

Shareholder activism in Turkey

by *Gökçe İldiri Coşgüner* and *Ece Çağırın*, *Kolcuoğlu Demirkan Koçaklı Attorneys at Law*

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A Q&A guide to the use of shareholder activism in Turkey.

The Q&A gives a high-level overview of the use and goals of shareholder activism, the regulation of shareholder activism, and the strategies and tools used by shareholder activists. It also considers how shareholder activism may be prevented, and the practical steps that a company can take to minimise the risk of being targeted.

To compare answers across multiple jurisdictions, visit the shareholder activism *Country Q&A tool*.

The Q&A is part of the global guide to shareholders' rights in private and public companies law. For a full list of jurisdictional Q&As visit global.practicallaw.com/shareholdersrightsprivateandpubliccompanies-guide.

Use of shareholder activism

1. Provide an outline of the use of shareholder activism in your jurisdiction.

Shareholder activism is defined as actions of shareholders who attempt to use their shareholding right to influence a company's activities or bring a change within the company. Activist shareholders tend to intervene in the company's management by putting pressure on the board and executives.

Shareholder activism is not a well-developed concept in Turkish law. Companies usually do not face activist movements as the majority of companies are family-controlled entities and market players are not as aggressive as players in other countries. Low percentages of free float in publicly-held companies also limit activist movements among shareholders. Examples of shareholder activism in Turkey are therefore very limited. It may become more prevalent if the investment climate becomes more structured in Turkey.

Regulation of shareholder activism

2. What are the main regulatory or legislative provisions relevant to shareholder activism in your jurisdiction?

Regulatory/legislative provisions

Commercial Code No. 6102 (Commercial Code) governs shareholders' rights in joint stock corporations, which is the most common type of company in Turkey. While the Commercial Code does not include any provisions with respect to shareholder activism, it grants the following personal rights to shareholders, which may be relevant to shareholder activism, regardless of their ownership ratio in the company.

Right to participate in general assembly of shareholders' meetings and including an item in the agenda of the general assembly meeting. The details of this right are:

- The general assembly meeting is held by the joint stock corporation's shareholders and is the highest decision-making body of that corporation. Each shareholder has the right to participate in the relevant meetings, in person or by proxy. In contrast to the adoption of a board resolution (by circulating a written resolution proposal by a board member and the execution of that resolution by the other board members), a general assembly resolution cannot be adopted without the physical (or electronic) attendance of the shareholders or their proxies at the relevant meeting. In the meeting, shareholders have the right to express their opinions and cast votes. Resolutions of these meetings bind all shareholders, including those not present at the meeting and those present who vote against items on the agenda. Under the Commercial Code, the board must adopt a resolution to invite shareholders to the general assembly meeting.
- The call for a general assembly of shareholders' meeting is of particular importance, as agenda items are specified in the resolution and these can be discussed during the meeting. In addition, the date of the meeting, the agenda, and gazettes where the announcement of the meeting will be published must be notified to shareholders who are registered in the share ledger; or who notified their address to the company together with documents evidencing their shareholding. If the invitation does not comply with the procedures set out under the Commercial Code and the articles of association, the general meeting and resolutions adopted can be deemed void. However, if all shareholders or representatives are present, and if none of them object, a general assembly meeting can be convened without invitation.
- In principle, (subject to certain exceptions under the Commercial Code) the items that are not included in the agenda cannot be discussed by the shareholders in a general assembly meeting (*Article 413, Commercial Code*).
- If the board cannot convene such a general assembly meeting on a continuous basis, or there is no possibility that the quorum for a board meeting will be met, a shareholder can invite the general assembly meeting to convene a meeting, by obtaining permission from the competent court. By doing so, the relevant shareholder(s) (who may be supported by other shareholders) would be able to change the board members of the company, if such proposal is approved by the majority of the shareholders present at that meeting.

Voting rights. These apply as follows:

- The share capital of JSCs is divided into shares, with each conferring equal rights, except for any special privileges prescribed under the articles of association. In principle, a shareholder's voting rights are

determined in accordance with the nominal value of its shares (*Article 434, Commercial Code*). To exercise the voting right, the minimum share capital, determined by law or by the articles, must be paid up.

