

Assignment of Representative Curator [Guardian] To Joint Stock Companies in Turkey Within the Framework of the Liability Lawsuit Against the Board of Directors

Author: Atty. M. Tarık Gülerüz

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Under Turkish law, the company is represented by the board of directors in lawsuits filed by or against the company. However, in some cases, a conflict of interest arises between the company's board of directors and the company. In such cases, assignment of a representative curator [guardian] – “Temsil Kayyımı” in Turkish, may be of use in order to ensure effective protection of the interests of the company, minority shareholders and creditors before the judicial authorities.

Curatorship [guardianship] is a provisional measure of protection aiming to fill the gap which occurs in case of failure to exercise the authority to represent or manage the company, with a person to be appointed by the court.

Under Turkish law, there are two different kinds of curatorship [guardianship]: [i] representative curator [guardian] and [ii] management curator [guardian]. A representative curator [guardian] is appointed by the court to exercise the representation authority when this authority cannot be used **temporarily** due to a factual or legal reason.

There are two typical examples where a need arises to appoint representative curator [guardian] in joint stock companies. First one is when all members of the board of directors filed a lawsuit for the annulment of the decision of the general assembly; and the second when a liability lawsuit is filed against all members of the board of directors.

It may be useful to examine the institution of representative curatorship within the framework of the liability lawsuits to be filed by the shareholders or creditors. All transactions that cause direct damage to a joint stock company are losses "**consequently**" incurred by shareholders and creditors, and thus they are granted a right to sue. The compensation to be ruled in this lawsuit, which is called "liability lawsuit", is paid to the company, and not to the plaintiffs. Since it is the board of directors who will pay the to the company, it is obvious that there may be a conflict of interest between the company and the members of the board of directors in this case.

It is therefore important to analyze whether it is necessary to appoint a representative curator [guardian] and/or a panel of curators by the court to intervene in the lawsuit and to represent the company in the lawsuit filed against all members of the board of directors due to indirect damages incurred by the minority shareholders and / or creditors. To sum up, many legal risks that may arise due to conflict of interest and abuse of dominant shareholder may be eliminated through the institution of representative curatorship [guardianship], by ensuring the representation of the joint stock company through an independent representative curator [guardian] during the course of the liability lawsuit.

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