

Restriction on the Authority to Represent in Turkish Joint Stock Companies Law

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Abstract

Turkish Joint Stock Corporations Law is based upon Swiss Law. Turkish Commercial Code of 2012 reflects a pure reception of the rules regarding the representation of the company from Swiss Law. However in 2014, Turkish Law has confronted the enforcement of Art. 371/7 TCC, which enables restrictions on the representation authority in terms of the material and monetary scope of the transaction. This study aims to bring a critical view of this regulation and to introduce a draft for a well-directed regulation with respect to restrictions related to power of representation.

Keywords: Joint stock corporation, representation, distinction between management and representation, internal regulations, delegation of representation authority.

1. Fundamental Structure of the Regulations in Turkish Law Regarding Representation of Joint Stock Corporations

Primary sources of Turkish Joint Stock Corporations Law are Swiss Obligations Law and regulations of European Union (TCC's Preamble, General Part, par. 7). In Turkish Law, more specifically in Turkish Commercial Code published in TOG dated 14.02.2011, numbered 27846 and enacted in 2012, representation of the company is ruled under Art. 329-563 TCC and is formulated in accordance with corporate governance principles (TCC's Preamble, General Part, par. 9; further Tekinalp, 2008, pp. 635-636; Eminoglu, 2014, p. 57 ff.; Demir, 2016, p. 43). In this respect corporate management and representation of the company is subject to detailed rules (Art. 359-375 TCC).

Turkish Commercial Code is an inherent part of Turkish Civil Code No. 4721 (Art. 1/1 TCC). Both Turkish Civil Code and Turkish Code of Obligations is subject to reception from Swiss Law. Thus, the interaction between representation in terms of General Obligations Law and corporate representation is the same in Turkish Law compared to Swiss Law. In General Obligations Law, the representative acts on the name and on behalf of the represented person (direct representation) or acts on his/her own name but on behalf of the represented person (indirect representation) (Oguzman & Oz, 2011, p. 223). On the other part, in terms of the corporate representation, the representative is the representative body of the legal entity and enables the legal entity to exercise its legal capacity. Since the transaction effectuated by the representative body of the legal entity directly and solely rises its legal effects on the legal entity, representation in terms of General Obligations Law and corporate representation are distinct mechanisms.

In general, rules regarding representation in Obligations Law are equivalently applicable to corporate representation unless there is a specific rule and provided that the nature of corporate representation allows such an analogy (Oguzman & Oz, 2011, p. 223; Kirca, Sehirali Celik, & Manavgat, 2013, p. 624). For instance, rules regarding unauthorized representation are thoroughly applicable to corporate representation. On the contrary, rules regarding the requirement for specific mandate are not applicable to corporate representation, since the representatives of a joint stock company, whose powers of representation are not limited by scope, may effectuate any kind of transactions (Kirca et al., 2013, p. 625) which fall within the field of operation of the company. That particular interdependence between the field of operation (specified in the AoA) and the authorities of the representative will be detailed in Section 4 below.

Thus, the authority of representation covers all kind of transactions within the field of operation. As the activity of the joint stock company starts to intensify and becomes more complex, a detailed regulation regarding representation is needed. From a general perspective, unless otherwise agreed, TCC provides the Board of Directors with the authority of representation in the broadest way.

In cases where the structure of the joint-stock company requires a detailed representation system, in two cases, certain breakdowns are needed: delegation of the representation authority to third persons outside the board of directors and limitation of the representation authority of the legal representatives.

The aim of this study is to focus on "limitation of the representation authority in terms of subject and quantity" within the context of limitation of representation authority in joint stock companies stipulated by Turkish Law differently from Swiss Law which constitutes the primary source of Turkish Joint Stock Company Law. In order to examine the subject, first, provisions regarding representation in joint stock companies under Turkish Law will be examined and such examination shall also include the legal provisions of Swiss Law regarding the matter. In the second stage, the interaction between the representation authority and the ultra vires rule will be discussed. Following the said discussion, the ways of delegating and limiting the representation authority will be explained. In the last section, as a provision accepted only under Turkish Law yet unrecognized by Swiss Law, "limitation of representation authority in terms of subject and quantity" will be examined and certain specific legal issues arising from such rule will be discussed.