- Each shareholder has at least one vote. It is possible to create voting privileges under the articles of association. However, one share cannot have more than 15 voting rights (*Article 479, Commercial Code*).
- The quorum for general assembly meetings is the presence of shareholders holding at least one-quarter of the share capital, or their representatives (*Article 418, Commercial Code*). If this quorum cannot be met in the first meeting, no quorum is required for the second meeting. In principle, a majority of votes present is required to adopt a resolution at a general assembly meeting. There are exceptions to this rule. According to the Commercial Code, unless a higher quorum is provided by law or the articles of association, resolutions amending the articles of association must be approved by a majority of the votes represented at the meeting (on the condition that shareholders holding shares at least 50% of the company's total share capital present at the relevant meeting). Resolutions concerning the burden of additional obligations to cover the company's losses or moving the registered office of the company abroad must be taken unanimously, while resolutions regarding the following must be approved by the votes of shareholders representing at least 75% of the share capital:
 - change of the company's purpose;
 - issuance of privileged shares;
 - restricting the transferability of registered shares. Activist shareholders may vote against resolutions to prevent adoption of certain resolutions requiring their positive votes.

The Commercial Code provides the following restrictions with respect to the usage of voting rights by the shareholders:

- **Non-voting shares.** A shareholder cannot vote for transactions which are related to a personal or a legal or arbitral case between the company and himself/herself, his/her spouse, his/her lineal kinship or the private or capital companies in which they are shareholders or have domination. In such a case, the relevant shareholder (or his/her proxy) can attend the relevant general assembly meeting but cannot vote on the respective agenda item (*Article 436, Commercial Code*).
- **Suspension of voting rights.** If an entity directly or indirectly holds 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% of the shares of a capital company, or its shares fall below such percentages, the entity must notify the company and the relevant authorities of the situation within ten days following completion of the relevant transactions (*Article 198, Commercial Code*). The voting rights arising from the relevant shares will be suspended if:
 - an entity does not comply with this notification obligation; or
 - a company acquires its own shares (up to 10% of its original or issued capital).

In other words, the relevant shareholders cannot use their voting rights and these shares will not be taken into account while calculating the quorum of a general assembly meeting, until the underlying reason for such suspension disappears (*Articles 198 and 389, Commercial Code*).

Annulment of general assembly meeting resolutions. General assembly meeting resolutions which are against the Commercial Code or the articles of association and principles of good faith can generally be legally

challenged (*Article 445, Commercial Code*). The following can file a lawsuit for annulment of the relevant resolution before the commercial court at the place of the company's registered office, within three months following adoption of the resolution:

- Shareholders who attended the meeting, opposed the resolution and recorded their opposition in the meeting minutes.
- Shareholders (whether or not they attended the meeting or voted against the resolution) who allege that one of the following breaches has occurred and had an effect on adoption of the resolution:
 - the call for the general assembly meeting was not duly made;
 - the agenda was not announced in accordance with the Commercial Code;
 - individuals not authorised to attend the meeting or their representatives attended the meeting and voted for the resolution;
 - he or she was unlawfully not allowed to attend the meeting and to vote for the resolution.
- The board.
- Each board member (if execution of the resolution results in him or her incurring liability).

Under the Commercial Code, the general assembly of shareholders has the authority to adopt a resolution on the distribution of dividends. If the majority of shareholders abuses its authority regarding distribution of dividends and objects to the distribution of dividends, shareholders who attended the meeting, opposed such resolution and recorded their opposition in the meeting minutes can file a lawsuit for annulment of the relevant resolution before the commercial court. In this lawsuit, the court may cancel the relevant resolution and according to some commentators (as supported by the Court of Appeal in some of its decisions), the court could also render a decision on the amount of dividends to be distributed.

Right to information. Every shareholder has the right to receive information about the company's activities and business at the general assembly of shareholders' meeting by raising questions to the board of directors and/or the auditors in relation to the company's management, operations and financial statements and any other issue set out in the board of director's annual report. This right cannot be limited by a board decision or the articles of association (*Article 437, Commercial Code*). In addition, subject to the permission of the general assembly of shareholders or the board of directors, each shareholder has the right to review the company's books and records. The general assembly or the board can refuse the exercise of the right to information by a shareholder only if disclosure of such information/records to the requesting shareholder could jeopardise the company's interests.

Requesting a special audit. Every shareholder can request the appointment of an auditor (even though an item related to request a special audit is not included on the agenda) to inspect particular issues in a general assembly of shareholders' meeting provided that the:

- Audit is necessary for the shareholder to exercise its shareholding rights.
- Shareholder has exercised its right to information with no success before the request.

Filing a lawsuit against board members. The shareholders can file a lawsuit against the board of directors, unless the general assembly of shareholders releases such members. In any event, the shareholders who object to the

resolution, in which the general assembly of shareholders releases board members, have the right to file a lawsuit against the board members within six months after the release date (*Article 558, Commercial Code*). If a shareholder or group of shareholders hold at least 10% of the shares in joint stock corporations (5% in publicly-held companies) the Commercial Code gives them further shareholding rights such as calling for a general assembly meeting, inserting items into the meeting agenda and the right to be represented at the board (as explained in [Question 6](#)).

