Shareholders' agreement and bye-laws Q&A: Turkey

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This Q&A provides country-specific commentary on *Practice note, Shareholders' agreement and bye-laws: Cross-border*.

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1. What are the main documents that regulate the constitutional arrangements and day-to-day operation of a joint venture company incorporated in your jurisdiction? (Please answer this and other questions in respect of the corporate vehicle that is most likely to be used for a private joint venture with two or more corporate shareholders.)

Two of the most common forms of corporate entity in Turkey are (privately held) joint stock companies (*anonim şirket*) and limited liability companies (*limited şirket*). The following analysis is based on the rules applicable to these two corporate types.

The main documents that regulate the constitutional arrangements and day-to-day operations of a joint venture company incorporated in Turkey are:

The articles of association.

For joint stock companies only, the internal directive for general assembly meetings. This sets out the procedural rules relating to general meetings. The form and content of the directive is provided by statute and regulation.

The internal directive for the board. This is an instrument determining the principles relating to delegation of management duties and the scope and limits to the signing powers of authorised signatories, subject to a limited number of statutory requirements.

Another complementary document is the signature circular. This includes the names of the authorised representatives of the company, the signature authorities held by them and their signature specimens. This document is issued based on the internal directive for the board and an additional resolution designating the authorised representatives.

Turkish companies have no constitutional document corresponding to bye-laws operating in parallel to the company's articles of association. Shareholders' agreements are contractual instruments. They are not considered to be constitutional documents of a company.

2. Is it possible to amend the constitutional documents of a company? If so, what are the relevant voting requirements? Can the shareholders amend the relevant voting majorities and, if yes, to what extent?

It is possible to amend the constitutional documents. Relevant quorum requirements as set out below can be amended by express stipulation in the articles of association, but only to make them more stringent.

- Joint stock companies
- Articles of association

Articles of association can be amended by the general assembly of shareholders, subject to quorum requirements.

Where special quorum requirements do not apply, during the first meeting, a meeting quorum of at least 50% of shares applies, with the decision quorum being the majority of the shares present at the meeting. If the meeting quorum could not be achieved at the first meeting and a second meeting is convened, then a meeting quorum of at least a third of the shares is required, with the decision quorum being the majority of shares present at the meeting (*Article 421(1), Turkish Commercial Code* (*TCC*)).

Amendments imposing additional or ancillary liabilities on shareholders to cover balance sheet losses, or to relocate the company headquarters outside of Turkey, require the affirmative vote of shareholders holding 100% of voting shares (*Article 421(2), TCC*).

The following amendments require the affirmative vote of shares representing 75% of the capital:

- Decreasing the share capital of the company (*Article 473(3), TCC*).
- Completely changing the company's field of activity (*Article 421(3)(a), TCC*).
- Creating new types of privileged share (*Article 421(3)(b), TCC*).
- Creating new transfer restrictions for registered shares (*Article 421(3)(c), TCC*).
- Commencing voluntary liquidation (procedurally requires change of corporate name) (*Article 529, TCC*).

Amendments to bring a company out of voluntary liquidation require the affirmative vote of shares representing 60% of the capital (*Article 548, TCC*). Amendments to change the company's corporate form require the affirmative vote of either two-thirds or 100% of the issued share capital, depending on the particulars of the change (*Article 189(1)(a), TCC*).

Proposed amendment to the articles of association infringing on the existing privileges of privileged shareholders must be ratified by a resolution from the special assembly of privileged shareholders. The special assembly can convene a meeting with at least 60% of privileged shares in attendance, and can ratify the proposed amendment with an affirmative vote of the simple majority of those present at meeting (*Article 454, TCC*).

Internal directive for general assembly meetings

This document can be amended on the recommendation of the board of directors, by a resolution of the general assembly of shareholders to be adopted in accordance with the following quorum requirements.

During the first meeting, a meeting quorum of at least 25% of shares is required, with a decision quorum of the majority of the shares present at the meeting. If the meeting quorum could not be achieved during the first meeting and a second meeting is convened, a decision quorum of the simple majority of the voting shares applies, with no meeting quorum applicable (*Articles 418* and *419(2), TCC.*)

Internal directive for the board

This document can be amended by an ordinary board resolution (*Articles 367, 371(7)* and *390(1), TCC*).

- Limited liability companies
- Articles of Association

Articles of association can be amended by the general assembly of shareholders, subject to quorum requirements.

Where special quorum requirements do not apply, amendments may be adopted with the affirmative vote of shares representing two thirds of the share capital (*Article 589(1), TCC*).

