



PARTICULARS TO BE INCLUDED IN THE ARTICLES OF ASSOCIATION OF PUBLICLY HELD JOINT STOCK COMPANIES

THE LEGISLATORS HAVE PLACED EMPHASIS ON regulating the underlying principles of Publicly Held Joint Stock Companies (“Open Company”) as the issue of protecting the interests of the minority shareholders in such companies has a social context. In parallel with the additional requirements envisaged for Open Companies in such social context, the articles of association of those companies are also subject to several specific legal regulations.

The circumstances where the requirement of good faith is to be included in the articles of association of Open Companies in terms of the application of capital markets legislation are stated below.

Initial Dividend Rate and the Authority to Distribute Dividend Advance

As per the Capital Market Act Number 2499 (the “Act”), it is mandatory to indicate the percentage of initial dividend rate in the articles of association of Open Companies. Such percentage is determined by the Capital Markets Board (“CMB”) and may not be less than the amount to be published by the communiqués. CMB may revoke or postpone the requirement to distribute dividends on the basis of the type of issuers and the distributable dividend amounts. Under the Act, distribution of dividends is independent from the will of the company and the prevention of Open Companies’ exclusion from distribution of dividends.

In addition, as per the Act, it is mandatory for the Open Companies to have a provision in the articles of association in order to distribute dividend advance.

Respects Regarding the Registered Capital System

The particulars of a transition to the registered capital system that the company made and a possible capital increase of up to the amount of the registered capital through a board of directors’ resolution must be specified in the articles of association, and also the information regarding the system (registered capital and issued capital figures, type, amount, group and nominal value of share certificates representing the issued capital) must be indicated. As a matter of fact, the registered capital is defined as the capital registered with the trade registry indicating the maximum amount up to which share certificates may be issued with a board of directors’ resolution without being subject to the provisions of the Turkish Commercial Code Number 6102 regarding the increase of capital provided that the required provision is present in its articles of association.

Authority to Limit Pre-emption Rights

As per the Act, the board of directors may be authorized to limit the pre-emption rights of the shareholders. However, there must be a provision to that effect in the articles of association.

Authority to Issue Preferential Share Certificates

In the companies subject to registered capital system, the board of directors may be authorized to issue preferential share certificates. Such authorization must be made with a provision in the articles of association. Nonetheless, adding an abstract provision authorizing the board of directors to issue preferential share certificates is not sufficient. In addition to such, the subject of the preferential

shares, their qualities and limits and purposes of usage must also be specified.

The Authority to Limit the Rights of Preferential Shareholders

The board of directors may be authorized to make resolutions as such to limit the rights of the preferential shareholders through adding such provision to the articles of association.

The Authority to Issue Share Certificates with Premium

The Board of Directors may be authorized to issue share certificates with premium through adding such provision to articles of association. This authority does not contain the power to determine nominal values because the nominal values of the shares must be indicated in the articles of association.



Authorizing the Board of Directors to Issue Debt Instruments

The authority to issue bonds and other capital market instruments which have the potential of securities may be allocated to the board of directors with the articles of association.

Issuance of Non-Voting Shares

Joint stock companies may issue non-voting shares through providing preferences with respect to dividends, as long as the articles of association contain relevant provisions.

Distributing Profit Shares to Members of Board of Directors, Officers, Employees and Workers

A provision must be included in the articles of association

of the Company in order to distribute profit shares to shareholders, employees and managers of the company.

Distribution of Dividend Advance

Open Companies may distribute dividend advance providing that a provision is included in their articles of association and a general assembly resolution authorizing the board of directors only for the relevant year has been passed.

Cumulative Voting

As per the Communiqué on the Principles Regarding Casting Cumulative Voting in the General Assemblies of Joint Stock Companies Subject to the Capital Market Act (“Communiqué”), it is mandatory for the companies whose shares have not traded in the stock exchange market and number of shareholders is continuously above 500 to apply cumulative voting system and include a provision regarding such in their articles of association. Cumulative voting is an application used for electing members to the board of directors.

Other Particulars

- i.** The articles of association need to be purified from the provisions limiting transfer and circulation of shares and preventing the shareholders from using their rights,
- ii.** Buying and selling share certificates must be included in the section regarding scope of activity in the articles of association. However, it must also be expressed that such will be conducted with the reservation that intermediary and portfolio management activities will not be performed unless the Open Company is a company duly authorized to conduct those specific activities,
- iii.** The article regarding capital must be drafted as such to be in compliance with the principle of payment in full and in cash as specified under the Act,
- iv.** The article regarding minority shareholders must be drafted in consideration of the fact that the ratios envisaged for companies subject to the Act is different than other companies.

As explained above, the additional requirements with respect to articles of association of Open Companies envisaged in the legislations have been put in place for serving the purpose of protecting the interests of the minority shareholders.

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