While shareholding rights mentioned above do not enable the shareholder to interfere in day-to-day operations, force the board members to resign or have the board take decisions in line with the shareholder's views, they may trigger shareholder activism in the company and influence the board or executive management's actions.

Case study

As explained in [Question 1](#), Turkish companies do not usually encounter conflicts with activist shareholders and management. Traditional investment strategies restrain activist acts. That said, there are a few cases which set good examples of the shareholder activism in Turkey. The most notable case in Turkey regarding the shareholder activism was the interference of shareholders in the management of Turkcell Holding Anonim Şirketi, a Turkish company active in the telecommunications sector.

Turkcell was the sector leader in Turkey in 2010 in terms of total revenues in the market and it was the only Turkish company listed in another stock market (the New York Stock Exchange). As a result of a disagreement among the largest shareholders, Sonera Holding and Alfa Telecom prevented the general assembly of shareholders of the company from convening and operating between 2010 and 2014 and the general assembly could not adopt any resolutions during this period. Then, in 2013, the Capital Markets Board of Turkey (CMB) decided that, to protect the minority shareholders, the CMB could appoint independent board members to public companies whose general assembly of shareholders' meeting is not held for two consecutive periods and the CMB appointed independent members to Turkcell's board of directors. In 2015, Turkcell's key managers, including the CEO, resigned.

Goals of shareholder activism

3. What are the principal goals of activist shareholders where shareholder activism is used?

Activist shareholders wishing to intervene in the management of the company may aim to change:

- The governance policies or practices of the company.
- Compensation plans implemented by the company.
- Oversight of certain functions (such as audit or risk management).
- The company's position against certain issues (for example, environmental, political) for both financial and non-financial reasons.

Financial reasons

The intervention of activist shareholders in the management may be for financial purposes, for example the goal of maximising the company's potential and gaining a high profit in a short period. However, this short-term economic gain may jeopardise the company's long-term economic plans on innovation, customer portfolio, growth and development.

Non-financial reasons

Activist shareholders may also intervene in the company's management to influence the relevant company's environmental and social practices. An activist shareholder may prefer to increase the company's value and reputation by taking more environment-friendly actions, or by applying non-discriminatory corporate policies.

Strategies used by activist shareholders

4. What are the key strategies used by activist shareholders?

Gain board of directors' seats

The board of a company is the main management body of the entity and it passes resolutions on significant business matters. Activist shareholders could require seats in the company's board to directly influence the management and have their preferred resolutions adopted. To achieve this goal, an activist shareholder can buy a significant portion of the company and use the voting power to gain seats.

Cost cutting

Activist shareholders may opt to decrease costs of the company, which are not vital for its activity, such as travel, accommodation and meal expenses of employees, holiday and events. With efficient cost cutting, a company can save significant amounts of their budget.

Lobbying

Activist shareholders can raise their concerns and share their plans through public announcements, and one-to-one contact with other shareholders and board members to gain support for the resolution they wish to pass.

Mergers and acquisitions

Companies may gain more value through mergers and acquisitions. Activist shareholders may put pressure on the company to seek possible mergers or acquisitions, which they believe would present profitable opportunities.

Shareholder disclosures

5. Are shareholders required to disclose their share ownership? What are the penalties for non-compliance?

Disclosure requirements

In principle, non-public JSCs are not required to disclose their share ownership. However, under the Commercial Code, if an entity directly or indirectly holds 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% of the shares in a capital company, or its shares fall below such percentages, the entity must notify the company and the relevant authorities of this situation within ten days following completion of the relevant transactions. This notification must also be registered with the trade registry and announced in the *Trade Registry Gazette*. Otherwise, the voting rights arising from the relevant shares will be suspended until the completion of this procedure. The company must record the relevant transactions under the annual activity and audit reports and announce the transactions on its website (*Article 198, Commercial Code*). That said, the activist shareholders of non-public JSCs, who work together and have agreed to vote in the same manner, are not required to disclose their "group" status under Article 198 of the Commercial Code. Under the Communiqué on Material Events Disclosure (No. II-15.1), changes in the capital structure and management control of a publicly traded company which exceed certain thresholds must be disclosed to the public by the relevant shareholder if and when direct or indirect shares of an individual or a legal entity, or other individuals or legal entities acting together with that individual or legal entity, in the share capital of a publicly traded company reach or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95%. Changes in the capital structure and management control of a publicly traded company which exceed certain thresholds will be disclosed by the Central Registry Agency (*Merkezi Kayıt Kuruluşu*) if and when direct shares of an individual or a legal entity, or other individuals or legal entities acting together with that individual or legal entity, in the share capital of a publicly traded company reach or fall below 5%, 10%, 15%, 20%, 25%, 33%, 50%, 67% or 95%.