The following special amendments may be adopted with the affirmative vote of two thirds of the shares present at a meeting, provided that holders of shares representing at least a simple majority of the company's total share capital are in attendance:

- Completely changing the company's subject (*Article 621(1)(a), TCC*).
- Creating shares with privileged voting rights (*Article 621(1)(b), TCC*).
- Amendments to the provisions relating to the transferability and transfer restrictions of shares (*Article 621(1)(c), TCC*).
- Increasing the share capital of the company (*Article 621(1)(d), TCC*).
- Changing the registered headquarter of the company (*Article 621(1)(f), TCC*).
- Commencing voluntary liquidation (*Article 621(1)(ı), TCC*).

Amendments changing the corporate form of the company may be adopted with the affirmative vote of three-quarters of the shareholders, holding between them at least three-quarters of the issued share capital of the company (*Article 189(1)(c), TCC*).

Amendments to introduce new additional payment or supplemental performance obligations that would increase shareholder burdens beyond their existing obligations may be adopted only with the approval of all shareholders affected by such amendments (*Article 607, TCC*).

Internal directive for the board

This document can be amended by an ordinary resolution adopted by the issuing body (the board or general meeting) (*Articles 367, 371(7), 624(3)* and *629(3), TCC*).

3. Is every shareholder automatically bound by a company's constitutional documents?

Every shareholder is automatically bound by the so-called "genuine" or "company law-related" provisions (*gerçek hükümle*" or *korporatif hükümler*) of the articles of association. Other constitutional documents are also binding on shareholders.

For joint stock companies, the binding provisions of the articles of association are those relating to:

- Date of articles of association.
- Trade name and registered address.
- The company's duration, if any.
- Amount of share capital, number of shares, nominal value, group and privileged rights granted to each group and rules relating to payment of contributions (if applicable).
- Types of share (bearer or registered).
- Nature of in-kind capital contributions and registered shares allocated in consideration of those contributions (if any).
- Rules relating to representation and binding of the company.
- Appointment criteria (if any) for board members.
- Method for publishing required corporate information by the company and notices to be provided to shareholders.
- Transfer restrictions that would comply with statutory transfer restriction regime.

(*Articles 339, 354* and *36, TCC.*)

For limited liability companies, the binding provisions are:

- Date of articles of association.

- Trade name and registered address.
- Corporate subject.
- The company's duration, if any.
- Amount of share capital, number of shares, nominal value, group and privileged rights granted to each group (if applicable).
- Nature of in-kind capital contributions and registered shares allocated in consideration of those contributions (if any).
- Details of dividend certificates (*intifa senetleri*).
- Appointment criteria (if any) of the managers, and the manner of their representation of the company.
- Method for publishing required corporate information by the company.

(*Article 587, TCC.*)

The following provisions would also be binding if they are included in the articles of association of a limited liability company:

- Transfer restrictions diverging from the statutory transferability regime.
- Right of first offer, pre-emption, repurchase and purchase rights granted over shares to the company's shareholders.
- Additional payment obligations.
- Supplemental performance obligations.
- Veto and casting vote rights.
- Contractual penalties that may apply in case of non-performance or delayed performance of statutory obligations or obligations set out under the articles of association.
- Non-compete provisions deviating from the applicable statutory regime.
- Special rights to convene general assembly meetings.
- Special provisions relating to decision making at the general assembly, voting rights and calculation of votes.
- Granting authority to delegate work to a third party.
- Disposals over annual profits that deviate from the statutory regime.
- Specific provisions relating to withdrawal rights of shareholders and payment of withdrawal compensation.
- Specific provisions relating to expulsion of shareholders.
- Specific grounds for dissolution on just grounds.

(*Article 577, TCC.*)

4. Is it necessary for a company's constitutional documents to be registered and open to public inspection?

A company's constitutional documents must be registered with the relevant trade registry and published in the Trade Registry Gazette (*Articles 354, 371(7), 419(2), 587* and *629(3), TCC*).

Trade registry records are open to the public for inspection (*Article 35, TCC*).

5. Is it necessary for a shareholders' agreement to be registered and open to public inspection?

Shareholders' agreements to which the company is not a party need not be registered or be open to public inspection (*Articles 195* and *198(3), TCC*; *Article 106(5), Trade Registry Regulation*).

6. Is a company bound by its constitutional documents?

Companies are bound by their constitutional documents.

7. Is it common practice for a joint venture company to be a party to a shareholders' agreement relating to the joint venture?

It is not common practice for a joint venture company to be a party to a shareholders' agreement relating to the joint venture.

Where the company becomes a party to the shareholders' agreement, the shareholders' agreement may be construed to be a control agreement, depending on the specific obligations assumed by the company under it. If this is the case,

to be valid the agreement must be registered with the trade registry and then published (*Articles 195* and *198(3), TCC*; *Article 106(5)*; *Trade Registry Regulation*).

8. What are the remedies for breach of a shareholders' agreement?

The general view under Turkish law is that no corporate law remedy (that is, a remedy available under the TCC for breaches of constitutional documents or statute) may be sought where there is only a breach of an agreement between shareholders. Breaches of a shareholders' agreement may not constitute a standalone ground for challenging the validity of a corporate resolution.

