



## **Turkiye: Postponement of a General Assembly Meeting in a Joint-Stock Company**

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### **1. What is General Assembly Meeting under Turkish laws?**

Under Turkish corporate law, general assembly is a mandatory corporate body that functions through decisions of the shareholders. General assembly meetings allow the shareholders to exercise their shareholder rights in the company and decide on the matters which are exclusively vested to the general assembly by articles of association and the Turkish Commercial Code No. 6102 (“TCC”).

In a non-public joint-stock company, general assembly may convene, physically or electronically, with attendance of the shareholders, either in person or via their proxies, and at least one board member. In certain cases, independent auditor, other stakeholders and representative of the Ministry of Trade (“**Ministry**”) also attend the general assembly meetings.

In order to hold a general assembly meeting in electronic environment, articles of association of the company must include necessary provisions sought by relevant regulations of the TCC and the company must duly establish and make available all relevant and necessary technical systems for the attendees.

In terms of the timing, a general assembly meeting may be held (i) ordinarily on annual basis or (ii) extraordinarily, when it is deemed necessary. As per Article 409/1 of the TCC, annual general assembly meeting must be held within three months from the end of each fiscal year. In the meeting, the general assembly of shareholders discuss the following agenda: review and approval of financial statements and annual activity report of the board of directors, release of board of directors, distribution of dividend and independent auditor. If there is an additional matter which is intended to be resolved by the general assembly Agenda to be discussed at an annual general assembly meeting is not limited to the foregoing, any matter that is within the authority of general assembly may also be discussed at such meeting (*e.g.* amendment of articles of association or election of board members). General assembly may also convene at any time extraordinarily to discuss any such matter that is within the authority of the general assembly.

In most cases, the shareholders are called for the general assembly meetings by the board of directors which functions as management organ of a joint-stock company, through the methods stipulated in the articles of association of the company and mandatory provisions of the TCC.

If all shareholders (or their proxies) representing the entire share capital of the company agree to attend the meeting without any objection, the general assembly meeting may be held by skipping the procedural the invitation formalities in accordance with Article 416/1 of the TCC.

General assembly meetings are managed by the meeting president to be elected by the shareholders at the beginning of the meeting as per the Regulation on the Procedures and Principles of General Assembly Meetings of Joint-Stock Companies and the Ministry Representatives to Attend These Meetings (“**Regulation**”). The meeting president may also select a vote collector and a secretary for their assistance, if need be.

## **2. What are the Reasons to Postpone a General Assembly Meeting?**

The TCC and the Regulation enable postponement of general assembly meetings of joint-stock companies in some limited circumstances and on an exceptional basis. In terms of the non-public joint-stock companies, these circumstances are as follows:

- a. Lack of Meeting Quorum:** In order to convene a general assembly meeting, article 418 of the TCC requires presence of the shareholders representing at least 1/4 of total share capital of the company unless a higher meeting quorum is specified in the articles of association or the TCC for specific matters. Further, such quorum should be present during the meeting as well. That said, failing to meet at least 1/4 of total share capital automatically results in postponement of the meeting.

If the first meeting is postponed due to lack of the meeting quorum, the subsequent meeting would not be subject to said quorum once again. In such a case, the general assembly would be able to take necessary resolutions with the majority of the shareholders present at the subsequent general assembly meeting. Having said that, in the cases where specific and aggravated meeting and decision quorums are sought in the articles of association or the TTC, foregoing simplified quorum does not apply. Therefore, depending on the agenda, mandatory and applicable general assembly meeting and decision quorums should be checked for each time.

- b. Decision of the General Assembly:** As per Article 28/2 of the Regulation, the general assembly can resolve on postponement of the meeting before starting the discussions regarding the agenda, provided that all the shareholders are duly invited to the meeting and the decision quorum required for the postponement (*i.e.* simple majority unless the articles of association seek a higher quorum) has been met.
- c. Request of Minority Shareholders:** As per Article 420 of the TCC, upon the request of the minority shareholders of a non-public joint-stock company representing 10% of the share capital, (i) discussions regarding financial statements and (ii) other matters related to financial statements shall be postponed directly by the meeting president for one month without the need of a general assembly resolution thereof. In terms of the latter, release of the existing board members and appointment of new members to the board of directors are also considered as matters related to discussions about the financial statements as per Article 413 of the TCC.

Objections of the minority shareholders regarding the financial statements must be made in the first meeting and recorded in the meeting minutes. After the postponement, the second postponement may come into question only if objections of the minority shareholders have not been answered by the

relevant executives in accordance with the principle of honest accountability. As this condition has a subjective nature, any disagreement on this matter might lead to legal disputes in practice.

- d. **Security Concerns:** According to Article 28/5 of the Regulation, the meeting presidency may postpone a general assembly meeting with the affirmative opinion of the law enforcement forces and Ministry representative if security concerns arise. The Regulation does not explain the scope of security concerns. Therefore, it should be interpreted by the scholars and practitioners. In the doctrine, some scholars suggests that in some cases force majeure circumstances might constitute the security concern and lead to postponement of the general assembly meeting.
- e. **Absence of Duly Established Electronic General Assemblies:** According to Article 32/1 of the Regulation, the joint-stock companies, which holds general assembly meetings electronically, must invite the Ministry representatives to the meetings. As per Article 28/6 of the Regulation, if it is detected that the conditions of the Regulation on General Assemblies to be Held Electronically in Joint-Stock Companies cannot be satisfied for the general assembly meeting, the meeting presidency may postpone the meeting with the affirmative opinion of the Ministry representative.

### 3. What are the Consequences of the Postponement?

- i. **Liabilities of Board Members:** As per Article 375/1 of the TCC, preparing for general assembly meetings is one of the non-transferable duties of the board of directors. In this regard, board members must take all necessary actions and precautions for duly completion of the general assembly meetings. If the board members breach such obligation in any way and causes damages of the company, shareholders and creditors of the company with their own faults, they might be held liable for the damages.
- ii. **Termination of the Company:** As per Article 530 of the TCC, if the general assembly cannot convene, upon the request of the shareholders, creditors or the Ministry, a commercial court located at the company's headquarters listens to the board of directors and grants a time period for the company to solve this deficiency. If this problem cannot be solved during the given term, the commercial court may decide the annulment of the company. In this regard, it is possible that postponement of the general assembly meetings on a repetitive basis might trigger termination of the company in some cases.

### 4. Conclusion

General assembly meetings are crucial for shareholders to exercise their rights arising from the articles of association and the TCC.

The TCC and its secondary regulations enforce mandatory provisions such as invitation procedures and quorum requirements to ensure shareholder participation to the general assembly meetings and transparent decision-making procedures.

While postponement mechanisms, as outlined in this article, offer flexibility at a certain level to handle unforeseeable circumstances, they should not become habitual as this could disrupt the functioning of the

general assembly and the company. Excessive delays may lead to liability of the board members and termination of the company by judicial intervention, in extreme cases. Therefore, strict adherence to legal and procedural requirements is crucial to safeguard the governance, integrity and stability of the company.

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(*First published by Mondaq on January 20, 2025*)

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