

## REASONS FOR THE ANNULMENT OF GENERAL ASSEMBLY RESOLUTIONS OF JOINT STOCK COMPANIES UNDER THE TURKISH COMMERCIAL CODE AND THE ACTION OF ANNULMENT

### A. Introduction

Articles 445-451 of the Turkish Commercial Code (“TCC”) include the conditions for filing an action for annulment of the general assembly resolutions of a joint stock company. Since the adoption of resolutions in the joint stock companies are subject to the decision of the majority, a resolution adopted by the general assembly are also binding for those shareholders who did not attend the general assembly or cast a negative vote as well as for other bodies of a company. In this context, the right to request the annulment of the general assembly resolutions provides an important means of protection and legal review to which the minority shareholders can recourse, if the majority shareholders abuse their rights.

### B. Prerequisites of an Action for Annulment Pursuant to the Article 445 of the Turkish Commercial Code

Article 445 of the Turkish Commercial Code stipulate that an action for annulment can be filed against the general assembly resolutions which are contrary to the provisions of the Articles of Association and especially the principle of good faith.

#### I. General Assembly Resolution

The annulment of a general assembly resolution pre-requires the existence of a formally valid general assembly resolution, otherwise adjudication of non-existence may be imposed.

#### II. Cases in Which the General Assembly Resolutions are Contrary to the Relevant Laws, Articles of Association or the Principle of Good Faith

Unlawfulness as the first reason for the annulment is a widely interpreted concept and includes the Turkish Commercial Code as well as all the provisions of private and public law.

Secondly, a general assembly resolution can be annulled if this is contrary to the Articles of Association

of a company. Articles of Association stipulates and governs the legal framework of the relations between the legal entity of the company and its shareholders in order to enable the company to carry out its activities in accordance with the purpose of its incorporation as defined in the Articles of Association.

Thirdly, Article 445 of the Turkish Commercial Code stipulates the violation of the principle of good faith among the reasons for the annulment. In this context, this concept must be interpreted as the breach of the obligation to comply with the principle of good faith laid down in Article 2 of the Turkish Civil Code. Its purpose is to prevent the majority shareholders to harm the interests of minority shareholders by taking unfair and malicious decisions in the pursuit of their own interests. Since this is a subjective reason as of its very nature, a special evaluation of each general assembly resolution is required based on its specific conditions.

### C. Parties to the Action for Annulment

#### I. Plaintiff

Article 446 of the Turkish Commercial Code stipulates who is entitled to file an action for annulment. Based on the conditions laid down in the Turkish Commercial Code, shareholders and the board of directors in its capacity as an organ of the company and each of members of the board of director can request the annulment of the respective general assembly resolution.

#### 1. Shareholders

Pursuant to Article 446 of the Turkish Commercial Code,

- Shareholders who attended the general assembly and cast a negative vote against the resolution and had their opposition recorded in the minutes of the general assembly

- Shareholders claiming that the general assembly was not summoned duly, the agenda of the general assembly was not announced as required, persons not authorized to attend the general assembly or their representatives attended the general assembly and voted in the general assembly, they were not allowed to attend and vote in the general assembly without any justifiable reason and that the above mentioned irregularities were effective for the adoption of the general assembly resolution are authorized to file an action for annulment regardless of whether they attended the general assembly or not and cast a negative vote or not.

#### a. Shareholders Attending the General Assembly

Shareholders who attended the general assembly, opposed the resolution adopted by the general assembly and had their dissenting opinion recorded in the minutes of the general assembly are entitled to file an action for annulment against the general assembly resolutions. The first condition for filing an action for annulment is that the relevant shareholder must have casted a negative vote. The relevant jurisprudence of the Court of Cassation considers the existence of dissention after the adoption of the general assembly resolution as a prerequisite for the request for the annulment of general assembly resolutions. For that reason, the opposition by the respective shareholder prior to the adoption of the general assembly resolution is to be interpreted as an opposition against the motion for resolution and not against the general assembly resolution itself. Therefore, it is not considered a sufficient ground for filing an action for annulment against the general assembly resolutions.

Shareholders can have their dissenting opinion recorded in the minutes of the general assembly at the same time or have separate dissenting opinions recorded for each of the resolutions. Furthermore, the respective opposition does not need to include any legal reasoning; a statement declaring that the shareholder opposes the respective resolution is a sufficient condition to file an action for annulment.