A shareholders' agreement offers mainly contractual protection. The principal remedy for a breach of the shareholders' agreement would be a claim for compensation of provable damages incurred by the aggrieved party as a result of the breach.

Statutory shareholding rights (for example, economic and participatory rights granted to each shareholder) may not be suspended, frozen or denied by the company, its management bodies or shareholders on account of breach of contract.

Parties would often negotiate bespoke arrangements to ensure compliance with the provisions of the shareholders' agreement. These may include:

- Contractual penalties triggered on breach of contract. Contractual penalties allow an aggrieved party to claim a specified amount, without having to establish the quantum of damages resulting from the breach.
- Escrow arrangements for the enforcement of contractual share transfer restrictions and options over shares.

9. What are the remedies for breach of a company's constitutional documents?

Breach of a company's constitutional documents would give rise to a number of rights of action.

The specific rights of action available and when those would be available are defined by statute. Each case will require an analysis based on its specific factual circumstances.

There is no panacea remedy under Turkish law that would be an equivalent to the common law oppression remedy.

The key rights of action that may arise on a breach of a company's constitutional documents are as follows.

Action for invalidating board resolutions

Board resolutions may be challenged, found unlawful and declared null on the following grounds:

- They are in breach of the "equal treatment of shareholders" principle.
- They contradict the basic structural constitution of the company or contravene the principle of protection of equity.
- They infringe on, restrict or unduly burden the use of shareholders' inalienable rights.
- They infringe on non-delegable and exclusive competencies of other corporate bodies.

(*Articles 391* and *644(1)(c), TCC.*)

Action for cancellation of general meeting resolutions

General meeting resolutions that breach the law or articles of association, or that are adopted against the principles of honesty and good faith, may be challenged by a cancellation suit by any shareholder who attended the meeting in which the relevant resolution was adopted, voted against it and had their objections recorded in the meeting minutes. A shareholder may also challenge a general meeting resolution regardless of whether they were present and how they voted, claiming that the resolution was passed as a result of one of the following irregularities:

- The meeting was not duly called.
- The agenda was not duly published.
- Unauthorised persons attended or were represented at the meeting.
- The shareholder was unjustly prevented from participating in the general meeting or from voting on resolutions.

(*Articles 445, 446* and *622, TCC.*)

Action for declaration of nullity of general meeting resolutions

General assembly resolutions may be challenged, found unlawful and declared null on the following grounds:

- The resolution removes or restricts participatory rights of shareholders, minimum voting rights, rights of action or any other inalienable rights of shareholders.
- The resolution restricts shareholders' information, inspection and control rights beyond the extent permissible under statute.
- The resolution contradicts the structural constitution of the company or contravenes the principle of protection of equity.

(*Articles 447* and *622, TCC.*)

Action for civil liability of members of management

Board members and persons entrusted with management of the company will be liable for damages incurred by the company, its shareholders and creditors resulting from breaches of statutory obligations or obligations arising under the articles of association (*Articles 553* and *664(1)(a), TCC*).

Unless the damages are direct, a shareholder's right of action will be limited to seeking compensation on behalf of the company (*Articles 555* and *664(1)(a), TCC*).

Action for dissolution of the company for just cause

In the event of a persistent breach of the articles of association, shareholders may initiate an action for dissolution of the company for just cause (*Articles 531* and *636(3), TCC*).

Shareholders holding at least one tenth of the share capital in (private) joint stock companies, or any shareholder of a limited liability company, may request the court to dissolve the company, provided that there are just causes for dissolution.

Dissolution for just cause is a remedy of last resort and will not be ordered unless there are serious grounds justifying it and the court finds there are no alternative remedies. The onus of proving the existence of a just cause for dissolution will be on the claimant.

The court can order alternative measures that it deems fit, including ordering the buy-out of the shares of the claimant by the company or by the other shareholders willing to do so.. Accordingly, a claimant should be aware that it may be ordered to sell its shares at the end of these proceedings, at what the court deems to be true and fair value. The law is silent as to whether the claimant can offer to buy-out the other shareholders, although this is theoretically possible.

Action for withdrawal (exit) from the company on just grounds (in limited liability companies only)

Any shareholder of a limited liability company may request a court order allowing it to exit the company, provided that there are just causes (*Article 638(2), TCC*). A suit for withdrawal will be highly dependant on the factual circumstances of a specific case, and the onus will be on the claimant seeking to withdraw to prove just causes exist.

The claimant must prove that there are circumstances rendering continuation of the existing shareholding relationship unfeasible and that they cannot be expected, in good faith, to remain as a shareholder. As a general rule, courts will deny requests for withdrawal if they find that the underlying circumstances causing grief to the claimant shareholder can be remedied through other statutory shareholder rights or remedies.

