



Minority Rights under the Turkish Commercial Code

Rights of shareholders in joint stock corporations (“JSC”s) have been relatively improved by the new Turkish Commercial Code (the “TCC”).¹ Minority shareholders’ rights have also been significantly strengthened, through the granting of new rights and improvement of existing rights.

Under Article 411 of the TCC, shareholders representing 10% of the share capital of a non-public JSC and shareholders representing 5% of the share capital of a publicly held JSC are deemed "minority shareholders". Accordingly, a minority shareholder, who owns shares representing 10% or more of the JSC’s share capital, may exercise the rights granted by the TCC on its own; whereas a minority shareholder who represents a lower proportion of shares (e.g. 3%) may only exercise these rights, if it acts together with other shareholders (e.g. shareholders holding 7% of the share capital in non-public JSC) so that all shareholders acting together represent at least 10% of the company’s capital.

Some of the important minority shareholders’ rights set forth under the TCC are as follows:

Adjournment of Balance Sheet Discussions

As per Article 420, minority shareholders may request the adjournment of balance sheet discussions for one month. In such case, other shareholders will be notified of the fact that the balance sheet discussions have been adjourned. The relevant minority shareholders may request adjournment of balance sheet discussions for a second time, if such minority shareholders are not provided with satisfactory explanations with respect to the particular sections of the balance sheet, to which they have objected.

Right of Representation in the Board of Directors

Under Article 360, to the extent this is set forth in the articles of association (“AoA”), minority shareholders may be provided with a right enabling them to be represented in the board of directors (the “BoD”). A provision may be included in the AoA, granting minority shareholders a right to be appointed as a BoD member or a right to nominate candidate(s) to be appointed as BoD member(s). Unless a just cause exists not to do so, the person nominated by the minority shareholders must be elected as a member of the BoD. In publicly held JSCs, the number of BoD members elected and/or to be elected based on this representation right, cannot exceed ½ of the total number of BoD members.

¹ Law No. 6102 published in the Official Gazette dated 14 February 2011, and numbered 27846.

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Convocation of the General Assembly Meeting and Inclusion of an Item to the Agenda

Under Article 411, minority shareholders may, via notary public, request the BoD to convene a general assembly (“GA”) meeting or to add an agenda item to the agenda of the GA meeting that has already been decided to be convened. The latter (request to add an agenda item to the agreed agenda), must reach the BoD before the payment of fees to the trade registry directorate for announcement of the GA in the trade registry gazette.

If the BoD accepts the minority shareholders’ request to convene a GA, the BoD must invite the shareholders for a GA meeting within 45 days. Otherwise, the minority shareholders would be entitled to directly invite the shareholders and convene a GA meeting.

If the BoD rejects the minority shareholders’ request or remains silent for seven days, minority shareholders would then be entitled to apply to the commercial court of first instance and ask for a GA to be convened or an agenda item to be added to the agenda of the GA meeting that has already been decided to be convened. In such case, the law grants the court the authority to appoint a trustee to the JSC, in order for him/her to make the call and define the agenda.

Appointment of an Independent Auditor

Under Article 438 of the TCC, during a GA meeting, each shareholder may request the appointment of an independent auditor from the GA (regardless of whether a relevant item is included in the agenda), whenever it is necessary for the relevant shareholder to exercise its shareholding rights, and provided that the relevant minority shareholder has already exercised its right to demand information and right to investigate. If the GA accepts this request, every shareholder or the JSC may, within 30 days, request the appointment of an independent auditor from the commercial court of first instance.

According to Article 439 of the TCC, if the GA rejects this request, minority shareholders may, within three months, request the appointment of an independent auditor from the commercial court of first instance.

Right to Request Issuance of Shares

As per Article 486/3 of the TCC, upon minority shareholders’ request, the JSC must issue registered share certificates and distribute them to each shareholder holding registered shares. A breach of this provision entitles minority shareholders to file legal action against the JSC.

Right to Request the JSC’s Dissolution

In the presence of a just cause, minority shareholders may request the JSC’s dissolution by filing a lawsuit before the commercial court of first instance. The court, at its sole discretion, may decide to terminate the plaintiff shareholders’ shareholding status upon payment to the relevant shareholders of their share value, to be calculated based on the value as of the date closest to the court’s decision, as well as any other appropriate solution, instead of the JSC’s dissolution.

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Settlement and Release Rights

Under Article 559, unless a four-year period has passed since the JSC's incorporation, responsibilities of the incorporators, BoD and auditors in relation to the incorporation and capital increase of the JSC cannot be settled and released. Following such four-year period, a settlement and release may only be effectuated upon the GA's approval. If minority shareholders vote against such settlement and release, despite the four-year period having passed, the GA cannot adopt a settlement and release decision.

*İnci Karcılıođlu (ikarcilioglu@kolcuoglu.av.tr) &
Gözde Kabadayı (gkabadayi@kolcuoglu.av.tr)*

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