Finally, under the Communiqué on Material Events Disclosure Regarding Publicly-Held (but not traded) Companies (No. II-15.2), if either the shares or total voting rights held directly or indirectly by an individual or a legal entity, or the shares or total voting rights of other individuals or legal entities acting together with individual or legal entity, in the share capital of a publicly-held company reach 5%, 25%, 50%, 67% or 95%, or fall below the same thresholds, or there is any direct or indirect change in the management control of the relevant company, such event must be disclosed to public by the parties to the relevant transaction (that is, the former or new holders of the relevant shares).

Penalties for non-compliance

If an entity does not comply with the notification obligation under Article 198 of the Commercial Code, all rights (including any voting rights) arising from the relevant shares in a non-public JSC will be suspended until the notification procedure is completed. In such a case, the activist shareholders will not be able to vote and be involved in the decision-making process at the general assembly level, and will have to disclose changes in their shareholding structures and share transfers within the company. If an entity does not comply with the notification obligation under the Communiqué on Material Events Disclosure (No. II-15.1) or the Communiqué on Material Events Disclosure

Regarding Publicly-Held (but not traded) Companies (No. II-15.2), an administrative fine can be imposed on the relevant shareholders.

Tools available to activist shareholders

6. Outline the range of legal and regulatory tools available to activist shareholders.

In addition to the rights granted to the shareholders under the Commercial Code as set out in [Question 3](#), the shareholders holding 10% or more of a private joint stock corporation are considered minority shareholders (the threshold is 5% in public companies) and they have the following rights:

- **Including an item in the agenda of the general assembly meeting.** Minority shareholders can also request an extraordinary general assembly meeting to be convened, or include an item on an agenda of a general assembly meeting (*Article 411, Commercial Code*). These requests must be submitted to the board by a notary public. If the board accepts the request, the general assembly meeting must be convened within 45 days. If the board does not accept the request within seven business days, the shareholders can apply to the competent court. If the court deems it necessary, a general assembly meeting must be held. The court can also appoint a trustee, who is responsible for the agenda and the conduct of the meeting.
- **Right of board representation.** Provided that it is set out in the articles of association, minority shareholders and a certain group of shareholders can be provided with a right to be represented on the board (*Article 360, Commercial Code*). The articles of association can provide for a right to be appointed as a board member, or to nominate a board member to represent a group of shareholders, certain share classes, and minorities. This nominee or shareholder must be appointed as a board member, unless there is just cause not to do so. This representation right cannot exceed one-half of the board in public companies. This right may facilitate the shareholder activism.
- **Dissolution of the company.** If there are just causes, minority shareholders can request dissolution of the company by filing a lawsuit before the commercial court of first instance (*Article 531, Commercial Code*). Instead of dissolution, the court can order:
 - payment to the claimant shareholders of their shares' market value at the date closest to the court decision and termination of their shareholding;
 - any other appropriate and acceptable solution (such as dividend distribution, if such lawsuit is filed to procure that the general assembly resolves to distribute dividends).

Requesting dissolution of the company may also be used as a key tool by the activist shareholders.

- **Postponement of balance sheet discussions.** Minority shareholders can request postponement of balance sheet discussions for one month (*Article 420, Commercial Code*). The postponement is notified to other shareholders. The minority shareholder can request postponement of the balance sheet discussions

for a second time if the minority shareholder is not provided with satisfactory explanations of the issues objected to.

Prevention of shareholder activism

Red flags

7. Are there any red flags that a company should look out for to provide an early indication that it may have become the target of shareholder activism?

A company that is more likely to become the target of shareholder activism is one:

- That is profitable with a well-regarded brand, but has a low market value compared to its book value.
- Whose business line is underperforming compared to other companies in its market.
- That has a qualified shareholder composition; however, board members/management set ineffective strategies.
- That has received negative criticism about a merger or acquisition, regulatory action or a new product launch.
- Where there is a conflict of interest between the shareholders of a company which may prompt a shareholder to block the general assembly to adopt a resolution from which the other shareholder(s) may benefit (for example, a dividend distribution).

Minimising the risk of being targeted

8. What practical steps can a company take to minimise the risk of being targeted by activist shareholders?

To prevent shareholder activism, the management of a company should:

- Monitor the shareholders and ownership structure of the company and comprehend the positions and perspective held by them.
- Address significant threats/risk factors proactively, to eliminate the possibility of a shareholder proposal.
- Develop an engagement plan and have good communication with other significant shareholders to have their support and strengthen the communication between the management and the shareholder.