If the request for withdrawal is granted, the court will order payment of withdrawal compensation commensurate to the true value of the claimant's shareholding (*Article 641(1), TCC*). A key consideration for the claimant would be the availability of disposable funds in the company for the payment of the withdrawal compensation. If there are insufficient funds, the unpaid amounts will be recorded as a claim of the withdrawing shareholder against the company, subordinated to all its other debts (*Article 642(3), TCC*).

Action for abuse of dominance in corporate groups

The Commercial Code has specific provisions relating to groups of companies. These provisions apply where there is a group of companies, as defined in statute (*Article 195, TCC* and *Article 105, Trade Registry Regulation*), and

one of the controlling or controlled companies belonging to the group is registered in Turkey (*Articles 195(1)* and *195(5), TCC*).

The controlling company of a group of companies is liable towards the creditors and other shareholders of the controlled company if it abuses its control over the controlled company by causing it losses and:

- The losses are not compensated in the same financial year.
- No equivalent compensation claim is granted to the controlled company until the end of the same financial year (*Articles 202* to *206, TCC*).

Where a breach of the constitutional documents of a company is connected to an abusive exercise of control, non-controlling shareholders may raise a claim against the controlling shareholder under the abuse of dominance in corporate groups regime.

Squeezing-out a minority shareholder

In exceptional circumstances, statutory provisions permitting a squeeze-out may be pertinent. This may be the case where a breach of the company's constitutional documents is caused and aggravated by a shareholder acting in bad faith and ultimately to the detriment of the company's interests.

Squeeze out of minority shareholders in (private) joint stock companies is possible either:

- Through a court decision rendered in a lawsuit for dissolution for just cause, as explained above.
- By application of Article 208 of the TCC, whereby in the context of group companies, a controlling company owning at least 90% of the shares or voting rights of another company can buy out the shares of minority shareholders who, acting in bad faith, obstruct the company's operations, create a perceptible disruption to company and act recklessly to the detriment of the company.

Limited liability companies can, following a shareholder resolution adopted with a qualified majority, apply to the court to order the expulsion of a shareholder on just grounds (*Articles 621(1)(h)* and *640(3), TCC*).

10. In which document would you commonly insert the following provisions:

- (a) Object and scope of the venture.
- (b) Capitalisation and funding.
- (c) Board composition and management arrangements.
- (d) Distribution of profits (including dividend policy).
- (e) Provisions for dealing with deadlock.
- (f) Termination provisions.

- (g) Restrictive covenants.
- (h) Rights to appoint and remove directors.
- (i) Quorum for board and shareholder meetings.
- (j) Procedures for shareholders' meetings.
- (k) Division of shares into classes.
- (l) Chair's casting vote.
- (m) Notice provisions.
- (n) Share transfer provisions (including pre-emption rights).
- (o) Minority protection (veto rights, tag along rights and so on).
- (p) Drag along rights.

(a) Object and scope of the venture

Shareholders' agreement, with relevant provisions reflected in the articles of association.

(b) Capitalisation and funding

Shareholders' agreement, with relevant provisions pertaining to capitalisation reflected in the articles of association.

(c) Board composition and management arrangements

Shareholders' agreement and articles of association. Certain management arrangements would be detailed in the internal directive for the board.

(d) Distribution of profits (including dividend policy)

Shareholders' agreement and articles of association.

(e) Provisions for dealing with deadlock

Shareholders' agreement.

(f) Termination provisions

Shareholders' agreement. If the joint venture vehicle is organised as a limited liability company, certain provisions may be reflected in the articles of association.

(g) Restrictive covenants

Shareholders' agreement. If the joint venture vehicle is organised as a limited liability company, certain provisions may be reflected in the articles of association.

(h) Rights to appoint and remove directors

Shareholders' agreement and articles of association.

(i) Quorum for board and shareholder meetings

Shareholders' agreement and articles of association.

(j) Procedures for shareholders' meetings

Shareholders' agreement and articles of association. For joint stock companies, procedures for shareholders' meetings will also be detailed in the internal directive for general meetings.

(k) Division of shares into classes

Shareholders' agreement and articles of association.

(l) Chair's casting vote

For limited liability companies, in the shareholders' agreement and articles of association. No casting vote is allowed for joint stock companies.

(m) Notice provisions

Shareholders' agreement.

(n) Share transfer provisions (including pre-emption rights)

Generally in the shareholders' agreement. Certain provisions may be reflected in the articles of association, depending on the corporate type and the specific transfer provisions.

(o) Minority protection (veto rights, tag along rights and so on)

Mainly in the shareholders' agreement. Veto rights should ideally be reflected in the form of quorum requirements in the articles of association. Some provisions relating to share transfers may be reflected in the articles of association.

