

Shareholders' Withdrawal or Dismissal in Joint Stock Companies

Introduction

As a rule, partnership relation between JSC and shareholders terminates when the shares are transferred. Hence, the shareholders who intend to leave the company must find a third party to purchase their shares. On the other hand, shareholder may be dismissed if the obligation to pay the amount of the shares for the JSC's capital committed by the shareholder is not fulfilled. The sanction for failing to fulfill this obligation is called expulsion which is a way of dismissal. This article examines the provisions of Turkish Commercial Code ("TCC", Law No. 6102) regarding shareholder's withdrawal or dismissal in JSC.

Expulsion

Expulsion is regulated in order to ensure that shareholders pay their share capitals to sustain the existence of the company. Unlike other types of dismissal, it is not used to resolve the conflicts of interest within a JSC. Besides no payment is made to the shareholder after expulsion. Therefore, the main purpose of the expulsion is to supply and protect the basic capital.

Conditions for Expulsion

According to Article 482 of TCC, shareholder who does not fulfill the obligation to pay its share capitals within the time specified is obliged to pay it with the default interest and furthermore, Board of Directors (“BoD”) is authorized to deprive the shareholder from its rights. BoD has right to sell the share to a third party in such cases, besides if there is a share certificate given to the shareholder, BoD is entitled to cancel it. Moreover, a contractual penalty to be paid by shareholders in case of default may be regulated in Articles of Association (“AoA”).

There are certain conditions that has been set in Article 483 for these mentioned consequences. These conditions are as follows;

- The shareholder must fail to meet its financial obligation, in other words shareholder must be in default,
- The shareholder in default must be notified by BoD via an announcement in Trade Registry Gazette as well as in the company’s website regarding the consequences of the default. Accordingly, the shareholder should pay the amount within one month, and
- The shareholder must fail again to meet the obligation within the specified time.

Decision for Expulsion

Once all the conditions are met, the decision for expulsion must be taken by an authorized body of the JSC. BoD is the authorized body for taking the decision and imposing the sanction. BoD shall convene at the end of one month and take the decision of expulsion.

In the Turkish doctrine, it is a controversial issue whether the authority to expel may be granted to the General Assembly by AoA.

If a shareholder has more than one share capital, the expulsion decision is only applicable to the share which is not paid-up. On the other hand, if the shareholder in default has only one share, its shareholder title is lost as soon as the BoD’s decision is made regarding the expulsion.

Shareholders' Withdrawal in Mergers

Pursuant to the Article 141 of TCC, in a merger contract, companies participating in the merger can provide shareholders the option to choose either to have shares and partnership rights in the taking-over company or to receive a cash payment for the withdrawal equal to the actual value of the company shares to be acquired. Companies participating in the merger can stipulate in the merger contract that only the right of cash payment for the withdrawals is granted.

Accordingly, the shareholder who does not find the merger favorable to its interests may withdraw from the company by receiving the cash payment. However, if the merger contract stipulates a cash payment for withdrawals, approval by 90% of shareholders is required.

Controlling Party's Right to Purchase

If the controlling company directly or indirectly, holds at least 90% of shares and voting rights, besides if the minority which has less than 10% of shares and voting rights, does not act in good faith, prevents the company from running its business or behaves in a reckless manner, the controlling company may purchase the shares of the minority on the value of stock exchange, or at the value determined in accordance with the method stipulated in the Article 202/2 of the TCC. In case of a disagreement concerning the value, the legal dispute shall be settled by Commercial Court.

Dissolution for Just Causes

The term "just cause" has not been defined in the TCC. There may be cases where it cannot be expected for shareholder to continue to be a part of the company. Such cases are regarded as just cause for dissolution. Nevertheless, the dissolution should be the last resort.

According to the Article 531 of the TCC, shareholders representing at least one tenth of capital and/or one twentieth of capital in public companies may request the dissolution of company from the Court. The Court may decide the company to pay the shares on their real

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values at the closest date to the decision date and dismiss the claimant shareholder from the company instead of dissolution.

This right to file a dissolution case by a just cause which is granted for minority shareholders has a dissuasive effect on the majority.

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