

Board of Directors' Authority to Represent a Joint Stock Company

Introduction

Joint Stock Companies (“JSC”) are managed and represented by its Board of Directors (“BoD”). Management and representation powers granted to the BoD are regulated under Article 365 of the Turkish Commercial Code (“TCC”) whilst exceptional provisions in the law are reserved. This article briefly reviews the scope and limits of the BoD’s authority to represent a JSC under the provisions of TCC.

1

Scope and Limits of the Authority to Represent

In order to understand the scope and the limits of this authority, one has to understand the principle of *ultra vires*. According to this principle, departing from the objectives of a company, as specified in its Articles of Association (“AoA”), can only be done to the extent permitted by the law. Hence, if a company enters into a contract beyond the powers of the BoD, then the said contract is void and not legally binding for the company. So, as per the former Turkish Commercial Code (Law No. 6762), contracts concluded by a company that were beyond its scope and field of activity were legally deemed void.

However, this principle led companies to provide detailed explanations as to their fields of activity in their AoA and also in their trade names allowing them to carry out their transactions on a wider range. The principle of *ultra vires* has been abandoned with the new TCC, which came into force on July 1, 2012.

According to the Article 371 of TCC, the scope of authority to represent is limited with the purpose and the scope of the activity of the company. Those who are authorized to represent may carry out, on behalf of the company, all kinds of business and legal transactions within the purpose and scope of activity and further, may use the trade name of the company for this purpose. The company's right to recourse for damages arising from transactions contrary to law and the AoA is reserved.

Nonetheless, due to revocation of the *ultra vires* principle in Turkish Law, the transactions which are conducted with third parties outside the scope of activity shall bind the company; if it is proved that the third party was aware or capable of being aware that the transaction is outside the scope of activity. However, the announcement of the company's AoA shall not be solely enough evidence to prove this matter.

Delegation of the Authority

2

Pursuant to Article 370 of TCC, unless otherwise stipulated in the AoA, the authority to represent belongs to the BoD and shall be exercised by affixing two signatures. However, if the BoD consists of only one member, authority to represent can be exercised by affixing one signature.

Authority to represent is not one of the non-transferable and inalienable authorities of the BoD. Even though the BoD has the authority, it can be delegated to certain people.

Capabilities of a BoD may be insufficient in a large-scale JSC and it might be relatively difficult for a BoD to officiate every single transaction. To overcome this problem, authority may be delegated to certain people.

Paragraph 2 of Article 370 states that the BoD may delegate its authority to one or more of its members as well as to third parties acting as manager provided that at least one board member keeps the authority. In other words, the authority to represent can be divided between the BoD members or can be delegated to a third person acting as manager together with a board member.

On contrary to the duty of management, authority to represent relates to legal relations of the company with third parties, therefore scope of delegation of this authority is limited. For this reason, at least one board member should possess the authority even if it is delegated to a third party acting as manager.

Additionally, the fact that the transaction which contradicts the AoA or the general assembly resolutions carried out by authorized persons shall not prevent third parties acting in good faith to raise claims against the company.

Legal Form of the Delegation

Article 370 is silent on whether or how the delegation of authority to represent will be reflected in the AoA or internal directive. The legal form of the delegation is not clear, and this leads to discussions which mainly occur because of separate regulation of delegation of the management and representation in TCC. Although controversial, it is generally accepted that the process regarding the delegation of the authority to represent should be in line with the procedure defined in Article 367 of TCC which regulates the delegation of the management. Accordingly, delegation of the authority to represent should be stated in the AoA and indicated in the internal regulation of the company.

Pursuant to the Article 372 of TCC, authorized persons entitled to sign on behalf of the company shall affix their signatures under the trade name of the company.

Registration and Announcement

The registration and announcement process regarding the delegation of the authority to represent are regulated under Article 373 of TCC. The BoD shall submit the notarized copy of the resolution indicating the persons authorized to represent and the forms of representation to the trade registry for registration and announcement.

Following the registration of the authority to represent at the trade registry, claims about invalidity of the election or appointment of the

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authorized persons may be raised by the company against third parties only if is proven that the invalidity is known by them.

GURULKAN ÇAKIR AVUKATLIK ORTAKLIĞI

Polat İş Merkezi, Offices 28-29
Mecidiyeköy 34387
Istanbul, TURKEY

T +90 212 215 30 00
M info@gurulkan.com
W www.gurulkan.com



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