(p) Drag along rights

Mainly in the shareholders' agreement. Certain provisions may be reflected in the articles of association (see also *Question 3*).

11. In the event of a conflict between a shareholders' agreement and a company's constitutional documents, which document is likely to prevail?

Under Turkish law, the contractual framework created by the shareholders' agreement would co-exist with the corporate law regime governed by the constitutional documents.

Where a dispute is litigated under the contractual framework, the shareholders' agreement is likely to prevail between the parties if the agreement provides that this should be the case.

Where a dispute is litigated under corporate law rules, the courts are likely to give effect to the constitutional documents over the shareholders' agreement.

12. Which conditions are commonly inserted in a shareholders' agreement?

Conditions inserted in a shareholders' agreement would generally be limited to:

- Obtaining necessary corporate, third party and regulatory approvals.
- Obtaining certain specific permits, licence or tenders, if possible, before the incorporation of the joint venture vehicle.
- Entering into certain specific ancillary agreements relating to the business of the joint venture.

Provisions of the joint venture shareholders' agreement relating to the management of the joint venture company and other shareholding rights may be made conditional on the incorporation of the joint venture vehicle.

If *Standard document, Joint venture shareholders' agreement: majority and minority shareholder: Cross-border* were governed by the laws of the Republic of Turkey, we would amend *clause 4* (*Conditions*) by:

- Removing the conditions under sub-paragraphs (f), (i), (j) and (k) (legal opinions are almost never requested in the context of Turkish law joint venture shareholders' agreement).
- Amending *clause 4.5* to provide that the provisions of the shareholders' agreement other than the "surviving provisions" would only enter into force on successful fulfilment of conditions (that is, we would restructure the conditions as conditions of effectiveness of certain provisions under the shareholders' agreement).
- Adding completion of incorporation of the joint venture vehicle as a condition.

13. Is there any restriction under the law of your jurisdiction on the method that the joint venture partners may use to finance the joint venture?

There are no specific restrictions under Turkish law on the methods that joint venture partners may use to finance the joint venture, regardless of whether the joint venture is incorporated in Turkey, a partner is incorporated under Turkish law or the shareholders' agreement is governed by the laws of the Republic of Turkey.

Shareholders' agreements would typically provide that the joint venture must obtain its own financing if further financing is needed in addition to the initial contributions. Alternatively, parties may agree to provide further financing in the form of:

- Additional share capital contributions or share issuance premiums.
- Loans from shareholders.
- Loans from third party financiers, obtained with support from shareholders either by providing collateral or parent guarantees.

The preferred financing method would mainly depend on tax efficiency considerations and the joint venture company's capability to borrow foreign currency denominated loans under Turkish foreign currency regulations, which provide a number of technical limitations.

14. What are the consequences under the law of your jurisdiction for provisions in the shareholders' agreement and/or in a company's constitutional documents that are in breach of company law (for instance, are they void)?

Provisions of the shareholders' agreement that are inconsistent with mandatory provisions of Turkish law would be unenforceable.

Statutory provisions strictly regulate how the articles of association may deviate from the law. In this respect, the articles of association of joint stock and limited liability companies may deviate from statutory provisions only to the extent permitted under the TCC (*Articles 340* and *579, TCC*).

Provisions of the articles of association that are inconsistent with the provisions of the TCC would be void.

15.Are the limitations set out in the objects clause in the constitutional documents of the joint venture enforceable against third parties (for instance, if the company enters into a transaction outside the

scope of its objects clause, could the relevant transaction be set aside on the basis that the company acted ultra vires)?

The *ultra vires* rule has been repealed on the enactment of the TCC. Companies have full capacity to acquire rights and obligations as natural persons, other than those which presuppose intrinsically human attributes (*Article 125, TCC*; *Article 48, Turkish Civil Code*).

Where the authorised representatives of a company enter into transactions with third parties outside the company's field of activity, these transactions will be binding on the company, unless it is proven that the third party has knowledge, or ought to have had knowledge, of the fact that the transaction was outside the company's field of activity. The fact that the company's articles of association have been made public is not sufficient, by itself, to impute knowledge to the relevant third party (*Articles 371(2)* and *629(1), TCC*).

16. Is the shareholders' liability limited to the amount of their respective equity contributions to the joint venture?

As a general principle, shareholders' liabilities in Turkish joint stock and limited liability companies are limited to the payment of the capital subscription and share issuance premium amounts, as well as any additional payment and supplemental performance obligations stipulated in the articles of association (*Articles 329(2), 480(1)* and *573(2), TCC*).

