

MINORITY SHAREHOLDER RIGHTS UNDER TURKISH LAW

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Shareholder(s) of a joint stock company representing at least 10% of the share capital (5% for publicly owned joint stock company) is deemed as constituting a “minority” and enjoy a certain degree of protection under Turkish Law. The minority shareholders’ rights of a Turkish joint stock company (“Anonim Şirket”) are governed by the Turkish Commercial Code (Law No. 6762) (the “TCC”). These rights may be expanded, but not limited or restricted, by the articles of association of a company which is a kind of by-laws for a company. Minority shareholders, among others, are entitled to (i) request the appointment by the General Assembly of a special auditor (“*ozel denetçi*”) with regard to specific corporate matters; (ii) filing lawsuits against directors and/or statutory auditors for their misconduct; (iii) calling for extraordinary General Assembly meeting; etc. The minority rights may be categorized as individual rights and special minority rights as follows:

1. Individual Rights

According to article 385 of the TCC, any right of a shareholder arising from law or the articles of association of the company constitutes the individual right of such shareholder which cannot be (i) waived or altered unless permitted but law, and (ii) waived or altered without the prior consent of such shareholder if such rights are granted by the articles of association.

Under the TCC, the individual rights of each shareholder are as follows: (i) to receive dividends; (ii) not to have claims against it for the return of the dividends declared; (iv) to participate in liquidation of the company and (v) to challenge the decisions of the shareholders’ general assembly before a commercial court in the event such decisions are passed in breach of law, the articles of association of the company or the decisions of the shareholders’ general assembly.

2. Special Minority Rights

The following are the statutory special minority rights of the shareholders available under the TCC:

a) Positive Minority Rights

- Any shareholder(s) holding 10% or more of the issued and outstanding share capital of the company may postpone the annual shareholders’ general assembly meeting with respect to the approval of the balance sheet for one (1) month. The next shareholders’ general assembly

meeting shall not be postponed unless the necessary explanations with respect to objections to the balance sheet have not been provided (article 377 of the TCC).

- Any shareholder(s) holding 10% or more of the issued and outstanding share capital of the company may cause the company to take legal action against any member of the board of directors of the company and sue the same with respect to their personal liabilities provided that it has been resolved that the shareholders' general assembly shall not file a lawsuit against the actions of the board of directors members. The company is obliged to file a lawsuit against the actions of the board of directors members within a month following such resolution (article 341 of the TCC).
- Any shareholder(s) holding 10% or more the issued and outstanding share capital of the company may cause the company to take legal action against the statutory auditor(s) of the company and sue them with respect to their personnel liabilities (article 359 of the TCC).
- Any shareholder(s) holding 10% or more of the issued and outstanding share capital of the company may request the appointment of a special auditor to audit the accounts, books, balance sheet and profit and loss statement of the company (article 348 of the TCC).
- Any shareholder(s) holding 10% or more of the issued and outstanding share capital of the company may request that the board of directors (i) call an extraordinary shareholders' general assembly meeting, whereby the board of directors is required to do so or (ii) add a new item to the agenda of the shareholders' general assembly meeting to be discussed by the shareholders and resolved accordingly. If the board of directors fails to add the requested item in to the meeting agenda, then such shareholders may apply to the court in order to be authorized to call the extraordinary shareholders' general assembly meeting or add a new item to the agenda of the shareholders' general assembly meeting (article 366 and article 367 of the TCC).
- Any shareholder(s), regardless of the number of their shares in the company, may file complaints to the statutory auditor(s) against the members of the board of directors or managers of the company. The statutory auditor(s) is required to examine such complaints. If such complaints are proven to be correct, the statutory auditor(s) should mention them in their annual reports. However, if the complaints are made by the shareholder(s) holding 10% or more the issued and outstanding share capital of the company then the statutory auditor(s) are obliged to mention the opinion with respect to such complaints in their annual reports and call a extraordinary general assembly meeting, if deemed necessary by the shareholder(s) (article 356 of the TCC).

b) Negative Minority Rights

The negative minority rights can be defined as the cases in which the minority rights may impair the resolution in accordance with the following quorum for the meeting and quorum for the decision required by the relevant article of the TCC:

Subject	Quorum for the Meeting	Quorum for the Decision
To change the nationality of the company by amending its articles of association (sub-paragraph 1 of article 388 of the TCC)	100%	100%
To increase undertakings of the shareholders, (sub-paragraph 1 of article 388 of the TCC)	100%	100%
To change objective and purpose of the company or the type of the company (sub-paragraph 2 and 4 of Article 388 of the TCC)	1 st meeting: 2/3 2 nd meeting: 1/2	1 st meeting: majority 2 nd meeting: majority
To increase the share capital of the company (sub-paragraphs 3 and 4 of article 388 of the TCC)	1 st meeting: 1/2 2 nd meeting: 1/3	1 st meeting: majority 2 nd meeting: majority
To decrease the share capital of the company (sub-paragraph 3 and 4 of article 388 of the TCC)	1 st meeting: 1/2 2 nd meeting: 1/3	1 st meeting: majority 2 nd meeting: majority
To amend articles of association of the company for a purpose other than those mentioned above (sub-paragraphs 3 and 4 of article 388 of the TCC)	1 st meeting: 1/2 2 nd meeting: 1/3	1 st meeting: majority 2 nd meeting: majority
To issue corporate bonds, bills and notes (article 423 of the TCC)	1 st meeting: 1/2 2 nd meeting: 1/3	1 st meeting: majority 2 nd meeting: majority
To dissolve the company (sub-paragraph 9 of Article 434 of the TCC)	1 st meeting: 2/3	1 st meeting: majority

	2 nd meeting: 1/2	2 nd meeting: majority
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Turkish Commercial Code Draft (the “**Draft**”) provides the minority shareholders with a new category of shareholder rights. In the event of justified cause, minority shareholders may request which claim for the dissolution of the company on justified cause. Apart from the right to claim for the dissolution for justified cause, the Draft establishes a new mechanism called squeeze out mechanism, under certain conditions, may pave the way for converting a publicly held company into a private company.