

Principle of Commitment to the Agenda in the General Assembly Meetings of Joint Stock Companies

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Joint stock companies are the most commonly established companies in Turkey. For this reason, Turkish Commercial Code no. 6762 (“TCC”) gives great importance to joint stock companies and regulates them in great detail. In order to incorporate or maintain a joint stock company, at least five (5) shareholders are required, and the general assembly, board of directors and auditors are sine qua non for their existence. Nonexistence of any of such organs will result in dissolution of the joint stock company. Among such organs, the general assembly is the most significant one, since it is the main organ, and is formed by the participation of all the shareholders.

The General Assembly

The provisions regarding the general assembly are regulated under Articles 360 and 370 of the TCC. According to Article 364 of the TCC, there are two types of general assembly; namely ordinary general assembly and extraordinary general assembly. Ordinary general assembly meetings shall be convened within three (3) months of the end of the fiscal period and at least once every year, whereas extraordinary general meetings shall be convened whenever needed.

Approving the budget and the yearly accounts, modifying company bylaws, electing and dismissing the board of directors or its members, deciding on the policy of the company, distributing the dividends and increasing the share capital are the exclusive rights and obligations of the general assembly. Since the general assembly is such a significant organ and essential for the company, there is a specific procedure to convene its meetings. The board of directors is competent to call for a general meeting, and it shall follow the procedure stated under Article 365.

The Principle of Commitment to the Agenda

The call for a general assembly meeting is very important as agenda items are specified in the invitation and only pre-specified agenda items can be debated during the meeting pursuant to Article 369 of the TCC. This restriction is called the principle of

commitment to the agenda, which is obligatory in all joint stock company general assembly meetings regardless of whether they are ordinary or extraordinary general assembly meetings. This principle prevents any subject other than the agenda items which are stated in the invitation to the general assembly meeting from being debated and resolved at the general assembly meetings.

The Regulation on General Assembly Meetings of Equity Companies and the Ministry of Industry and Trade Commissioner Attending to Those Meetings

To meet the needs arising from the development of trade life, the Regulation on General Assembly Meetings of Equity Companies and the Ministry of Industry and Trade Commissioner Attending to Those Meetings was published by the Ministry of Industry and Trade in Official Gazette no. 22720 and dated August, 7 1996 (“Regulation”) determining the scope of the principle of commitment to the agenda more specifically. Article 25 of the Regulation brought significant exceptions and flexibility to this principle and its practice. Items not included in the previously announced general assembly meeting agenda can only be discussed if all shareholders are present in the meeting and the majority of those present vote in favor of such an addition. Also, if the term of one of the board of directors’ members or auditors has expired, a new agenda item regarding the election of new members for the vacant board membership can

be added to the agenda. The general assembly may insert a new item regarding the dismissal of board of directors' members, auditors and election of new members to the agenda following the decision of the majority present at the meeting.

Contradiction between the Regulation and the TCC

When the Regulation and TCC are compared regarding the addition of an agenda item, they are contradictory. While the TCC does not allow agenda items which were not specified in the call for the previously announced general assembly meeting agenda to be discussed during the meeting, the Regulation allows agenda items which have not been included in the previously announced general assembly meeting agenda to be discussed during the meeting under some circumstances. In this respect, a rule set forth by a regulation supersedes a rule set forth by a law, thus such contradiction constitutes a violation of the hierarchy of norms.

According to some authors in doctrine, agenda items can be discussed in general assembly meetings even if they are not included in the previously announced agenda. Their ideas are based on the grounds that the general assembly is the main organ of joint stock companies. For this reason, the general assembly should have the right to make any decision at any time regardless of its subject. However, according to opposing authors in doctrine, agenda items cannot be discussed if they are not included in the previously announced agenda. Their ideas are based on the grounds that the voting rights of shareholders not in attendance due to the announced agenda will be violated. If the shareholders not in attendance knew the new agenda items would be discussed in the general assembly meeting, then they might have attended the meeting.

Court of Appeals Decision

The Turkish Court of Appeals has conflicting decisions on this issue. While the Court of Appeals' earlier decisions state that the general assembly shall only decide on the announced agenda items in the meetings, later decisions are in conflict with earlier decisions.

Later decisions are based on the grounds that only a minority representing at least ten percent (10%) of the shares may be awarded some minority rights as stipulated under Article 366 of the TCC. Minority shareholders may notify the board of directors in writing requesting the items that they want to add to the agenda. If the board of directors rejects or does not respond to such request, then the minority shareholders have the right to make such request from the statutory auditors. Furthermore, Article 367 of the TCC allows the minority shareholders to request the addition of the new items to the agenda from the court by filing a lawsuit if their request is rejected or not responded to by the board of directors or statutory auditors. If the minority shareholders do not apply to the board of directors and the auditors before filing a lawsuit before the court, the court will reject such a request on the ground that they did not fulfill the preconditions.

The contradiction between the Regulation and TCC is resolved by the New Turkish Commercial Code. New Turkish Commercial Code no. 6102 ("NTCC"), which will enter into force in July 2011, expands the scope of the principle of commitment to the agenda items under Article 364. According to this regulation, the board of management members shall always be dismissed from membership even if such dismissal is not included in the agenda.

Conclusion

As a conclusion, commitment to the announced general assembly agenda is the main rule according to the TCC, however the Regulation regulates the opposite. Therefore, there is not a consensus between the doctrine, TCC, Regulation and case law. Furthermore, there are conditions prescribed by the TCC which grant the right to add new items to the agenda to minority shareholders. Either the Regulation needed to be amended in accordance with the TCC to avoid any confusion or the TCC needed to be amended in accordance with the needs of commercial life. With respect to this, the legislature's will is presented as the principle of the commitment to the announced agenda and shall be expanded in situations which are stated in the NTCC.