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**Shareholders' right to obtain and examine information in joint stock companies  
in Turkish law**

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**Abstract:** In joint stock companies, shareholders have the right to request information from the board of directors and auditors regarding the affairs of the company and to examine the company records when necessary. Thus, shareholders vote more consciously and effectively in general assembly meetings. However, the shareholders' right to obtain and examine information is not unlimited. Company secrets and the interests of the company constitute the limits of the shareholders' right to obtain and examine information. Shareholders have the right to request the appointment of a special auditor in the matter where the right to obtain information or examination is exercised. If a special auditor is appointed, the special auditor report cannot contain information on company secrets in his/her report. In addition, information contrary to the interests of the company shall not be included in the special audit report. The study enjoys the basic doctrinal research methodology. By using this research method, the provisions of the Turkish Commercial Code regulating the right to obtain and examine information and special audit provisions will be discussed.

**Key words:** right to obtain information; right to examine; special auditor; special auditor report; commercial secret.

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**НАУЧНАЯ СТАТЬЯ**

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**Права акционеров на получение и изучение информации в акционерных  
обществах по турецкому законодательству**

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**Аннотация:** В акционерных обществах акционеры имеют право запрашивать у совета директоров и аудиторов информацию о делах компании и при необходимости изучать соответствующие документы. Таким образом, акционеры могут более осознанно и эффективно голосовать на общих собраниях. Однако право акционеров на получение и изучение информации не должно быть неограниченным. Институт коммерческой тайны и интересы компании ограничивают права акционеров на получение и изучение соответствующей информации. Также акционеры имеют право потребовать назначения специального аудитора в случае, если право на получение информации или ее изучение было реализовано. Если специальный аудитор назначен, его отчет не может содержать информацию, составляющую коммерческую тайну. Кроме того, в отчет специального аудитора не должна быть включена информация, противоречащая интересам организации. В исследовании используется базовая методология теоретического исследования. С помощью этой методологии рассмотрены, помимо прочего, положения Торгового кодекса Турции, регулирующие право на получение и изучение информации, а также положения о специальном аудите.

**Ключевые слова:** право на получение информации; право на изучение; специальный аудитор; отчет специального аудитора; коммерческая тайна.

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**Информация о конфликте интересов:** автор заявляет об отсутствии конфликта интересов.

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## **A. Introduction**

In order for the shareholders to effectively exercise their voting rights and other right in the general assembly, they must have the right to obtain and examine information regarding the current situation of the joint stock company [1, p. 492]. For this reason, shareholders in joint stock companies have the right to obtain and examine information in order to effectively exercise their rights arising from share ownership. The shareholders' right to obtain and examine information is a right attached to share ownership. The shareholders' right to obtain information is a vested right. It cannot be limited or removed by a general assembly resolution. Moreover, this right to obtain and examine information is an inalienable right for the shareholder [2, p. 633].

The right to obtain and examine information is an independent right. While voting rights, rights to determine profit and liquidation are directly related to the shareholding rates, the shareholding rates of the shareholder are not important for the exercise of the right to obtain and examine information [3, p. 33].

## **B. Shareholders' Right to Obtain and Examine Information Outside the General Assembly Meeting**

In the doctrine, shareholders' right to obtain information outside the general assembly meeting is called the passive right to obtain information. Accordingly, the financial statements, consolidated financial statements, annual report of the board of directors, audit reports and dividend distribution proposal of the board of directors of the joint stock company shall be made available for the inspection of the shareholders at the headquarters and branches of the joint stock company at least 15 days prior to the general assembly meeting. These financial statements and consolidated financial statements shall continue to be made available at the headquarters and branches of the company for 1 year after the relevant general assembly meeting. During this period, each shareholder may request a copy of the income statement and balance sheet, at the expense of the joint stock company. The joint stock company may also provide this information in electronic environment in a way that does not interfere with obtaining information. Providing the relevant information and documents electronically shall be deemed to facilitate access to information [2, p. 633]. As a rule, the information provided by the passive right to obtain information is provided once a year. This information is general and retrospective. This information cannot fully satisfy the shareholders. Shareholders will not only want

to receive retrospective information. Shareholders will also want to be informed about the company's affairs, the board of directors' opinions about the company's affairs and the way the management body is supervised. Depending on the situation; it should be noted that shareholders have the right to information in cases such as internal corruption, difficulties in paying the debts of the company [1, p. 493].

