

## Shareholders' Right to Request Information and Examination in Joint Stock Companies

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### Introduction

Joint Stock Companies ("JSC") are one of the most preferred corporate vehicles in Turkey because of the strict regulation and liability system towards its shareholders. Indeed, shareholders' only liability towards the company is to provide the amount of capital that was agreed upon and, they have no further obligation towards third parties. It is necessary and enough for the shareholders to commit the right amount of capital and expect for the profit.

Nevertheless, even though they have no obligation to take active position in the management, shareholders can have an impact on it if they are members of the Board of Directors, which is why their right to request information and examination is crucial in terms of shaping the future of the company.

As a matter of fact, the shareholder's right to request information and examination is explicitly stated in the Turkish Commercial Code ("TCC"), and its violation can lead to serious consequences, such as the decision of the General Assembly resulting in being void<sup>1</sup>.

This article not only aims to analyze the content of the right to request information and examination, but also to clarify possible

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<sup>1</sup> TCC, Article 447: "Decisions of the general assembly especially which [...] limit the right of shareholder to take information, inspect and audit out of legal limits [...] are null".

legal remedies in case of violation of the right, through the analysis of the situation in publicly held companies.

### **The Right to Request Information**

Even though JSCs have no threshold limit concerning the number of shareholders, this fact does not jeopardize transparency and certainty since the TCC grants shareholders specific rights, such as the right to request information and examination.

### **The use of the Right before the Meeting of the General Assembly**

Pursuant to the article 437 of the TCC regarding the personal rights of shareholders, it is stated that: *“Financial statements, consolidated financial statements, Board of Director’s annual activity report, audit reports and suggestion of Board of Directors for profit distribution shall be kept available for the examination of shareholders in the company’s head office and branches at least fifteen days before the meeting of the General Assembly [...]”*

2

The article clearly states how the right to obtain information can be used before the General Assembly meeting. Besides, financial statements and consolidated financial statements must be kept under the access of shareholders for a year, in the company’s head office and in its branch offices.

However, there is no possibility to use that right out of the scope that is provided by article 437. One option may be to issue a shareholders’ agreement. Those agreements are aimed to organize relations between shareholders and the company, they provide more flexibility to shareholders and give the opportunity to settle other obligations towards each other.<sup>2</sup> Thus, with these agreements, shareholders can find a way to obtain information outside the General Assembly meetings.

### **Accessing information in the General Assembly Meetings**

Article 437 deals with the access to information during the General Assembly meetings. Pursuant to the article, shareholder may

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<sup>2</sup> Babur.E. “Paysahibi Sözleşmeleri”. 2013, November.

request information about the transactions of company from Board of Directors, and audit procedure and results from auditors during the General Assembly meetings.

Thus, each shareholder has the right to request information during the meeting and, as the paragraph follows, this information “must be in accordance with the principles of accountability and good faith”. The information provided by the person in charge to another must be broad, documented and sophisticated. Furthermore; if requested, information given to a certain shareholder must be given to the other shareholders within the same scope.

### **Disclosure of Company Secrets**

The request may be rejected only if providing the requested information leads to the disclosure of company secrets or other interests in need of protection. This eventual rejection can be made for the information or examination requests made during or before the General Assembly meetings.

3

### **The Right of Examination**

Commercial books and correspondences of the company can be examined, however; this is limited with the question of the shareholder. Pursuant to article 437 of the TCC, examination can be made by an expert as long as the consent is taken.

If, despite the information given, the shareholder is not satisfied, then, there is a possibility to ask for an audit, under article 438 of the TCC. This request must be made to the General Assembly by the shareholder and, in case of its approval, the shareholder must make the request for the appointment of a special auditor to the Commercial Court of First Instance at the place of company's head office within thirty days.

### **Violation of the Right to Request Information and Examination**

Pursuant to article 437 of the TCC, the right to request information and examination cannot be abrogated, even with a decision of any organs of the company or with the articles of association. The article

not only justifies the possible remedies in case of violation but also strengthens the right itself.

### **The Right of Action**

The first legal remedy is the possibility for the shareholder to make an application to the competent commercial court. Accordingly, shareholders have a right to apply to commercial courts at the place of company's head office within 10 days in case of unanswered, unfairly denied, postponed information or examination request.

### **Special Audit**

Shareholders are also able to demand a special audit when deemed necessary for them to use their right. However, according to article 438 of the TCC, if the right to request information or examination has been used previously, each shareholder may ask the General Assembly to clarify certain events with a special audit, even if it is not on the agenda.

4 Moreover, asking for a special audit constitutes an exception to the Principle of adherence to the agenda, which is stated in article 413 of the TCC. In fact, General Assembly's meeting must have a predefined agenda and, issues that are not on the agenda cannot be discussed. Nevertheless, exceptions are provided by the law, and the request of a special audit constitutes one of them.

The request must first be directed to the General Assembly and then, in case of approval, to the competent commercial court within thirty days from the approval.

General Assembly may reject the request for special audit and in such a case; shareholders who represent at least one tenth of the capital or those having the shares of which nominal values are at least one million Turkish Liras can demand the assignment of special auditor from the competent commercial court within three months.

In case of an approval by the court, a special auditor submits a detailed report, while protecting the secrets of the company. In addition, the court allows the demandants and the company to ask for further information and report their observations.

## Publicly held Companies

### Public Disclosure

Investors who are willing to buy the shares of publicly held companies need to be enlightened correctly about the company in order to make conscious choices. Hence the fact that the actor becomes the “public”, the right to request information and examination still is omnipresent but, under the term of “Public Disclosure”.

The public disclosure principle is emerging from the shareholders’ right to request information and examination and, in capital markets dispositions, the principle of public disclosure in publicly held companies has taken the place of shareholders’ right to request information and examination of JSCs<sup>3</sup>.

Pursuant to Capital Markets Law (“CML”), the company must prepare and share the financial accounts and reports in compliance with the Turkish Accountability Standards under the General Assembly’s responsibility.

5

Apart from Public Disclosure, the CML also defines “Special Public Disclosure”, which is related not only to financial statements and reports but all kind of information that could affect potential investors’ investment decision; such as, the value of capital market instruments or their price. The Communiqué on Special Situations Regarding Capital Markets also gives more insights about the term “Special public disclosure” and settling rules and procedures.

Shareholders have the right to ask for a special audit in JSCs. Yet, in publicly held companies, this inspection is made by private investigators such as certified public accountants or private supervision institutions under the “independent audit” term. It deals with a supervision made under International Financial Accountability and Turkish Accountability Standards, where the General Assembly’s annual action report, the inventory and accounts are inspected.

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<sup>3</sup> Kılıç S., Halka Açık Anonim Şirketlerde Bilgi Alma Hakkı, Ankara 2007, p.63

## Conclusion

The right to request information and examination of shareholders in JSCs has been widely regulated under the TCC but also under the CML, regarding publicly held companies, where the right to request information and examination has derived to “Public Disclosure”.

A right of action or, if the conditions are met, a request for a special audit can be directed to the General Assembly in case of violation of the right to request information and examination. Publicly held companies’ shareholders are also protected by the fact that those companies have broader responsibility in respect of transparency, as set out by a number of specific communiqués.

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