

Co-Option in Turkish Joint Stock Companies

Introduction

Pursuant to Turkish Commercial Code (Law No. 6102, "TCC"), the appointment of the Board of Directors (the "Board") of a Joint Stock Company ("JSC") is one of the inalienable powers of the General Assembly ("GA") therefore, Board members are appointed by the GA. However, in practice, it is not always easy for a GA to gather for a meeting. Accordingly, Article 363 of TCC grants an exceptional power to the Board, so called "co-option", that allows the Board to appoint a temporary Board member in case of vacancy to enable the Board to continue its activities without delay.

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Appointment by Co-Option

The Board must have the ability to take decisions in order to appoint temporary members to replace vacant members. In other words, the Board must have enough members to meet the quorum for meetings and decisions. In cases where the meeting and decision quorums are not met, i.e., when the Board no longer has the ability to take decisions, the GA must make the appointment(s) for the vacant board memberships. If the Board consists of one or two members, a vacancy in the Board results in an absence of one of the compulsory bodies, and therefore, co-option power cannot be used.

The Board using its co-option power is under the obligation to ensure that the temporary member is qualified for the position, and the shareholders in the GA have no such responsibility as they are exercising their natural voting rights.

A member is temporarily appointed by the Board and this member shall serve until the soonest GA meeting. The Board shall submit this member for the approval of the GA at the first meeting. The GA may approve or reject this appointment.

Duration of Appointment

If the GA approves the appointment, the member so appointed shall complete the term of his/her predecessor. If the term of his/her predecessor has already expired on the date of the GA meeting, the term of office of the temporary member shall also expire. In this case, the GA is free to re-elect the temporary member, or appoint a new member.

Until the approval of the GA, the temporary member is subject to the same rights, powers, responsibilities and obligations as the other members of the Board. Even if the GA decides to reject the appointment, all decisions and actions taken by the temporary member until that date shall be valid, and in this case, the decision of the GA shall take effect prospectively.

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Limitations of Co-Option Power

Although the Board has the power of temporary appointment, it does not have the power of dismissal as such power belongs exclusively to the GA. Therefore, temporarily member remains in office until the first GA meeting.

There is an exception with regards to the co-option power in cases where the representative of the public legal entity whose field of activity is public service, leaves his/her position of the Board for any reason. In that case, the relevant public legal entity has the power to make the appointment.

Co-Option in Limited Liability Companies

Co-option power is not exercisable for a Limited Liability Company ("LLC"). Such power cannot even be constituted by way of a provision to be stipulated under the Articles of Association of an LLC. Therefore, the Board of an LLC is not authorised to use co-option power.

GURULKAN ÇAKIR GÜNAY AVUKATLIK ORTAKLIĞI

Beybi Giz Plaza, Office 43
Maslak 34398
Istanbul, Türkiye

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



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