



TURKEY: POWER OF PRIVILEGED SHARES

Authors: Gönenç Gürkaynak, Esq., Nazlı Nil Yukaruç, Selen Ermanlı Sakar and Nisa Aybüke Erođlu, ELIG Gürkaynak Attorneys-at-Law

In terms of Turkish corporate law perspective, different types of privileges may be granted to certain shares during drafting the articles of association while a joint-stock company is being established or by way of amending articles of association of an already established joint-stock company. These privileges may be on dividend right, liquidation share, pre-emptive right, voting right and other similar rights. In this regard, the shareholders holding privileged shares in a joint-stock company are deemed privileged shareholders. In this article, we will focus on rights of privileged shareholders and relevant procedures that need to be followed for the circumstances that may affect interests of privileged shareholders within the framework of Article 454 of the Turkish Commercial Code No. 6102 (“**TCC**”) and the Regulation on the Procedures and Principles of General Assembly Meetings of Joint-Stock Companies and Ministry Representatives Attending the Meetings.

Some resolutions of general assembly and board of directors that could potentially violate the rights of privileged shareholders necessitate approval of privileged shareholders. If the general assembly and/or board of directors take such a decision (requiring approval of the privileged shareholders) the board of directors must call the privileged shareholders for a “*special assembly meeting*” within 1 (one) month at the latest from the date of the announcement of the relevant resolution. Otherwise, each privileged shareholder may request convention of the special assembly meeting from the court within 15 (fifteen) days following the last day of the convening period set forth for the board of directors.

This meeting is called as “*special assembly meeting*” due to the fact that not each shareholder but only shareholders holding privileged shares may attend the special assembly meetings. If the special assembly will be held abroad or attendance of the ministry representative is specifically requested from the Ministry of Trade and such request is found appropriate, the ministry representative would also attend the special assembly meeting. The special assembly convenes with majority of 60% of the entire privileged shares and takes resolution with the majority of the privileged shares represented at the meeting. In case the special assembly does not convene within the time limit despite the call, the relevant general assembly resolution and/or board of directors’ resolution will be deemed duly approved. In addition, if the general assembly resolution in question has already been taken with the affirmative votes of privileged shareholders which are sufficient for decision quorum of the special assembly, it will no longer be necessary to hold a separate special assembly meeting and the general assembly resolution will be applicable upon registration with the trade registry.

In the event of taking such a resolution by the general assembly and/or board of directors, the board of directors has to call the special assembly for a meeting within 1 (one) month at the latest from the date of the announcement of the relevant resolution. Otherwise, each privileged shareholder may request convention of the special assembly from the court within 15 (fifteen) days following the last day of the convening period set forth for the board of directors. The special assembly convenes with majority of 60% of the entire privileged shares and takes resolution with the majority of the privileged shares represented at the meeting. In case the special assembly does not convene within the time limit despite the call, the relevant general assembly resolution and/or board of directors resolution will be deemed duly approved. In addition, if the general assembly resolution in question has already been taken with the affirmative votes of privileged shareholders which is sufficient for decision quorum of the special assembly, it will no longer be necessary to hold a separate special assembly meeting and the general assembly resolution will be applicable upon registration with the trade registry.

If the special assembly convenes and it is concluded in the meeting that the general assembly resolution and/or board of directors resolution in question violates the rights of privileged shareholders, the reason behind this decision should be justified. It is also mandatory to deliver the meeting minutes of special assembly to the company's board of directors within 10 (ten) days following the date of the resolution. Along with the minutes, the list containing

those who voted negatively for the approval of the general assembly resolution and met the decision quorum as well as a notification address suitable for the lawsuit that may be filed against the foregoing privileged shareholders shall be delivered to the board of directors. The minutes shall be registered with the trade registry and announced in the Trade Registry Gazette, together with the accompanying information. If the foregoing conditions are not complied with, the decision of the special assembly shall be deemed untaken.

Provided that the foregoing procedure has been duly followed within 1 (one) month from the date of special assembly resolution, the board of directors may file a lawsuit for annulment of this resolution and request from the court registration of the general assembly resolution on the grounds that said resolution of the general assembly does not violate the rights of privileged shareholders.

All in all, it may be inferred that although privileges provide superior shareholding rights to privileged shareholders, the TCC also aims to protect and strengthen the rights of privileged shareholders in order to keep and maintain their advantageous position in a fair environment and accordingly, it defines special assembly level in addition to the general assembly. On the other side, the TCC limits the power of privileged shareholders by way of granting right of litigation to the board of directors for the cases where the board alleges that the general assembly does not violate the rights of privileged shareholders.

Article contact: Gönenç Gürkaynak, Esq.

Email: gonenc.gurkaynak@elig.com

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