

BULLETIN

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Shareholders' Right To Access Information In Companies

The right of shareholders to obtain information is one of the most important rights in companies, and it is one of the rights that cannot be limited, transferred or waived. The right to information of the shareholders is one of the indispensable rights in joint venture, joint stock and limited liability companies and is essential for the the companies. The right to obtain information in joint ventures are regulated under Article 631 of the Turkish Code of Obligations.

ARTICLE 631 - Each shareholder has the right to obtain information about the operation of the partnership, to examine its books and records, to take samples thereof and to make a summary of its financial situation, even if he has no management authority.

Contracts to the contrary are absolutely null and void.

Accordingly, in all companies established as business partnerships and joint ventures, the partners have the right to obtain information and examine the books of the company, whether or not they have the authority to manage. This right is a definite right and it is not possible for the partners to waive this right, transfer it to someone else or sign agreements that they will not examine the books of the partnership. The shareholders' right to obtain information is also regulated as a requirement of their obligations regarding the partnership and cannot be restricted. The same provisions apply to joint stock and limited liability companies regulated under the Turkish Commercial Code.

In the Turkish Commercial Code, the right of the shareholders to obtain information is considered as a right that they must have in order to fulfill their responsibilities in every respect, and it is explained separately and in detail for both general companies, joint stock companies and limited liability companies. Article 225 of the Turkish Commercial Code stipulates that the shareholders of the company may obtain information about the affairs of the company whether or not they have management authority and may examine the books and financial statements of the company. As such, no shareholder may waive this right. This right is legally protected in all respects and it is regulated that any agreement limiting the right to obtain information shall be invalid.

ARTICLE 225- Even if a shareholder does not have the right and duty of management, he has the right to obtain information about the course of the company's affairs personally, to examine the company's documents and books, and to draw up a statement of account showing the financial status of the company for himself accordingly. Any agreement contrary to this is invalid.

Under the Turkish Commercial Code Article 437, the scope of shareholders' right to information in joint stock companies is regulated in more detail. First of all, it should be noted that in general terms, the place where the shareholders will use the right to obtain information in joint stock companies is specified as the general assembly. For this reason, companies are obliged to hold at least one general assembly every year and discuss the financial statements. However, there are exceptional cases where shareholders may obtain information outside the general assembly.

The Turkish Commercial Code regulates the shareholders' right to obtain information as follows: Each shareholder may review the financial statements, annual reports and profit distribution proposals at least 15 days before the general assembly meeting. The main purpose of this right is to be able to vote and take decisions in the general assembly.

The only situation where the provision of information may be prevented is for the protection of company secrets. Even in this case, documents may be examined with the permission of the general assembly or the board of directors. In cases where this permission cannot be obtained or information about the company is hidden, each shareholder requesting information may file a lawsuit in the commercial courts of first instance and request the use of the right to information. The court shall decide where and how the right to obtain information shall be exercised and whether it is within or outside the general assembly.

It should be noted that in joint stock companies, no shareholder's right to obtain and review information may be abolished or restricted by the articles of association, shareholders' agreement, board of directors' decision or general assembly decision.

Similar provisions apply to limited liability companies. In limited liability companies, the right to obtain information is regulated under Article 614 of the Turkish Commercial Code, and it is stipulated that each shareholder may obtain information from the managers about all the affairs and accounts of the company, and that certain matters may be examined.

The only exceptional case where the right to information of the shareholders in limited liability companies is limited is when a limited liability company shareholder uses this information to the detriment of the company. In such cases, the company manager may limit the right to information and examination within the framework of certain issues. However, the general assembly makes the final decision regarding the right to obtain information. Namely, if the manager prevents the shareholder from obtaining information, the shareholder who cannot obtain information must apply to the general assembly. Upon this application, the general assembly decides whether or not to receive information.

The shareholder who is prevented from obtaining information by the decision of the general assembly may file a lawsuit and request the use of the right to obtain information.