

Shareholders' Right to Receive Dividends in Joint Stock Companies

Introduction

Joint Stock Companies ("JSC") are entities where the participation to capital is substantial, not the personalities of shareholders. The responsibility of the shareholder is limited with stipulated capital and shareholders' participation in the administration is in proportion to their capital. JSC's aim is to make profit and distribute dividends to its shareholders. Receiving dividends is one of the most important and main rights of a shareholder. Dividends, earnings and liquidation of shares are regulated under Article 507 and the following articles of Turkish Commercial Code ("TCC", Law No. 6102). Furthermore, determination of dividends, the body authorized to determine dividends and its payment procedures are also regulated in TCC.

Definition of Dividend

The definition of dividend is not found in TCC. However, Article 3 of the Dividends Communique which has come into force in February 1, 2014 provides a definition. Accordingly, dividend can be defined as an amount decided within the scope of the General Assembly's ("GA") policy, and distributed to the shareholders and other persons involved in the profit for the net term profit as well as other resources which may be subject to profit distribution.

Legal Nature of The Right to Receive Dividends

Shareholders have a right to receive dividend but, in some cases, there might be a tendency to keep the profit in order to protect the expedience of the company. Board of Directors of a JSC should manage the company by taking into consideration the balance of these two interests. Dividend distribution is important to attract new shareholders and protection of present shareholders. On the other hand, necessary investments should be made for the growth of the company.

Pursuant to a recent decision of Court of Appeals, the right to receive a dividend is an inalienable right. Nonetheless, there are different opinions on the legal nature of the right to receive a dividend in the Turkish doctrine.

Provisions on Dividend

Article 408 of TCC regulates the duties and powers of the GA in general. Paragraph 2 of Article 408 states that determination and distribution of dividend is one of the non-transferable duties and powers of the GA. This implies that there should be a GA resolution for the distribution of dividends.

Article 455 of the former Turkish Commercial Code (Law No. 6762) used the term “gross earnings” to specify dividends. However, TCC uses “net profit of the period” to determine dividends which is a term used in accounting standards. Paragraph 2 of Article 507 reserves the rights of concession as well as special benefits that are granted to some type of shares with Article of Association (“AoA”), which constitutes an exception of equal treatment.

Pursuant to Article 508 of TCC, if there is no contrary provision found in the AoA, the dividend is calculated in proportion to capital share payments made to the company by the shareholders. Annual profit, on the other hand, is determined according to the annual balance sheet.

Company's Obligation to Distribute Dividends

Discussions on whether the JSC is obliged to distribute dividends focuses on the interpretation of the Articles 519 and 523. Some of the authors advocate that it is an obligation for the JSC to distribute dividend while others defend otherwise.

Article 519 of TCC regulates the rule on legal reserve and, according to some authors, this provision is not about the obligation to distribute dividend but about determining the limits for the distribution decisions and how the second legal reserve will be allocated.

Another interpretation on the issue is made within the concept of Article 523/2 of TCC which states that the benefit of all shareholders shall be taken into consideration while allocating the legal reserves by the GA. This provision regulates that even if it is not required by law or with the AoA, further legal reserves may be set aside if it is necessary. Considering the disputes in the Turkish doctrine as a whole, even if it is accepted that the JSC does not have to distribute dividends every year, it is not possible for the GA to deprive the shareholders from the right to receive dividends.

GURULKAN ÇAKIR AVUKATLIK ORTAKLIĞI

Polat İş Merkezi, Offices 28-29
Mecidiyeköy 34387
Istanbul, TURKEY

T +90 212 215 30 00
M info@gurulkan.com
W www.gurulkan.com



Gurulkan Çakır Avukatlık Ortaklığı ("Gurulkan Çakır") is an attorney partnership registered at Istanbul Bar Association with a license number 105 and at the Union of Turkish Bar Associations with a license number 206.

This publication provides general information only and should not be relied upon in making any decision. It is not intended to provide legal or other advice. Gurulkan Çakır and its partners will not be liable for any loss or damage arising from reliance being placed on any of the information contained in this publication.

Before acting on any information, readers should consider the appropriateness of the information provided herein, having regard to their legal and financial status, objectives and needs. In particular, readers should seek independent professional advice prior to making any decision.

This publication may not be reproduced, in part or whole, by any process without prior written consent of Gurulkan Çakır.
