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DISPUTES BETWEEN SHAREHOLDERS IN COMMERCIAL LIFE



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Nowadays, trade is mostly carried out by certain individuals or companies which prefer to cooperate with the other individuals and companies. By means of such cooperation, partnerships are established and larger profits are targeted by merging share capitals of both. During the process, disagreements, conflicts, and moreover disputes brought to the courts may arise between the shareholders. In such a case, alternative dispute resolution methods provides to diminish the damage to the shareholders.

Cooperation within the scope of commercial activities may be in the form of “ordinary partnership” and may also distinguish itself as a “legal entity”. By any means, shareholders may sometimes dissent with each other in the course of conducting their commercial activities. Such that, shareholders may not agree on potential investments, selection of the companies to work with or participation in the tender process. Due to such disagreements, a significant part of workload of the judiciary institutions is in relation to “commercial disputes between the shareholders”. Although these disputes are initially tried to be resolved by the shareholders amicably, such amicable resolution attempts do not usually come to fruition. At this point, the shareholders need professional and legal support. Specifically with regards to the shareholders considered as legal entity, there is a commercial interest in working with professionals.

The legislation to be applied for commercial companies is generally the Turkish Commercial Code numbered 6102 (TCC). In case the provisions of the TCC are properly interpreted and implemented, the dispute can be resolved in a manner that will cause the least damage to the share capital of the company. The TCC contains detailed regulations especially for joint stock companies. Some of such provisions are as follows: Appointment of board members, determination of appointment methods, liability of board members, rights of the shareholders such as voting, attending the meetings, request information from the board, right of examination, requirements for the appointment of auditor, distribution of profit.

It will be useful to mention “mediation” way that we have dealt with in our previous issues while discussing “disputes between shareholders”. The place of mediation does not go back a long way in our legal system. Mediation which entered our lives in 2019 is applicable only for before initiating a lawsuit concerning compensations and the claims arising from receivables. Therefore, mediation is considered as a prerequisite to filing a lawsuit in such kind of disputes. Time will show us the efficiency of the mediation on resolution of disputes.

In case the disputes between the shareholders are not resolved, the shareholders are able to apply the provisions regarding “dissolution of the company with valid ground” in accordance with the TCC, if the other conditions also exist. However, the courts may not always rule to terminate the relevant company. Particularly in such cases, the shareholders who believe that they will suffer from disagreements and conflicts of interest are required to provide professional support. If improper strategies are followed by the shareholders, it is inevitable that even the shareholders who are considered rightful in commercial or legal sense will be harmed.

Answers. Not theories.

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Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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