In certain circumstances, this principle of limited liability may be disregarded or circumvented. The most important exceptions are:

- Exposure under the theory of piercing the corporate veil, as interpreted and applied by Turkish courts, typically in situations where:
    - there is significant undercapitalisation of the company;
    - there is commingling between the shareholder's assets and the company's assets; or
    - the controlling shareholders abuse their controlling rights for the sake of their own interests and to the detriment of the creditors.
- Liability, as legal representatives, for tax debts and public receivables owed by the company, that would arise in situations where the shareholders are also appointed as directors with authority to represent and bind the company (*Article 10, Tax Procedure Code*; *Article 35bis, Law on Collection Procedures of Public Receivables*; *Article 88, Social Insurance and General Health Insurance Law*).

- Secondary liability of shareholders in limited liability companies for certain public receivables, which would be called on if the company is unable to satisfy these debts (*Article 35, Law on Collection Procedures of Public Receivables*).

17. Are there any statutory requirements applicable to the directors' authority and powers, such as to their ability to delegate to committees or individual directors?

Directors of joint stock companies and managers of limited liability companies have a number of exclusive and non-delegable duties assigned to them by statute (*Articles 375* and *625(1), TCC*).

A lawful delegation of authority and powers is possible only if allowed under the articles of association. It requires the adoption of an internal directive for the board (*Articles 367, 371, 623,* and *629, TCC*).

At least one director or manager must have unlimited power to represent the company (*Articles 370(2), 623* and *629(1), TCC*).

18. Are there any statutory requirements applicable to the board of directors' meeting, such as:

- (a) The country in which they should be held.
- (b) The procedure to call and adjourn a meeting.
- (c) The procedure to participate to and vote in a meeting.
- (d) Who should chair a meeting.
- (e) The role, if any, of the Company secretary.
- (f) How the board decisions should be recorded.

(a) The country in which they should be held

There is no specific statutory rule. The matter is usually regulated under the articles of association.

(b) The procedure to call and adjourn a meeting

Board meetings may be called by the chairman, or if the chairman is not available by the vice-chairman. Other procedural details would be generally defined under the articles of association.

(c) The procedure to participate and vote in a meeting

In person attendance is required and no proxy is permissible for board meetings (*Article 390(2), TCC*).

The board may adopt resolutions by circulation of a written resolution, subject to certain conditions. (*Article 390(4), TCC*).

(d) Who should chair a meeting

The chairman of the board, appointed by the board or general assembly (*Articles 366* and *624(1) TCC*). If the chairman is not available, the vice-chairman of the board would chair the meetings.

(e) The role, if any, of the Company secretary

The TCC does not provide any company secretary system.

(f) How the board decisions should be recorded

Board resolutions must be reduced to writing and signed by the directors or managers to be valid. They are then affixed in the book of board resolutions of the company (*Article 390(5), TCC*; *Communiqué on Commercial Books*).

19. Are there any statutory provisions regulating directors' conflicts of interest?

The directors of a joint stock company and the managers of a limited liability company:

- Have a statutory duty of loyalty which dictates that they must hold the interests of the company paramount; otherwise, they are at risk of being held liable for breach of this duty (*Articles 369, 613(2)* and *626, TCC*).
- Are prohibited from transacting with the company on their own account or on account of a third party, unless otherwise permitted by the general assembly (*Article 395, 613(2)* and *626(3) TCC*).
- Are subject to a statutory prohibition from competing with the business of the company, unless permitted otherwise by the general assembly (*Article 396* and *626(2), TCC*).

Directors are also prohibited from taking part in discussions and votes on matters related to their personal interest or the interests of their ascendants, descendants, spouses and relatives by blood or by marriage up to and including the third degree, if these matters conflict with the interests of the company. This restriction applies in addition to the application of the principle of good faith, which requires a director not to participate in a board of directors' discussion in certain situations (*Article 393, TCC*).

Under the principle of good faith, a director should recuse themselves from discussions and votes on matters where there is a conflict of interest between the company and the director or the shareholder responsible for the nomination or the appointment of that director.

20. Are there any statutory requirements in relation to the directors' remuneration?

The general assembly has the exclusive duty to determine the remuneration of the members of management body (*Articles 394, 408(1)(f)* and *616(1)(f), TCC*).

21. Are there any statutory requirements applicable to the appointment and removal of the directors? Can alternate directors or board observers be appointed?

Board members are appointed either by the articles of association or by a resolution of the general assembly. The general assembly has the exclusive and non-delegable authority to dismiss any member of the board (*Articles 359, 408(2)(b), 616(1)(b)* and *630, TCC*).

All members of the management body of a company must have full legal capacity. Special qualifications relating to education or experience may be required by law, depending on the field of activity of the company.

The articles of association may provide more stringent eligibility conditions or limitations for directors and managers, such as nationality, education or relevant experience.

Directors or managers will lose their office by law if they:

- Have their legal capacity limited by a court decision or by law.
- Are declared bankrupt (in the case of representatives of legal entities, this provision would apply to both the legal entity and to its representative).
- Breach special eligibility requirements set out under any law.
- Breach eligibility requirements set out under the articles of association of the company.