2. General Overview of Legal Provisions Regarding Representation In Turkish Joint Stock Companies Law

2.1. Provisions Regarding the Board of Directors' Representation Authority

Apart from the limitation of representation authority in terms of subject and quantity, representation in Turkish Joint Stock Company Law is regulated parallel to Swiss Joint Stock Company Law. At this stage, not all legal regulations related to the representation in joint stock companies will be a part of this study; only the general and specific rules which are directly related to our subject will be addressed.

First of all, Art. 365 TCC, under the section regarding the management and representation of the joint stock companies, stipulates the main principle regarding representation of the company: *(1) The board of directors manages and represents the company. Exceptions prescribed in law are preserved.*

The distinction between management and representation established through this rule in Turkish Law (Kirca et al., 2013, p. 600). In brief, management is related with making decisions regarding the functioning of the company and representation serves to implement transactions with third persons on behalf of the company. Powers of management and representation may be attached to the same persons or not. In any case, management and representation is independent from each other, whereas each of these functions is subject to a different regime (Nisim, 2000, pp. 31-47).

The way to use the representation authority is prescribed in Article 370 TCC: *(1) Unless a different arrangement is set in the AoA or the Board is composed of a sole member, power of representation shall be exercised by the Board of Directors with joint signatures of two members.*

This rule reflects the general principle related to representation and further to stipulating that such power belongs to the Board, it also states that the representation authority shall be effectuated with two signatures of any members (Bilgili & Demirkapi, 2013, p. 383). Whether a different regime shall be arranged in the AoA is up to the discretion of the founders or later of the shareholders of the Company, who shall arrange or form a general assembly resolution to amend the AoA.

The limits of the scope of representation is designed in Art. 371/1 TCC: *(1) Those who are authorized to represent the company may effectuate, on behalf of the company, any kind of transactions within the scope of the field of operation and shall use the trade name of the company. The company is entitled to require compensation for its loss and damages arising from transactions breaching laws or the AoA.*

Abovementioned rule, which is reviewed in detail by Yanli and Okutan Nilsson (2014, pp. 6-42), is only valid unless the power of representative authority is restricted in terms of subject and quantity in accordance with the article 371/7 of TCC. Unlike the mandate contract between individuals, the legal representatives of the company are the competent body for its representation, hence, even the transactions that require special authorization such as arbitration, waiver, settlement and acceptance under mandate contracts, are included in the scope of their power of representation (Isik, 2015, p. 32). It should be noted that, for mandate contracts, Art. 504/3 OR stipulates that, unless granted with a special authorization, the Mandatary is not entitled to initiate a lawsuit, enter into a settlement, refer to arbitration, declare bankruptcy, request suspension of bankruptcy, request concordat, draw up a promissory note, donate, enter into a surety, transfer real property or restrict it with any kind of transaction.

2.2. Provisions Regarding the Delegation of the Representation Authority

Main principle regarding the transfer of representation authority under Turkish Law is as follows:

II. Representation Authority

1. General Overview

Article 370- (2) Board of Directors may transfer the representation authority to one or more executive board members or to third persons as executive directors. At least one member of the board shall have the authority to represent the company.

Art. 370/2 TCC, preserves the rule stipulated by Art. 718/3 regarding the authorization of at least one member of the Board to represent the company. In Turkish Law, on condition that Art. 370/2 is respected, it is allowed to delegate authority to other board members or to third persons outside the board to represent the company.

Board of directors is solely and exclusively entitled to decide whether to delegate the representation authority (Yanlı, 2013, p. 448). In line with Art. 716a/4 OR, Art. 375 TCC included the appointment of representative authorities within the exclusive powers of the Board of Directors. Before the entry in force of abovementioned rule, in Turkish law practice, Board of Directors used to provide the third persons, who are not members of the Board, authority to represent the company on a continuous basis which were also exceeding the individual matters. Such malfunction has been resolved by Art. 375 TCC (Kirca et al., 2013, p. 631-632).

If the transfer of representation authority is also accompanied by a restriction of representation authority, Art. 371/7 envisages the implementation of a special procedure which will be reviewed in the following section.