#### b. Other Shareholders Regardless of Whether They Attend the General Assembly

Pursuant to the sub-paragraph (b) of Article 446 of the Turkish Commercial Code,

Shareholders claiming that

- the invitation to the general assembly was not duly made;
- the agenda of the general assembly was not announced as required;
- Persons not authorized to attend the general assembly or their representatives attended the general assembly and cast vote in the general assembly;
- They were not allowed to attend the general assembly and cast vote in the general assembly without any justifiable grounds;

can file an action for annulment against the respective general assembly resolutions, regardless of whether they attend the general assembly or cast negative vote or not.

If one of the above mentioned conditions exists, the shareholders can file an action for annulment against the respective general assembly resolution regardless of whether they attended the general assembly or had the dissenting opinion recorded in the minutes of the general assembly. In addition to the proof of the existence of the above-mentioned conditions, the plaintiff must substantiate that the relevant dissention was effective in terms of the adoption of the general assembly resolution of which annulment is requested. Provided that it was evident that a resolution in the same direction would be adopted even if the above-mentioned dissention did not exist, the annulment of the resolution would not be possible.

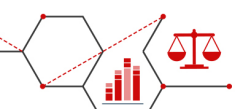
#### c. Board of Directors

The board of directors is also entitled to file an action for annulment of the general assembly resolutions in its capacity as an organ of the company. The board of directors must meet and take a decision as stipulated in Article 390 of the Turkish Commercial Code in order to take a decision on this issue.

#### d. Members of the Board of Directors

Pursuant to Article 446 (c) of the TCC, provided that the enforcement of a general assembly resolution will give rise to the liability of a member of the board of

<sup>1</sup> 11th Civil Chamber of Court of Cassation, 07.11.2019 E. 2019/2841, K. 2019/6994.



directors, this member of the board of directors is entitled to file an action for annulment against the relevant general assembly resolution. The member of the board of directors can have a liability against the joint stock company, shareholders or the third persons and this issue is to be reviewed by the judge ex officio.

## II. Defendant

As a rule, the defendant of actions for annulment is the respective joint stock company. The company is to be represented by the board of directors as far as the actions for annulment filed by the shareholders are concerned. In case the board of directors is the plaintiff in a lawsuit, a trustee must be appointed to represent the company.

## D. Term of Litigation

Pursuant to Article 445 of the TCC, a lawsuit for the annulment of a general assembly resolution is to be filed within the three-month-period beginning from the date of the resolution.

## E. Competent Court

Pursuant to Article 445 of the Turkish Commercial Code, the competent court in the action for annulment is the court of the place where the company's headquarter is located, whereas the commercial court has jurisdiction to hear the dispute.

## F. Specific Procedural Rules of the Action for Annulment

Pursuant to the paragraph 1 of Article 448 of the TCC, in case an action for annulment is filed, the board of directors is obliged to announce immediately that such a lawsuit was filed and, if available, must put the same announcement into the website of the company.

The hearing cannot be held before the expiry of the three-month-period of prescription. If more than one actions for annulment has been filed, they will be heard upon consolidation (TCC article 448/2).

If an action for annulment has been filed against the resolutions of the general assembly, the court can rule upon the request of the defendant joint stock company that the plaintiffs give security against the potential

losses of the company. However, the type and amount of the security is to be determined by the court (TCC Article 448/3).

If a lawsuit has been filed against the general assembly resolution, 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 (TCC Article 449).

## G. The Provisions and Consequences of the General Assembly Resolution

The court decision on the annulment of the general assembly resolutions will apply for all shareholders after becoming final and absolute. Board of directors is immediately required to have a copy registered in the commercial register and announce it through the website of the company (TCC article 450). The general assembly resolution in dispute shall be rescinded retrospectively when the decision for annulment becomes final and absolute.

## H. Filing of an action for annulment maliciously

Article 451 of the Turkish Commercial Code includes a specific provision for the prevention of the abuse of the right to file an action for annulment. If an action for annulment is filed maliciously against the general assembly resolutions, the plaintiffs will be jointly liable for the losses to be incurred by the partnership as a result thereof.

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