



Turkiye: Annulment of General Assembly Resolutions of Limited Liability Companies

Authors: Dr. Gönenç Gürkaynak, Nazlı Nil Yukaruç, Gülşen Pazarbaşı, Emin Pehlivan

I. Introduction

In limited liability companies, shareholders exercise their shareholding rights pertaining to the company in the general assembly meetings. The general assembly of shareholders is only entitled to resolve on matters explicitly stipulated under the laws (e.g. amendment of the articles of association of the company, appointment and dismissal of the board of directors, liquidation of the company) and articles of association of the company. Duly issued resolutions of general assembly resolutions bind all the shareholders -even the ones who were not present at the relevant meeting.

Due to the significance of its results on the company, shareholders and other stakeholders, Turkish Commercial Code No. 6102 (“TCC”) regulates annulment of general assembly resolutions under its Article 622 with a reference to provisions (Article 445 et seq. provisions of the TCC) regulating annulment of the general assembly resolutions of the joint-stock companies. Accordingly, in this article, we will aim to explain legal reasons and procedure of annulment of general assembly resolutions in limited liability companies.

II. When annulment can be claimed?

According to Article 445 of the TCC, not every resolution of the general assembly of shareholders would be subject to the annulment lawsuit, but the ones contrary to the (i) laws, (ii) articles of association of the company, or (iii) principle of good faith may be subjected to the annulment procedure.

(i) Infringement of the Laws

In terms of its scope, unlawfulness includes violation of provisions of the TCC as well as of all relevant legislation in force. Turkish legislation contains a variety of provisions regulating corporate law. Non-compliance with the relevant legislation in the context of the general assembly of shareholders might cause annulment. That said, unlawfulness is not applicable in the violation of the absolute mandatory provisions of the laws which lead to non-existence and nullity of such resolution but applicable for resolutions that are contrary to the provisions other than the foregoing. In other words, an annulment lawsuit can be filed against a general assembly resolution that is legally existing and valid. On the other hand, in case of violation of absolute mandatory provisions, the resolution is essentially null and void. To elaborate:

- a. According to Article 396 of the TCC, members of the board of directors must not compete with the company. Members of the board of directors who conduct business activities in the same scope of the company without the approval of the general assembly would breach the mentioned provision. In addition, any unlawfulness in relation to the removal of competition prohibition would lead to the annulment of such general assembly resolution as well. Indeed, the Court of

Cassation decided to annul a decision in the general assembly resolution about removal of competition prohibition of the board members, because such decision was voted unlawfully.¹

- b. Article 400 of the TCC stipulates that affiliated persons with the company cannot be appointed as an auditor since their objectivity would be in question. Accordingly, the Court of Cassation decided to annul a decision in the general assembly resolution in relation to the release of the auditor who accepted this duty although it should have been declined due to the kinship between him and the members of the board of directors and had not conducted his duties lawfully as an auditor.²

(ii) Infringement of the Articles of Association

Similar to the infringement of laws, in order to request annulment of a general assembly resolution due to non-compliance with the provisions of the articles of association in accordance with Article 445 of the TCC, the relevant provision must be a legally valid provision of the articles of association. Otherwise, there can be no violation of a provision of the articles of association that is deemed to be non-existent or invalid, and the non-existence or nullity of the relevant articles of association can be claimed by anyone having legal interest.

In case of infringement of the articles of association, there should be a breach of a valid provision of the articles of association. For example, the court may be asked to annul the decisions taken at the general assembly meeting held in violation of the aggravated negotiation quorum lawfully stipulated in the company's articles of association. However, as mentioned above, the general assembly resolution must be taken in accordance with the quorum stipulated by the law. Otherwise, if the general assembly resolution is taken with a quorum lower than the minimum quorum stipulated in the law, this decision is invalid. Alike, companies may set a provision in the articles of association which provides an upper limit in the number of board members (e.g. the board of directors would consist of 1 (one) to 4 (four) board members) and in such a case, any appointment of board members exceeding this threshold (e.g. appointment of 5 (five) board members in a general assembly meeting) in terms of total board member number would be against the said provision of the articles of association.

(iii) Infringement of the Principle of Good-Faith

The principle of good faith is stipulated under Article 2 of the Turkish Civil Code No. 4721. Due to its broad application, this Article applies to all civil law relations. The principle of good-faith obliges people to use their rights according to the good-faith principles and prohibits them from using their rights with bad faith. In this context, even if Article 445 of the TCC would not have contained this provision, it can be said that infringement of the principle of good faith would still be a reason for the annulment lawsuit.

III. Who is Entitled to Initiate the Annulment Lawsuit?

Article 446 of the TCC stipulates that shareholders, board of directors and each director are entitled to claim the annulment of the general assembly resolutions under certain conditions. Accordingly:

¹ Decision of 11th Civil Chamber of the Court of Cassation numbered 2016/2690, dated 10.03.2016

² Decision of 11th Civil Chamber of the Court of Cassation numbered 2016/2782, dated 14.03.2016

- a. Shareholders who attended the meeting and cast a negative vote can claim the annulment of the general assembly resolution. However, the negative vote must be recorded in the minutes of the meeting. Otherwise, they would not be able to file an annulment lawsuit.
- b. Regardless of whether they were present or not in the assembly, or cast votes or not, shareholders who claim that any of foregoing violations occurred and such violation was effective in passing the general assembly resolutions can claim the annulment of the general assembly resolution:
 - i. the call to the meeting was not duly made;
 - ii. the agenda was not announced as it should have been;
 - iii. persons or representatives not authorized to participate in the general assembly participated in the general assembly and cast votes;
 - iv. they were prevented from participating and voting in the general assembly unlawfully;
- c. The board of directors, as a corporate body of the company, is also authorized and can file an annulment lawsuit. It should be noted that, in this scenario, the board of directors must act as a corporate body.
- d. Each director (member of the board of directors) is also authorized to file an annulment lawsuit individually in case the implementation of the resolution will cause their personal liability.

The foregoing stakeholders are authorized to file an annulment lawsuit within 3 (three) months as of the date of the related resolution before the commercial court of first instance where the headquarters of the company is located. Once the annulment lawsuit is initiated, the company is obligated to announce the lawsuit and publish this on its website. If the court decides to annul the related resolution, the resolution will be retrospectively annulled. It should also be noted that the annulment decision of the court must be registered in the trade registry and declared in the trade registry gazette of Turkiye.

IV. Conclusion

General assembly resolutions are crucial for the company, shareholders and other stakeholders considering the significance of its effects and results. Therefore, the TCC provides a right to the respective stakeholders in case a general assembly resolution which infringes the laws, articles of association of the company, or principle of good faith is taken, to initiate an annulment lawsuit within 3 (three) months starting from the date of the related resolution before the commercial courts of first instance.

Article Contact: Dr. Gönenç Gürkaynak
(First published by Mondaq on July 23, 2024)

E-mail: gonenc.gurkaynak@elig.com