

Non-delegable Duties and Authorities of General Assembly in Joint Stock Companies

Introduction

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A Joint Stock Company (“JSC”) is a stock corporation that has two obligatory organs, namely the General Assembly (“GA”) and the Board of Directors (“BoD”) pursuant to the Turkish Commercial Code (Law No. 6102, “TCC”). While BoD is the management and representation organ of a JSC, GA is a decision-making body that derives its authority from provisions of the law and the Articles of Association (“AoA”) within the framework of the law. GA is a body that convenes at least once a year with the participation of the shareholders or their representatives. The decisions are taken in the GA meeting bind all the partners, BoD, other managers, and the partnership.

Non-delegable duties and authorities of GA under Article 408/2 of TCC

Article 408 of TCC states that the GA shall take decisions only in cases expressly regulated in the law and AoA.

The article also regulates certain non-delegable duties and authorities. Some authorities are granted to GA by law and can only be exercised by GA due to their nature and cannot be transferred to other organs. Pursuant to Article 408/2 of TCC, the non-delegable authorities of GA are regulated as follows:

a) Modification in AoA,

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- b) Election of the board members, determination of their service periods, their salaries and honorariums and determination of their rights like bonus and premium and making decisions on their dismissal,
- c) Election and discharge of auditor except the exceptions/situations mentioned in the law,
- d) Taking decision for financial statements, BoD's annual report, disposal of annual profit, determination of profit shares and dividend shares, and addition of contingency reserve to capital or the profit to be distributed and use of it,
- e) Dissolution of the company except the exceptions mentioned in the law,
- f) Wholesale of the considerable amount of assets.

Non-delegable duties and authorities of General Assembly under other provisions

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The non-delegable duties and authorities of GA are not limited to those listed under Article 408/2 of the TCC as it is explicitly stated in the Article that duties and authorities mentioned in various provisions are reserved. There are several provisions under TCC that also regulates non-delegable duties of GA. Merger (Article 151), division (Article 173), conversion (Article 189), decisions of a JSC, authorizing BoD in order for the company shares to be acquired or accepted as a pledge (Article 379/2) are a some of the non-delegable duties and authorities of GA regulated under certain provisions of the TCC.

Conclusion

Except for the non-delegable authorities of GA that are regulated in TCC and the powers exclusively vested in GA with AoA, all powers belong to BoD. This is a natural consequence of the fact that BoD is the representative and administrative body of the company.

GA cannot transfer its authorities in the above-mentioned matters to another organ. GA must make decisions within the scope of non-delegable authorities. Also, GA cannot make decisions on non-delegable authorities of other organs. Decisions taken by other organs on matters falling within the scope of the non-delegable authorities of GA are null and void.

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