

Legal Persons as a Joint Stock Company Board Member

Introduction

Turkish Commercial Code (“TCC”, Law No. 6102) introduced significant changes in the management of Joint Stock Companies (“JSC”). One of the changes brought by the TCC is the possibility of legal persons to become members of Board of Directors (“BoDs”) in JSCs. This article will briefly examine the legal persons’ membership to the BoDs.

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The Relationship Between the Legal Person and the JSC

Pursuant to the Article 359 of the TCC, the JSC shall have a BoDs which consists of one or more persons assigned according to the Articles of Association (“AoA”) or elected by the General Assembly (“GA”).

There are two opinions on the legal nature of the agreement that determines the relationship between the members of BoDs and the JSC. According to the first one, the legal nature of the relationship is regarded as contract of service and according to the other opinion, which is well accepted, it is regarded as contract of mandate.

Designation of the Real Person Who Will Act on Behalf of Legal Person

According to the Article 359 of TCC, legal persons can be member of

BoDs in JSCs. If a legal person is elected as a member of BoDs, together with this legal person, a real person having full legal capacity shall be designated by it to act on its behalf. Designated real person should be registered in the Trade Registry and has to be announced. Moreover, in companies which are obliged to launch a website, the registration shall be immediately declared on the company's website. Henceforth, only this registered real person may attend to the meetings of BoDs and vote on behalf of the legal person.

Relationship Between the Legal Person and the Real Person

The real person who will act on behalf of the legal person may be the body of the legal person, an organ member of the legal person or experts such as consultants, lawyers or financial advisors who are affiliated with the legal person by a contract of service, contract of mandate or similar contracts.

The real person has a full capacity to represent the legal person in BoDs' meetings. It attends, votes and declares the will of the legal person in the BoDs' meetings. The real person must act upon the instructions given by the legal person and comply with the prohibitions and restrictions since the legal person is mainly responsible for the actions of the real person. For this reason, communication between the legal person and the designated real person is crucial. If the real person doesn't act in accordance with the instructions of the legal person, it is regarded as an internal issue and do not affect the company.

The company shall be responsible for tort by those authorized to represent or manage while performing their duties. The company reserves its right to recourse.

As a member of BoDs, the legal person has a right to replace the real person and determine another real person at any time. And in that case, legal person must notify the company about the change, moreover, the new designated real person needs to be registered to the Trade Registry and must be announced as well.

The Qualifications of the Real Person Who Will Act on Behalf of the Legal Person

The TCC does not regulate the qualifications of the real person who will act on behalf of the legal person. It is a controversial issue whether the requirements which are set for the members of BoDs are applicable to the designated real person or not.

The right to designate the real person solely belongs to the legal person and not to the GA. It is not allowed to designate the real person by inserting a provision into the Company's AoA.

The members of the BoDs or the Company itself do not have a right to object the designated real person. Nevertheless, if there is a valid reason, the Company may ask the legal person to change the real person and besides, if the conditions are met, the company may file a legal action for the alteration.

Termination of the Legal Person's Membership in the BoDs

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Expiration of the Term of Appointment

BoDs members are elected for a term of not more than three years. Unless otherwise specified in the AoA, board members may be re-elected.

Dismissal from Appointment

Even if the members of the BoDs are appointed by the AoA, they can always be dismissed by the resolution of the GA if it is on the agenda or if there is a just cause even if it is not on the agenda of GA meeting.

The JSC and its BoDs may be affected by the structural changes of the legal person in cases such as merging and division. These changes may be evaluated as valid reasons for dismissal from the board membership. Furthermore, dismissal of the Board membership in case of a structural change might be regulated in the AoA.

Resignation

The declaration of resignation needs to be received by the company to be effective and to bear its legal consequences.

Even if the resignation of the board member is not registered and announced, the member will not be responsible for the public debts which will arise from that moment until the company receives the resignation. The goodwill of third parties is maintained until the registration and announcement of the resignation has been made.

The real person does not have the right to resign from membership of the BoDs unless he / she receives special authority and instructions from the legal person.

Bankruptcy of the Company

If a board member is a legal person and goes bankrupt or placed under interdiction, or if it loses the legal conditions or the qualifications required to be a member stated in the AoA, the membership shall terminate automatically.

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The Membership of Public Legal Entities in BoDs of JSCs

In a company where state, special provincial administration, municipality or other public legal entities are shareholders, these or their real person representatives shall be elected as a member of BoDs. In the companies where BoDs consists of more than two members; more than one real person may be elected as Board members in order to represent the public legal entity provided that all of the board members are not the representatives of the same public legal entity.

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