

Inspection Rights for LLC Shareholders under Turkish Law

Introduction

Shareholders of a Limited Liability Company (“LCC”) use their rights arising from “shareholder” title at the General Assembly (“GA”). Shareholders must have sufficient knowledge on company transactions and must be able to conduct examinations when needed in order to use these rights efficiently and properly. For LLC, this right is regulated under Article 614 of the Turkish Commercial Code (“TCC” Law No.6102)

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Scope of the Right

The first paragraph of Article 614 regulates both right to request information and examination as follows; *“Each partner can request information about all company business and accounts from managers and can conduct examinations on certain matters.”*

The article sets the limit of the right to request information widely by using the phrase *“all company business and accounts”*. Therefore, any information or document that are of interest to the company is within the scope of this right. However, the right does not cover the records held at the company concerning third parties even if the records are related to company business.

Company assets, financial obligations, relations with other institutions, company’s affiliates, customers, suppliers, contacts, reports as well as the future activities are in the scope of the *“all company business”* phrase. Balance sheet, profits, loss accounts,

reports, stocks and funds fall within the scope of the “*all company accounts*”. These documents and accounts do not necessarily have to be physically within the company borders. Any document or account outside the company borders must be provided to the shareholder upon request, such as company documents that are held at law offices which the company works with.

Exercising the Right

Shareholders including a manager who is also a shareholder, possess these rights as long as the partnership continues. Shareholder makes a request to the manager, but it is the legal entity’s obligation to give out the information.

Right to request information leads an access to the information as the manager of an LLC provides information upon shareholder’s request. While making a request for information, shareholder should specify the subject as much as he can since he is requesting an information on a matter he does not have knowledge of. Additionally, he does not have to explain the reason why he is requesting information or his interest.

Right to request examination should be exercised at the company’s headquarters or at the workplaces in the presence of company officials. Thus, company documents or books will not be taken outside of the company. On the other hand, there is no such limitation for the right to request information.

There is no regulation on when to exercise these rights, so right to request information and examination can be exercised before, during or after GA meetings. Moreover, no immediate response to the request is obligatory. Managers may take a reasonable period of time to respond to the request by taking into consideration the functioning of the company’s business.

The shareholder does not need a justification for the request and no legal form for the request is stipulated in the article. Request can be made verbally or in writing. However, a particular form can be specified under company’s Articles of Association (“AoA”).

Refusal of the Request

The refusal must be based on an objective, substantial and justifying reason. If there is a risk that a partner who obtained information may use it in such a way that will damage the company, managers of the LLC can prevent access to information and examination to the extent that it is necessary. By saying “damage”, company’s customer loss or unfair competition is implied

When a shareholder’s request is refused, the shareholder can apply to the GA. TCC is silent on the form of application. In terms of provability, however, the application should be made in written form. Following the application, managers should call a GA meeting at the first opportunity and add the subject to the agenda. The GA can either have an ordinary meeting and discuss the dispute or have an extraordinary meeting just to resolve the dispute. Either way, the dispute finalizes at the GA.

Right to request information and examination are strengthened with the right to apply to the court. If the GA prevents access to information and inspection without a just cause, the partner may seek a court order on this issue. Prior to applying to the court, shareholder must consult to the manager, upon adverse judgement of the manager must object to the GA. Until this procedure has been carried out, the shareholder cannot apply to the court. The court’s decision shall be final and cannot be appealed.

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