## **C. Shareholders' Right to Obtain and Examine Information During the General Assembly Meeting**

In the doctrine, the shareholders' right to obtain information during the general meetings is called the active right to obtain information. At least one of the members of the board of directors and independent auditors must attend the general assembly meetings of joint stock companies and are obliged to provide information to the shareholders. Members of the board of directors may request information regarding company's affairs, and auditors may request information regarding the manner and results of the audit. The information to be provided must be truthful. This is an obligation. It may be deemed sufficient for the information requests of more than one shareholder on the same subject to be provided once in a way that all of them can obtain information. This is the case in cases where verbal answers on the requested subject are sufficient. However, if the requested information requires the provision of certain documents, even if the requests are related to the same subject matter, the information cannot be deemed to have been provided unless the request of each shareholder is met in the manner required by this request. In this respect, it does not matter whether the information is provided in the general assembly or outside the general assembly. The joint stock company may not refuse the request by stating that the requested information was given information on a subject outside the general assembly. If any shareholder has been given information on a subject outside the general assembly. If any shareholder has been given information on a subject outside the general assembly due to his/her shareholding, the same information shall be given in the same scope and detail upon the request of another shareholder [2, p. 634]. For example, shareholders may be informed regarding the management, organisation, business strategy and general economic situation of the joint stock company [1, p. 493].

As a rule, the right to obtain information cannot be limited in terms of content. The limits of the right to obtain information are company secrets and company interests. The purpose of this limitation is that the

shareholders are not obliged to be loyal to the joint stock company [4, p. 422]. The concept of company secrets is divided into two categories in the doctrine: absolute company secrets and relative company secrets. Absolute company secrets are the secrets that the company that the company is under an absolute obligation not to disclose, either through a contract with third parties or by inference from general provisions. These secrets may never be disclosed to third parties and shareholders. These secrets are independent from the structure of the joint stock company and are outside the company's sphere of disposal. For example; the pricing principles of the company are absolute trade secrets. Providing information on whether a company carries out R&D activities is not an absolute company secret, but the technical details of R&D activities are absolute company secrets [5, pp. 584, 585]. Relative company secrets are outside the scope of absolute company secrets. The disclosure of these secrets is left to the assessment of the authorised bodies of company. As long as the legitimate interests of the company that need to be protected are not harmed, there is no harm in disclosure. For example, the goodwill of a joint stock company is a relative company secret [5, p. 585].

In order to examine the commercial books and correspondence of the joint stock company, which are relevant to the shareholders' questions, a resolution of the board of directors or the approval of the general assembly is required. If permission is granted, the examination shall be conducted through an expert. The subject of examination is generally commercial books and correspondence of the company. The relevant correspondence and relevant parts of the shareholder's question in the commercial books are examined. This means that not all commercial book and correspondence can be the subject to the examination [6, p. 69]. In this process, the company is under an obligation to provide the right to examination [7, p. 340]. This situation reveals the difference between the right to obtain information and the right to examination. In the exercise of the right to obtain information, it is sufficient for the shareholder to make a request. The shareholder is more active in the exercise of the right to examination [8, p. 10]. Therefore, the right to examination is more concrete than the right to obtain information [8, p. 10]. However, as a result, both rights help the shareholder to learn information regarding the joint stock company.

Another point to be emphasized regarding the right to examination is that this right may be exercised outside the general assembly meeting. The shareholder's request for information and question may require a comprehensive examination of the company's commercial books and correspondence. It may even be necessary to carry out this examination with an expert who is not present at the general assembly meeting. For this reason, the right to examination cannot be restricted to be enjoyed only in the general assembly meeting [3, p. 224].

#### **D. Right to Obtain and Examine Information**

Shareholders whose requests for information and examination are left unanswered, unjustly rejected or postponed, and who consequently cannot obtain information from the company, may file a lawsuit is 10 days in cases where the request is explicitly rejected. In other cases, the period for filing a lawsuit is determined in the law as a reasonable period. The reason for determining the reasonable time for filing a lawsuit is the difficulty of determining the starting moment of the said situations [9, p. 174]. The decision to be rendered by the commercial court upon the application may also include the instruction to provide the information outside the general assembly and the form thereof. The commercial court's decision is final.<sup>1</sup> It can be deduced that the shareholder may not directly file a lawsuit to exercise the right to obtain and examine information [5, p. 537].

