

**COMMERCIAL CODE**

# Shareholder rights

Is it possible to disclose a company's trade secrets to its shareholders?



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The 'right to information' and the 'right of inspection' are regulated in Article 437/II, III and IV of the Turkish Commercial Code (TCC). Taking into account the volume of lawsuits before the courts, it is important to understand the application and interpretation of Article 437.

The rights to information and inspection are separate. The former is regulated in Article 437/II and III, and the latter in Article 437/IV. These rights can be exercised by shareholders either in an ordinary or an extraordinary general assembly meeting.

**The right to information**

In a general assembly meeting a shareholder may request information from the board of directors about the affairs of the company or the auditors with regard to the method or results of the audit.

In the event a shareholder is given information outside the general assembly on the request of other shareholders, such information must be given to requesting shareholders in the same scope and detail. In such a case, the company may not refrain from providing information, even though it may constitute a trade secret and such a request may not have been on the agenda of the meeting.

**Is it possible to reject the information request of a shareholder?**

If giving information to a shareholder reveals trade secrets or jeopardises other company interests that need to be protected it is possible to reject a request for information. Although the TCC gives this opportunity to a company, in some instances the company may be obliged to give such information.

**In what circumstances must a company accept an information request?**

In the event information is given to a shareholder outside the general assembly, the board of directors cannot refrain from providing the same information to the other shareholders who request information during a general assembly.

If the requested information is given to a shareholder, even though the trade secrets of the company are disclosed or other company benefits are jeopardised, the company must give such information.

**The right of inspection**

A shareholder is entitled to inspect the commercial books and correspondence of the company only to the extent relevant to their question, and if express authorisation is given by the general assembly or a

resolution to this extent is taken by the board.

Inspection can be conducted either by the shareholder requesting inspection or by an expert. They cannot inspect company books and correspondence at the same time, and the number of experts that can be appointed by a shareholder cannot exceed one.

**What if the inspection right is exercised outside the general assembly?**

Article 437/II regulates the exercising of the right to information outside a general assembly, but there is no provision in the TCC enabling other shareholders to inspect the books or correspondence of the company in the event that such an opportunity is given to a shareholder outside the general assembly.

**What happens if the inspection or information request of a shareholder is rejected?**

If an information or inspection claim is not responded to, is rejected without a just cause or is delayed so the shareholder cannot get information in accordance with Article 437/IV, they may apply to a court within 10 days of the date of rejection – or within a reasonable period of time in other circumstances. The court's decision might include an instruction to provide information outside the general assembly.

However, the application of a shareholder to court to exercise the right of inspection is not regulated. Some scholars believe the procedures pertaining to the right to information shall apply if a shareholder applies to court to exercise its right of inspection.

**Conclusion**

As inspection and information rights are regulated separately, if a shareholder wishes to exercise these rights they must explicitly express their intention to exercise them both in a general assembly meeting. If a shareholder exercises their right to information but not their right of inspection in a general assembly, they will not be able to claim inspection from the court.

It should also be noted that, in the event the company gives information to one of its shareholders outside the general assembly, it has to give the same information to other shareholders who request such information within the scope of Article 437, even though such information might constitute a trade secret.

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