



## **Limitations on Voting Rights of Shareholders**

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### **I. Introduction**

In principle, shareholders of limited liability companies (“LLC”) have the right to vote on the issues being discussed during the general assembly meetings and such right is indispensable. On the other hand, Turkish Commercial Code No.6102 (“TCC”) sets forth certain limitations on voting rights of the shareholders to prevent any impartiality, especially in cases where certain shareholders may not be able to prioritize the interests of the LLC and may value their own benefit. With this article, we aim to provide the instances where the shareholders of an LLC may be prohibited from using their voting rights.

### **II. Limitations on Voting Rights**

The general rule under Article 447/1(a) of the TCC is that each shareholder of an LLC has the right to vote and such right cannot be taken away by any means. In this respect, voting rights of the shareholders are calculated in accordance with the nominal value of their share capital and one voting right is equal to TRY25 as per Article 618/1 of the TCC, unless a higher nominal value per share has been determined in the articles of association.

However, under certain events, shareholders can be prohibited from voting in the general assembly meetings of the LLCs. Such events could be listed as follows:

- (i) **Participation in the management:** According to Article 619/1 of the TCC, any person who has participated in the management of the LLC in any way will not be able to vote on the release of the managers. As per Article 616/1/(f) of the TCC the general assembly can decide on the release of the managers (i) if there is an item on the agenda regarding release or (ii) an item to approve the balance sheet of the LLC as per Article 424 of the TCC. In this respect, simple majority of votes represented in the general assembly meeting will be sufficient for the release of the managers in accordance with Article 620 of the TCC.

Article 619/1 provides a wide definition with respect to the persons who will fall under the scope of this provision by not listing such persons one by one. For this reason, it can be inferred that the managers (legal entity or real person), authorized signatories, commercial agents and shareholders who are also the managers of the LLC will not be able to vote for the release of the managers. In the event there are shareholders who are unable to vote for the release of the managers, the decision quorum, which is the simple majority of the votes present at the general assembly meeting as per Article 620 of the TCC, will have to be satisfied by the other shareholder(s) present at the general assembly meeting. In another words, share



capital of the shareholder who is prohibited from voting will not be taken into consideration when calculating the decision quorum.

- (ii) **LLC's acquisition of its own shares:** According to Article 619/2 of the TCC, shareholders will not be able vote on the decisions related to LLC's acquisition of its own shares if they are the transferor. Pursuant to the Article 612 of the TCC, the LLC can acquire its own shares if; (i) it has the necessary equity that can be freely used to purchase such shares and (ii) the nominal value of shares to be purchased does not exceed %10 (ten percent) of the total share capital. Simple majority of the votes will be required for the approval of LLC's acquisition of its own shares as per Article 620.
- (iii) **Approval of activities in violation of duty of loyalty and non-compete:** According to Article 619/3 of the TCC, shareholders will not be able to vote on the decisions with respect to approval of their activities that are in violation of duty of loyalty or duty to non-compete. Pursuant to Article 613 of the TCC, shareholders are obliged to protect secrets of the LLC and cannot act in a way which will hinder the interests of the LLC. However, shareholders can permit a certain shareholder to perform activities that activities that are in violation of duty of loyalty or duty to non-compete as per Article 613/4 of the TCC. In this regard, the shareholders other than the shareholder who is acting in violation of the said duties can allow such activities through a general assembly meeting, provided that there is a provision in the articles of association. Please note that such resolution can be adopted with at least two-thirds of the votes represented together with the majority of the total basic share capital with voting rights as per Article 621/1(g) of the TCC.

Shareholders will be able to attend to the general assembly meetings even though the matters listed above are to be discussed in the meeting but they will not be able to vote on such issues.

Please also note that any provision in the articles of association removing or changing Article 619 shall be deemed invalid as per Article 579 of the TCC.

### **III. Effect of Acting Contrary to Article 619 on the Validity of General Assembly Meeting Resolution**

Firstly, it should be determined whether a vote by the shareholder who is prohibited from voting in the general assembly affects the validity of the general assembly meeting resolution. The majority of legal scholars state that voting alone does not constitute a reason for the invalidity of the general assembly meeting resolution; and the general assembly meeting



resolution might be cancelled as per Article 445 of the TCC only if such shareholder's vote has an effect on the decision-making process (i.e. meeting and/or decision quorums).<sup>1</sup>

Secondly, in case the shareholders try to circumvent Article 619 by performing certain transactions such as fiduciary transfer of shares, establishing a usufruct on the shares, voting agreement with a third party, Article 433 of the TCC will be applicable to LLCs with reference of Article 617/3. According to Article 433/1, any share capital transfer aiming to circumvent or neutralize the restrictions on the voting rights will be invalid. For this reason, if a shareholder transfers its shares in order to avoid Article 619 and the buyer participates in a general assembly meeting following share transfer, such participation and voting will be unauthorized since the buyer has not acquired the voting rights as per Article 433/1.<sup>2</sup> In such case, other shareholders will have the right to object to the unauthorized participation in the general assembly as per Article 433/2 of the TCC.

Shareholders will be able to object (i) during the preparation of the list of attendants or (ii) to the chairman of the general assembly meeting and request that such objection is included in the meeting minutes. Additionally, shareholders will be able to file a lawsuit for cancellation of the general assembly resolution in accordance with Article 445 and Article 446/1/(b) of the TCC in the event the shareholders who were prohibited from voting have voted regardless of the objections raised by the other shareholders.<sup>3</sup>

#### **IV. Conclusion**

Article 619 of the TCC provides an important protection to the rights and interests of the LLCs through limiting voting in the general assembly meetings where there is a possible conflict between the interests of the shareholders and the LLC. As a result, the said provision ensures that the shareholders act more carefully and prioritize interests of the LLCs.

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<sup>1</sup> Tokcan, F. Pelin, Limited Ortaklıkta Oy Hakkından Yoksunluk, 59, (1st ed. 2018), 150-151

<sup>2</sup> Id. at 141

<sup>3</sup> Id. at 143-146