(*Article 363(2), TCC.*)

In limited liability companies, at least one manager must also be shareholder.

Systems of alternate directors are not recognised by statute. Non-voting board observers may be appointed if permitted by the articles of association.

22. What is the procedure to be validly recognised as a shareholder? Are share certificates issued and, if they are, what is the procedure to replace them?

Joint stock companies

Shareholding rights arising from uncertificated shares, shares certificated under registered share certificates (*nama yazılı pay senedi*) or provisional share certificates (*ilmühaber*) may be exercised by shareholders who are registered in the share book of the company. Registration in the share book would be carried out by the board on adopting a resolution (*Articles 375(1)(f)* and *499, TCC*).

With effect from 1 April 2021, the legal regime governing bearer share certificates issued by privately held Turkish companies has been substantially overhauled. Whereas the old regime effectively allowed shareholders holding bearer shares to be anonymous, the new regime institutes a requirement of notification and registration with the Turkish Central Securities Depository (*Merkezi Kayıt Kuruluşu*). Under the new regime, persons proving that they are in possession of bearer share certificates and who are notified to the Central Securities Depository will be entitled to exercise shareholding rights against the company (*Article 426, TCC*).

A company must issue registered share certificates on a request from shareholders holding at least 10% of the company's shares (*Article 486(3), TCC*). Issuance of share certificates is annotated in the share book (*Article 487(2), TCC*).

The board must issue and deliver bearer share certificates to the shareholders within three months following payment in full of share capital contributions. The resolution of the board in this respect must include the prescribed minimum content and be registered with and published through the trade registry. The prescribed information about the bearer shares and shareholders entitled to receive bearer share certificates must be notified to the Central Securities Depository before the distribution of the printed bearer certificates to the relevant shareholders (*Article 486(2), TCC;* and *Article 4, Ministry of Trade Communiqué Respecting the Notification of Bearer Share Certificates to, and Recording of the Same by, the Central Securities Depository*).

Shareholders may request replacement of worn-out certificates at their own cost (*Article 488, TCC*). In practice, replacement is conducted by adopting a board resolution to exchange the old physical certificates with new ones.

Limited liability companies

Transfer of the shares in limited liability companies is subject to registration with the trade registry (*Article 598, TCC*). The company must also keep a share book (*Article 594, TCC*).

Although the company may issue registered share certificates to serve as proof of a shareholding, these certificates do not carry any rights similar to the ones attached to the share certificates of joint stock companies (*Article 593(2), TCC*).

23. Are there any statutory provisions governing the declaration and payment of dividends and other distributions? Is it possible for a shareholder to waive its right to receive a dividend?

Dividends are distributed after an ordinary resolution of the general assembly, adopted on the recommendation of the management body (*Articles 408(2)(d)* and *616(1)(e), TCC*).

Dividends may only be distributed from net profits for the current activity period and freely disposable reserves (*Articles 509(2)* and *608, TCC*).

Certain other aspects of dividend distribution are also regulated by statute, such as the recovery of excessively distributed dividends if the company subsequently becomes insolvent.

The right to receive dividends is inalienable and may not be totally waived. Shareholders may, however, adopt a resolution not to distribute dividends for individual years of activity.

24. Are there any statutory requirements applicable to the shareholders' meeting, such as:

- (a) The country in which they should be held.
- (b) The procedure to call and adjourn a meeting.
- (c) The procedure to participate (in person or by proxy) to and vote in a meeting.
- (d) Who should chair a meeting.
- (e) The role, if any, of the Company secretary.
- (f) How the shareholders' resolutions should be recorded and amended.

(a) The country in which they should be held

For joint stock companies:

- Meetings can only be held at venues other than the registered head office of the company if they are listed in the articles of association (*Article 8, Regulation Respecting General Assembly Meetings of Joint Stock Companies and Ministry Representatives to Attend Thereto (General Assembly Regulation*).

- A Ministry of Trade representative must be present at shareholder meetings held outside Turkey, as a condition of validity of the meeting (*Article 32, General Assembly Regulation*).

For limited liability companies, meeting venues other than the registered head office of the company should be indicated in the articles of association (*Article 577(1)(h), TCC*).

(b) The procedure to call and adjourn a meeting

Shareholders meeting are ordinarily called by the management body of the company, as prescribed by the articles of association, via an announcement in the Trade Registry Gazette and by invitation sent to owners of registered shares by registered mail (*Articles 410, 414* and *617, TCC*).

The call must be issued:

- For joint stock companies, at least two weeks before the meeting date, unless a longer period is provided under the articles of association.
- For limited liability companies, at least 15 days before the meeting date. The articles of association can extend this period or reduce it to 10 days.

