within 30 (thirty) days following the announcement of the decision, at the commercial court where the headquarters of the Company is located, in accordance with the provisions of the TCC regarding the annulment of GA resolutions.



Pursuant to the relevant law, the Capital Markets Board of the Republic of Türkiye has also been granted the right to file an annulment lawsuit against the decisions of the BoD taken in this regard at the commercial court of first instance where the Company's headquarters is located within 30 (thirty) days from the date of public announcement of these decisions and to request the suspension of the execution of these decisions without collateral.



Local Knowledge for Global business

Global Presence



Integrated Offices

Azerbaijan
Baku

Belarus
Minsk

Georgia
Tbilisi

Kazakhstan
Astana
Almaty
Atyrau
Aktau, etc.

Kyrgyzstan
Bishkek

Moldova
Chisinau

Mongolia
Ulaanbaatar

Russia
Moscow
Rostov-on-Don
St. Petersburg

Tajikistan
Dushanbe

Ukraine
Kyiv

Uzbekistan
Tashkent



Associate Offices

Armenia
Yerevan

Cyprus
Limassol

Russia
Samara

Turkmenistan
Ashgabat

Turkey
Istanbul

UAE
Dubai



Representatives

China
Beijing

Germany
Frankfurt

Malaysia
Kuala Lumpur

Switzerland
Zurich

UK
London

USA
New York