Steps to take when faced with shareholder activism

9. What steps can a company take when it is faced with shareholder activism?

Responding before a general meeting

A company that has been the target of shareholder activism should initially consider the activist shareholder's proposals and plans objectively. If the company finds such plans and proposals effective and applicable, then the shareholder activism may be beneficial for the company to re-structure its problematic features.

The company's management and the shareholders should have effective and good communication prior to the general assembly of shareholders meeting, so that an atmosphere for discussions, engagements and consensus is created. It is important that the management engages with other shareholders prior to meeting with the activist shareholder to find the opportunity to discuss the significant matters and proposals privately. Spending less time and budget for settlement would be preferable and beneficial for both the company and the activist shareholder.

Responding at a general meeting

By holding meetings and discussions before the general assembly meeting, the company's management and other shareholders will be prepared for the general assembly meeting and form a stance with regards to the activist shareholder's plans and proposals.

Responding after a general meeting

Since the activist shareholders may block the company's operations and business by exercising the shareholding rights provided to them under the Commercial Code (such as information rights), a company that has been the target of shareholder activism should provide the continuity of a calm environment in the company by establishing a mutual understanding between all shareholders. In such a case, a company's reaction to the activist shareholders will be a determinate factor in the company's future.

Risks and benefits of company responses

10. What are the risks and benefits of different company responses to shareholder activism?

A company's management should closely monitor shareholders' actions, by convening general assembly meetings on a regular basis, to ensure transparency, effective communication and information flow. By doing so, companies will be able to predict the possible actions of the relevant shareholders and may prevent legal conflicts from activist shareholders.

The Commercial Code has adopted the principle of the equal treatment of shareholders. No-one can be favoured or disfavoured in an inappropriate manner. Accordingly, any board resolutions which are contrary to this principle (for example, preventing an activist shareholder's information right) will be void. This provision protects all shareholders' rights (including those of activist shareholders). In this respect, if the management attempts to make the activist shareholders leave the company, by limiting such shareholders' access to the records and or preventing the use of their shareholder rights, the relevant shareholder(s) whose equal treatment right is breached can file a lawsuit against the management of the company.

Current trends and developments

11. Are there any current trends, developments or reform proposals that have or will affect the area of shareholder activism in your jurisdiction?

Shareholder activism is not a well-developed concept in Turkish law and currently there are no laws or reform proposals addressing this matter. Shareholders can use their limited rights conferred under the Commercial Code. With development of Turkey's global economic interactions, new laws and regulations may be enacted on this matter.

Contributor profiles

Gökçe İldiri Coşgüner, Senior Associate

Kolcuoğlu Demirkan Koçaklı Attorneys at Law

T +90 212 355 99 00

F +90 212 355 99 99

E info@kolcuoglu.av.tr

W www.kolcuoglu.av.tr

Professional qualifications. Turkey, Attorney at Law.

Areas of practice. M&A; corporate and commercial law

Recent transactions.

- Advising Vitol, one of the world's largest companies trading in energy and commodities, in its acquisition of 100% of the shares in Turkey's leading fuel products distributor.
- Advising Mediterra Capital, a prominent Turkish private equity fund, in connection with the acquisition by Logo of 100% stakes in various software companies including Sempa and Vardar; the acquisition of a 100% stake in Terra Pizza (formerly known as Pizza Pizza) and Glasshouse (an IT company); the sale of Hassas İş and ACP Insurance; the acquisition of a majority stake in Tavuk Dünyası (a fast-food chain); and the acquisition by Glasshouse of a 100% stake in C2E Technologies, by way of merger.
- Advising a British multinational distribution and outsourcing company listed on the London Stock Exchange FTSE100 Index, in connection with the acquisition of 80% shares in two companies active in the plastics packaging sector.

Languages. Turkish, English, French

Ece Çağiran, Associate

Kolcuoğlu Demirkan Koçaklı Attorneys at Law

T +90 212 355 99 00

F +90 212 355 99 99

E info@kolcuoglu.av.tr

W www.kolcuoglu.av.tr

Professional qualifications. Turkey, Attorney at Law.

Areas of practice. M&A; corporate and commercial law

Recent transactions. Advising Mediterra Capital in connection with the acquisition by Glasshouse of a 100% stake in C2E Technologies, by way of merger; the acquisition of a minority stake in GRI Gıda (SPV), holding majority of shares in Tavuk Dünyası (a fast-food chain) held by Öncü Girişim.

Languages. Turkish, English

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