Shareholders meetings can be held without following these procedures if all shareholders are present or represented and no objections are raised to holding the meeting. In this case, all shareholders must be present or represented for the entire duration of the meeting (*Articles 416,* and *617(3) TCC*).

Where a general assembly of shareholders meeting of a joint stock company is duly convened with the required meeting quorum, an adjournment will be possible only before commencing deliberations on the agenda items. This must be done by an ordinary resolution of the shareholders (*Article 28(2), General Assembly Regulation*).

A resolution for the adjournment of meeting in a joint stock company may be passed on request by a minority representing 10% of shares under certain circumstances (*Article 420, TCC*).

A Ministry of Trade representative must attend certain general assembly meetings of a joint stock company, as a validity requirement (*Article 407(3), TCC*; *Article 32, General Assembly Regulation*).

Limited liability companies may adopt shareholder resolutions by circulation of a written resolution, subject to certain conditions (*Article 617(4), TCC*).

(c) The procedure to participate (in person or by proxy) to and vote in a meeting

The management body must prepare an attendance list designating the shareholders who are entitled to attend and vote at a meeting. The attendance list is prepared on the basis of the share book with respect to shareholders holding uncertificated shares, registered share certificates or provisional share certificates, and on the basis of the shareholders table issued by the Central Securities Depository with respect to shareholders holding bearer share certificates (*Article 417, TCC;* and *Article 6, Ministry of Trade Communiqué Respecting the Notification of Bearer Share Certificates to, and Recording of the Same by, the Central Securities Depository*).

Shareholders may attend in person or by proxy. Proxies may be designated from among other shareholders of the company or third parties. Provisions of the articles of association limiting proxy designations to other shareholders only are null (*Articles 425* and *617(3), TCC*).

If more than one attorney is appointed under a proxy, only one of them may be vested with the authority to vote at a meeting. This person must be named in the proxy documentation (*Article 18(8), General Assembly Regulation*).

Where the shares of a joint stock company are owned by several persons under common ownership, the co-owners may appoint any one of them or a third party to exercise their voting rights (*Article 432, TCC*).

Unless provided otherwise in the articles of association or the internal directive for general assembly meetings, voting in general assembly meetings of joint stock companies will be open and by show of hands (*Article 20, General Assembly Regulation*). There are no statutory provisions applicable to limited liability companies.

(d) Who should chair a meeting

In joint stock companies, unless otherwise determined by the articles of association or the internal directive for general assembly meetings, the chairperson will be appointed at the shareholders' meeting (*Article 419, TCC*).

The chairperson of the board would customarily also chair shareholder meetings.

There are no statutory provisions for limited liability companies. The meeting would be chaired by a person appointed at the shareholders' meeting, unless the articles of association provide otherwise.

(e) The role, if any, of the company secretary

The TCC does not provide any company secretary system.

(f) How the shareholders' resolutions should be recorded and amended

Shareholder resolutions will be annotated in a written minute. For joint stock companies, there is a statutorily prescribed form of minutes of resolutions (*Article 422, TCC*; *General Assembly Regulation*).

The resolutions must be affixed to the shareholders' meeting minutes book. A notarised copy of the resolutions must be submitted to the trade registry with jurisdiction over the company. By law, certain matters resolved by shareholders must be further registered with the trade registry with jurisdiction over the company, and published in the Trade Registry Gazette.

The amendment of shareholders' resolutions, where possible, will be performed by following the same procedural requirements as for adopting the original resolution. Where third parties (such as shareholders or creditors of the company) have a vested right or a statutorily protected interest following the adoption of a shareholder resolution, the possibility of amending it by another shareholder resolution may be limited or unavailable.

25. Are company seals required?

Company seals are not required. By law, a Turkish company will be validly represented and bound by the signature of its authorised representatives affixed under the official commercial title of the company (*Articles 370* to *372* and *629(1), TCC*). The commercial title of the company may be pre-printed, hand-written, or subsequently stamped over a pre-printed document.

In practice, corporate officers have stamps stating the full trading name of the company, the registered address and some additional key information relating to the company, such as registry and tax information.

26. Are there any restrictions under the law of your jurisdiction to include indemnity provisions for the benefit of the directors or officers of the company in the company's constitutional documents?

Even though there is some statutory recognition of indemnities provided for the benefit of directors (*Article 202(5), TCC*), it is not customary or common practice in Turkey to incorporate indemnity provisions in a company's constitutional documents.

In practice, these indemnities would be of a contractual nature and set out in the relevant service or employment agreement executed between a company and its directors and officers.

Some companies obtain D&O liability insurance to protect their directors and officers against financial exposure arising from their functions.

27. In relation to cross-border joint ventures that present a connection to the UK, have you noticed the introduction of any "Brexit" wording in the shareholders' agreement or other joint venture document?

We have not noticed the introduction of any ″Brexit″ wording.

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