

Dismissal of Board Members in Joint Stock Companies

Introduction

A member can be removed from the Board of Directors by way of dismissal which prevents the dismissed member engaging in transactions using the name of the Joint Stock Company (“JSC”). This article briefly explains the scope and procedure of the dismissal of board members in a JSC.

1

Scope and Procedure

Dismissal of the board members in a JSC is regulated under Turkish Commercial Code (“TCC”, Law No. 6102). As per Article 408/2 of TCC, the General Assembly (“GA”) has the sole power to appoint and dismiss the board members. This is a non-transferable power granted to GA and cannot be limited with Articles of the Association (“AoA”).

The scope of the dismissal is regulated under Article 364 of TCC which provides two options for the dismissal procedure. The agenda of GA meetings is binding for GA resolutions and this principle is called “adherence to the agenda”. Pursuant to TCC, board members can either be dismissed by a GA resolution according to the item about dismissal in the agenda or with a just cause even if the dismissal is not in the agenda of the GA meeting.

GA meetings are held as ordinary or extraordinary meetings. Shareholders' ordinary GA meetings should be held within three months following the end of each accounting year. Shareholders'

extraordinary GA meetings, on the other hand, shall convene upon Board of Directors' ("BoD") call or upon shareholders' call who make up at least one tenth of the capital or upon shareholders' call who make up at least one twentieth of the capital in public JSCs. Unless a heavier quorum has been set in the AoA, GA meeting quorum is set at not less than 25% of the share capital. Decision quorum is the majority of the votes. However, heavier quorum can be specified with the AoA and these quorums also apply for the resolution of dismissal.

Dismissal under Agenda

Pursuant to TCC, the agenda of a GA meeting is determined by the persons calling for the meeting. Accordingly, if the meeting is convened upon BoD's call, the BoD will determine the agenda. Likewise, if the meeting is convened upon shareholder's call then shareholders will determine the agenda.

Article 364 of TCC stipulates that board members can be dismissed if there is an item related to a dismissal in the agenda. On the other hand, dismissal of the members of the BoD are deemed to be related with debates of the year-end financial statements. Thus, the GA will be able to dismiss a board member if there is an item in the agenda regarding the debates of the year-end financial statements.

Dismissal with a Just Cause

Dismissal for just cause is an exception to the rule of adherence to the agenda. A board member may be dismissed if there is a just cause even if the dismissal is not included in the agenda of the GA meeting. TCC does not contain any limitation or definition regarding the just cause. Nevertheless, preamble of Article 364 provides some examples for just cause such as corruption, inadequacy, violation of duty of loyalty, inability to perform duties, being a board member in several companies, discord or abuse of power. However, personal opinions or political opinions are not regarded as just cause especially for an efficient member of the BoD.

Dismissal of a Legal Entity Representative from BoD

Legal entities may become a BoD member in accordance with Article 359. In such case, legal entity will be represented by a real person who is elected by the legal entity. This real person can also be a subject to a dismissal. In such cases, not the GA but the legal entity has the authorization for the dismissal. In other words, a representative can only be dismissed by the legal entity.

Right of Objection for the Dismissed Board Members

Dismissed board members have a right of objection under three circumstances:

First, TCC allows dismissal with just cause even if the dismissal was not in the agenda of the GA meeting. In that case, dismissed board member can assert that the dismissal was unjust.

Second, the GA has a right to dismiss the board member even without a just cause if the dismissal is in the agenda of the meeting. Dismissed board member can only assert that the meeting and decision quorums are not met and accordingly the dismissal is unlawful.

Third, a board member can demand cancellation of the GA resolution and claim for damages in a case when there is no item in the agenda and there is no just cause for dismissal. This claim can be made on the grounds of nonfulfillment of the provision.

TCC clearly reserves the right to compensation. If the causation between the damage and the fault is proven, the dismissed board member will be entitled to a compensation. The scope of the compensation only involves the damage arising from unjust or unlawful dismissal.

GURULKAN ÇAKIR AVUKATLIK ORTAKLIĐI

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

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



Gurulkan Çakır Avukatlık Ortaklığı ("Gurulkan Çakır") is an attorney partnership registered at Istanbul Bar Association with a license number 105 and at the Union of Turkish Bar Associations with a license number 206.

This publication provides general information only and should not be relied upon in making any decision. It is not intended to provide legal or other advice. Gurulkan Çakır and its partners will not be liable for any loss or damage arising from reliance being placed on any of the information contained in this publication.

Before acting on any information, readers should consider the appropriateness of the information provided herein, having regard to their legal and financial status, objectives and needs. In particular, readers should seek independent professional advice prior to making any decision.

This publication may not be reproduced, in part or whole, by any process without prior written consent of Gurulkan Çakır.
