

Appointment of Directors in Limited Liability Companies Under Turkish Law

Introduction

The director or the Board of Directors (“BoD”) is the management and representation body in Limited Liability Companies (“LLC”) while the General Assembly (“GA”) is the company’s decision-making body.

1 Directors are authorized to take decisions on all matters related to management that are not reserved to the GA by law or by the Articles of Association (“AoA”) and have the power to execute these decisions. There is no hierarchy between the GA and the BoD.

Under Turkish law, there may be at least one director or a board consisting of more than one director in an LLC. Directors are one of the compulsory organs of LLCs, and their absence is a reason for the dissolution of the company.

Directors can either be appointed in the AoA or by the decision of the GA.

1) Articles of Association

The management and representation of the company are regulated under AoA, and first directors must be named in the AoA at the incorporation phase of an LLC.

Pursuant to Article 623 of the Turkish Commercial Code (Law No. 6102, “TCC”), “The management and representation of the company

may be assigned to one or several shareholders or to all shareholders or to third parties within the AoA.” In addition, the article also regulates that at least one shareholder must hold the title of director.

The directors may be appointed for a certain period or indefinitely, and the term of office of the directors appointed for a certain period expires upon the specified term.

TCC adopts that the management and representation of the company shall be regulated by the AoA under the principle of elected management as in Joint Stock Companies (“JSC”).

2) General Assembly Decision

Pursuant to TCC Article 616/1/b, the appointment of directors is one of the non-delegable powers of the GA, and the GA shall decide on this issue with the majority of the votes represented at the GA meeting.

The GA is not required to exercise this power immediately as the first director(s) of the company is appointed in the AoA at the incorporation stage. When the term of the directors appointed by the AoA expire in any way, new directors must be appointed by the GA. In order for the GA to appoint directors, the term of the first directors do not necessarily have to be terminated; the GA may appoint new directors without the removal of the first directors who are appointed within the AoA.

Qualifications to be Appointed as a Director

1) *Being a Real or a Legal Person*

The directors of an LLC may consist of one or more real persons or legal entities. A legal entity can become a director, however, a real person must be appointed with full capacity by the legal entity for representation. Thus, the liability of the director legal entity arises from the acts of the real person acting as a representative.

2) *At least one of the directors must be a shareholder of the company*

Under Turkish law, a director may be a third person who is not a shareholder. However, TCC requires at least one of the directors of an

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LLC to be one of the shareholders. In the case of a single director, the director must be appointed from among the shareholders of the company, and in the case of a BoD, one of the directors must be appointed from among the shareholders of the company. Therefore, it is not possible to leave the management and representation of the company entirely to persons who are not shareholders.

3) Qualifications of a director

Provided that it is not contrary to the mandatory provisions, it is also possible to require certain qualifications by the AoA for the appointment. In this case, the persons who will be the directors will have to meet these qualifications in order to be appointed.

The directorship shall be terminated automatically for legal reasons such as in the event of the director's loss of capacity to act, bankruptcy, and for the reasons specified in the company's AoA such as an age limit.

GURULKAN ÇAKIR AVUKATLIK ORTAKLIĐI

Beybi Giz Plaza, Office 43
Maslak 34398
Istanbul, TURKEY

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



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