



TURKEY: ANNULMENT OF THE GENERAL ASSEMBLY RESOLUTIONS OF JOINT-STOCK COMPANIES

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1. Introduction

Resolutions adopted in the general assembly meetings of joint-stock companies have an essential impact on the shareholders because resolutions are binding for all of the shareholders even if they did not attend the relevant general assembly meeting or casted a negative vote. Adopting a general assembly resolution with a majority of the votes may cause adopting a resolution that may harm the rights of minority shareholders. Also, the implementation of general assembly resolutions may cause liability of the board of directors. Therefore, the law provides an opportunity to shareholders and the board of directors for their protection to cancel the general assembly resolution if the resolution is against the law.

In light of the above, Article 445 of the Turkish Commercial Code No. 6102 ("TCC") stipulates that an action for annulment can be filed against the general assembly resolutions which are contrary to the relevant law, provisions of the articles of association and the principle of good faith. For the general assembly resolutions to be subject to annulments the general assembly resolutions must be duly adopted in accordance with the meeting and resolution quorums and the general assembly resolution must not be subject to nullity. It is in this light that we will focus on the general conditions of the annulment of the general assembly resolution of joint stock companies in Turkey.

2. Reasons for Annulment of the General Assembly Resolutions

As per Article 445 of the TCC, the reasons for annulment of the general assembly resolutions are determined as violation of (i) the relevant law or (ii) of the articles of association or (iii) of the principle of good faith.

The lawmaker did not specify the scope of the term "the law". Therefore, as per the common opinion of the doctrine, it is agreed that the resolution must be contrary to compulsory and supplementary legal rules. For example; a violation of the minority shareholders' right to insert an item into the agenda would be considered as a violation of the relevant law and allows minority shareholders to file a lawsuit for the annulment. On the other hand, provisions of TCC related to the annulment of general assembly resolution will not be applied to the resolutions which are adopted contrary to the customary rules.

In addition, resolutions against the articles of association are also subject to annulment. On the other hand, in case that the general assembly resolution is adopted against the provisions of articles of association which are contrary to the mandatory provisions of Turkish law, such violation would not be subject to annulment since the general assembly resolution would be subject to nullity.

Lastly, violation of good faith is considered as one of the reasons for annulment. In order to understand the concept of "good faith" within the framework of annulment of general assembly resolutions, decisions of Court of Cassation should be taken into consideration. For example; as per



the decision of Court of Cassation, not to distribute profit would be considered as “violation of good faith” in case that the company is always in profit.¹

3. Who is Entitled to File an Action for Cancellation

As per Article 446 of the TCC, (i) any shareholder who attended the general assembly meeting and voted against the resolution subjected to the annulment and then had his/her dissenting opinion recorded in the general assembly minute, (ii) any shareholder – whether present or absent in the meeting or whether voted against the resolution or not – who claims that the general assembly meeting was not duly called or the agenda was not duly announced or unauthorized individuals have participated in the general assembly meeting in person or by proxy and cast votes; or he/she was unjustly prevented from participating in the general assembly meeting and voting; and the general assembly resolution has been adopted due to presence of the foregoing illegalities, (iii) the board of directors and (iv) any board member who would be personally held liable upon implementation of the resolution have a right to file a lawsuit for the annulment of the general assembly resolution.

a. Shareholders

Shareholders, who attended the general assembly, opposed the resolution adopted by the general assembly and had their dissenting opinion recorded in the minutes can file a lawsuit for annulment of the general assembly resolutions. As it is clearly stated in the TCC, in order to file a lawsuit for annulment, a negative vote must have been casted and a dissenting opinion must be included in the minutes. Shareholders can have their dissenting opinion recorded in the minutes at the same time or have separate dissenting opinions recorded for each of the resolutions. The dissenting opinion does not need to include any legal reasoning and a declaration stating that the shareholder opposes the relevant resolution is a sufficient to file a lawsuit for annulment.

In addition, the shareholders who claims that (i) the invitation to the general assembly was not duly made, (ii) the agenda of the general assembly meeting was not announced in accordance with the relevant law, (iii) unauthorized individuals or representatives attended the general assembly meeting and casted votes, (iv) was not allowed to attend the meeting unjustly and non-attendance effected the result of the votes, can file a lawsuit for annulment.

b. The Board of Directors

As per Article 446 of TCC, (i) the board of directors or (ii) members of the board of directors who may be held personally liable in case of implementation of the general assembly resolution are also entitled to file a lawsuit for the annulment of the general assembly resolutions. The board of directors must take a decision in accordance with Article 390 of TCC in order to take a decision on this issue. As per Article 390 of TCC, quorum of a board meeting is the majority of the members of the board of directors and the board resolution shall be adopted by the majority of the members attended the meeting.

4. Lawsuit for Cancellation of the General Assembly Meeting

¹ Court of Cassation No. 11. 1977/4496 E. 1977/2168 K. 03.07.1977



As it is explained above, plaintiff (respective shareholder or board of directors or member of the board of directors) can file a lawsuit against the defendant (respective joint stock company) for the annulment. In case that the lawsuit is filed by a shareholder, the joint stock company will be represented by the board of directors of the company. In case that the lawsuit is filed by the board of directors or a member of the board of directors, the joint stock company will be represented by a trustee who will be appointed to represent the company.

TCC also stipulates that such lawsuit for the annulment must be filed within 3 (three) months following the date of the general assembly resolution. The hearing of the lawsuit can also be held after the expiry of 3 (three) months period. The commercial courts have jurisdiction to hear the dispute related to annulment of the general assembly resolution and the competent court is the commercial court of the place where the joint stock company's headquarter is located at and the commercial court has jurisdiction to hear the dispute.

In addition, TCC stipulates a notification requirement for the board of directors. As per the Article 448 of the TCC, in case that a lawsuit is filed for the annulment, the board of directors must immediately made announcement of such lawsuit and must publish the same announcement into the website of the joint stock company, if there is a website of the company.

As per Article 448 of TCC, in case that a lawsuit is filed for the annulment of the resolutions of the general assembly, the court can rule for the security which will be given by the plaintiff against the potential losses of the joint stock company upon the request of the joint stock company. The type and amount of the security will be determined by the court. Also, as per Article 449 of TCC, the court can rule for the adjournment of the execution of the resolution in dispute after obtaining the opinion of the members of the board of directors.

Once the decision of the court regarding the annulment of the general assembly resolution is final, the decision of the court will be applied to all shareholders. The board of directors must promptly make an application to relevant trade registry for registration of the court decision and such decision of the court must be announced through the website of the company.

5. Conclusion

As explained in this article, persons who are entitled by TCC may challenge the general assembly resolution if one of the reasons for the annulment is existed. This opportunity to file a lawsuit for the annulment of the resolution which is contrary to applicable law, articles association or good faith principle is essential for protection of shareholders and board of directors.

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