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Intra-Corporate Dispute Arbitration in Turkey

Introduction

Arbitration is an important alternative dispute resolution method in commercial and corporate disputes. Although it is a widely-used method, no specific provision is found about arbitration of intra-company matters under Turkish Law. Hence, arbitrability of corporate disputes is arguable in Turkish law.

This article will briefly examine possibility of resolving intra-corporate disputes through arbitration.

Disputes Between Company and Shareholders

Arbitrability of disputes between the company and its shareholders should be examined separately according to subject-matter of the disputes. Most of the corporate disputes are considered as arbitrable. However, the annulment of general assembly resolutions and dissolution of company matters are controversial in the doctrine.

Annulment of General Assembly Resolutions

Annulment of general assembly resolutions is regulated under article 445 of the Turkish Commercial Code ("TCC"). Pursuant to this article, it is stated that "*An action for annulment of the resolutions of general assembly which are against the law or articles of association can be brought within three months of the decision date before the commercial court of first instance where the headquarters of the company is located.*" There are different opinions with different

reasonings in the doctrine on whether the annulment of the resolutions is arbitrable or not. According to the first argument, general assembly resolutions are not arbitrable since article 445 of TCC is an imperative provision. The second argument supports the view that arbitration is only available for disputes that could be resolved compromisingly by the parties. Hence, settling a dispute on the annulment of general assembly resolutions with free will of the parties is not possible; therefore, general assembly resolutions are not arbitrable. According to a third view, a dispute on the annulment of general assembly resolutions is arbitrable. Therefore, depending on the existence of an arbitration agreement, disputes arising out of annulment of the resolutions may be arbitrable.

Besides the opinions in the Turkish doctrine, the High Court of Appeals ruled that "*Arbitration shall be applied only to disputes which are subject to free will of the parties, that is, the defendant and the plaintiff can resolve the dispute by the arbitrator without the court decision. For instance, it is not possible to settle the disputes about annulment of the general assembly resolutions with the agreement between the plaintiff and the defendant.*"

Disputes Regarding the Dissolution of Company

Another controversial issue is whether disputes regarding the dissolution of company are arbitrable or not. According to one argument, disputes regarding the dissolution of company are arbitrable since these decisions depend on the free will of parties. On the other hand, it is argued that resolving such disputes through arbitration is not possible since the cause of dissolution is not depending on the free will of the parties.

Another view in the doctrine makes a distinction according to whether the cause of dissolution is based on free will of parties or not. The causes for dissolution of the company are regulated in TCC both for the joint stock company (Article 531) and for the limited liability company (Article 636). Therefore, depending on whether the cause of dissolution is based on free will of the parties, one can decide the dispute is arbitrable or not. The Court of Appeal, on the other hand, accepted that the disputes regarding the dissolution of company does not depend on the free will of parties. Thus, it is not arbitrable.

Disputes Between Shareholders

The Articles of Associations ("AoA") is a multilateral agreement which regulates the internal and external relations of the company as well as the rights, powers and obligations of the shareholders against each other and against the company. Except for the matters that must be included in the AoA as per TCC, matters that will not disrupt the balance of benefit and will have a fair outcome can be included in the AoA and arbitration clause is regarded as one of them. Hence, if the arbitration clause is included in the AoA, it is binding for the company, the organs and all shareholders.

In general, disputes between shareholders may arise out of share purchase agreements, shareholder's agreements and joint venture agreements. Contrary to the disputes between company and shareholders, the High Court of Appeals and the Turkish doctrine are on the same page about settling disputes between shareholders through arbitration. The High Court of Appeals stated in one of its decisions that "*As long as there is an arbitration clause in the articles of association of the limited liability company, the dispute between the shareholders and disputes between the shareholders and the company can be settled by arbitration.*"

Conclusion

Arbitrability of intra-corporate disputes are arguable in Turkish legal doctrine. Due to the fact that Turkish law does not provide clear guidance on whether and which corporate law disputes are arbitrable, litigation will continue to be used as the primary tool for resolving intra-company matters. However, arbitration is proven to be an effective and fast way of resolving disputes in commercial matters. Therefore, expansion in application field of arbitration in disputes concerning corporate law will certainly help lessen the courts' workload and will have a positive effect on the accountability in companies.

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