The minutes of the general assembly meeting play a very important role in the lawsuit filed for the right to information, because the request for information and questions are recorded in the minutes of the general assembly meeting. For this reason, the minutes of the general assembly meeting has a proof function in the right to information case [10, p. 60].

#### **E. Special Auditor**

Each shareholder may request the general assembly to clarify certain events through a special audit, if the right to obtain information or the right to examination has been previously exercised. As can be understood from this statement, the exercise of only one of the rights to obtain information and to examine is sufficient for the request for the appointment of a special auditor. In cases where the balance sheet or financial statements are not opened for examination, or the general assembly remains passive or reacts late to the request for information, the right to obtain information or the right to examination should be deemed to have been exercised [11, pp. 308, 309]. A special audit is a non-periodic activity that is carried out at a time to examine and clarify certain issues on a voluntary basis. Thanks to the special audit, shareholders have more information about the company. Thus, shareholders can exercise their rights more effectively in the general assembly. For example; thanks to the special audit, shareholders are informed about the situations that cause the liability of the members of the board of directors and independent auditors. However, a special auditor's report is not a prerequisite for filing a liability lawsuit [12, p. 261]. The request for the appointment of a special auditor is one of the exceptions to the principle of adherence to the agenda.

##### **1. Appointment of Special Auditor**

The request for the appointment of a special auditor shall either be approved or rejected by the

<sup>1</sup> Turkish Commercial Code Article 437.

general assembly. If the general assembly approves the special audit request, the company or each shareholder may request the appointment of a special auditor within 30 days before the commercial court where the company's head office is located. If the general assembly rejects the special audit request, minority shareholders or shareholders with a total nominal value of at least 1,000,000.00TL may request the appointment of a special auditor from the commercial court where the company's head office is located within 3 months. The persons requesting a special auditor must "*convincingly*" demonstrate that the founders or company organs have acted in violation of the statute or the articles of association, causing damage to the company or the shareholders. However, this criterion of being "*convincing*" should not be a high criterion in terms of proof. The claimant is already deprived of information. Therefore, the judge should look for a reasonable indication between the damage and the breach of duty. As a matter of fact, the first step of the special audit case is not a stage where the damage shall be proved. This is a situation that will be revealed in the special audit report. Therefore, the criterion of being "*convincing*" should neither be interpreted as a strict criterion that is too high, nor should it be insufficient for the acceptance of claims that are unfounded by the exercise of rights arising from shareholding [13, p. 160]. Consequently, in both cases, the commercial court will decide on the appointment of the special auditor. The reason for this is that the special auditor is more independent from the shareholders, especially in the event that the special auditor is appointed by the court instead of the majority shareholders [14, p. 142].

## 2. Qualifications of the Special Auditor

If the court deems the request for special audit appropriate, it shall appoint at least one independent expert as a special auditor by determining the subject of the audit upon the request. The qualifications of the special auditor depend on the subject of the

special audit. The appointed person must have an understanding of company affairs and have knowledge of economics and law. Lawyers, financial advisors, academicians, company consultants or engineers may be appointed as special auditors [15, p. 289].

The special auditor to be appointed must be independent from the company. In this way, the special auditor is not instructed by the company. This is a strict condition for the special auditor [15, p. 289].

## 3. Special Audit Report

Following his appointment and commencement of his duty, the special auditor starts his activities provided that he does not interrupt the company's business. The special auditor has Access to all kinds of information and documents related to the subject to the special audit throughout the examination. The necessary information and documents in these accessed information and documents are included in the special audit report. The special audit report shall not include matters that are not within the scope of the special audit report. Company secrets and information contrary to the interests of the company are not included in the special audit report [15, p. 289].

## F. Conclusion

The right to obtain and examine information is an important right for shareholders. The right to obtain and examine information may be exercised outside and during the general assembly meeting. The limits of the right to obtain and examine information are company secrets and company interests. If the right to obtain or examine information is exercised, a special audit may be applied for. The special auditor shall issue a special audit report to provide information to the shareholders. However, this special audit report cannot contain company secrets and information contrary to the interests of the company, just like the limitations of the right to obtain and examine information.

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