2.3. Provisions Regarding the Limitation of the Representation Authority

As parallel to Swiss Law, under Turkish Law there are certain methods to limit the representation authority such as "limiting the power to the transactions regarding the headquarter or branch offices" or "requiring joint signatures of authorized signatories". Additionally, specific to Turkish Law, the option to limit the representation authority in terms of subject and quantity is also included (Art. 371/7 TCC).

In cases where representation authority is not limited or only limited to "the transactions regarding the headquarter or branch offices" or "joint signatures", Board of Directors' resolution regarding the appointment of representative authorities and the limitations of representation authority shall be registered to the trade registry office.

4. Registration and Announcement

Article 373- (1) The board of directors 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.

The signature circular issued by the notary public with reference to abovementioned registration process is used in order to certify the authority of the representatives for transaction security. In parallel to Art. 718a/2, these two restriction options are regulated by Art. 371/3 as follows:

2. Scope and limits

Article 371-(3) The restriction on the representation authority shall not be effective against third parties in good-faith; however, the restrictions which are registered and announced in relation to limiting the authority to the transactions regarding the headquarter or branch offices or to exercise of authority by joint signatures are valid.

The said provision which is stipulated in the first version of TCC is also preserved by the amendment made to the TCC by Law number 6552, which is published in TOG dated 11.09.2014, numbered 29116, however, the rule regarding the limitation of representation authority in terms of subject and quantity has been introduced for the first time under Turkish Law by Art. 371/7 of the TCC.

Article 371- (7) The Board of Directors, with the exception of certain representatives referred to above, may appoint non-representative members of the Board of Directors or persons bound to the company by a labor contract as commercial representatives with limited representative authority or other commercial assistants. Powers and duties of persons appointed in this manner shall be clearly stated in the internal directive issued in accordance with Art. 367. In such case, the registration and announcement of the internal directive shall be mandatory. Commercial assistants or other commercial representatives shall not be appointed with the internal directive. Commercial assistants or other commercial representatives authorized by this paragraph shall be registered in the Trade Registry and announced. The Board of Directors shall be liable jointly and severally for any damages caused by these persons towards the company or third persons.

Such legislation had been introduced due to issues arising from the implementation of Art. 371/3 TCC which is designed in parallel with Art. 718a/2 (Akdag Guney, 2010, p.186 and footnote 538). In Turkish law practice, board of directors' resolutions and signature circulars regarding the distribution of representation authorities used to contain material and monetary limitations as well as limitations regarding "headquarter or branch offices transactions" or "joint signatures" (Akdag Guney, 2010, p. 538; Kirca et al., 2013, p. 640). For instance, classification of representation authorities under specific groups such as A, B or C and authorizing group B representatives only for "transactions up to 100,000.00 TRY" and group C representatives only for "transactions regarding the customs operations" used to be a common practice. In line with the explicit provision of the law, it was accepted that limitations in terms of subject and quantity (material and monetary limitations) shall not be binding for third parties. A number of trade registry offices suggested that material and monetary limitations had no field of application within the new legal structure introduced by TCC and rejected the registration requests with regards to board resolutions containing material and monetary limitations. Art. 371/7 TCC is introduced and put into force to address the said problem.

Below, after reviewing the new rule with regards to the interaction between ultra vires rule and representation, we will be examining the legal regime introduced by Art. 371/7 TCC.

3. Interaction Between Ultra Vires Rule and the Representation Authority

Prohibition of carrying out transactions outside the scope and field of activity of the company (*ultra vires*) under Turkish Law is abandoned by TCC (Uzunalli, 2013, p. 32-33; Helvacı, 2001, p. 82-83; Oğuzman, Selici, & Oktay Özdemir, 2015, p. 262; Bahtiyar, 2019, p. 50 ff.) in the light of provisions regulating the legal personality and the capacity of the joint stock companies:

Article 125- (1) Commercial companies have legal personality.

(2) Commercial companies are entitled to enjoy all rights and undertake all obligations within the scope of Article 48 of Turkish Civil Code. Judicial exceptions regarding this matter are reserved.

However, the provisions of two separate articles concerning the scope of business must be taken into consideration together. Firstly, according to Art. 210/3 of TCC, in case that transactions outside the scope and field of the activity are carried out on a continuous basis, the company shall be subject to termination sanction.

H) Regulatory and Supervisory Authority of the Ministry of Customs and Trade

Article 210-... 3) The Ministry of Customs and Trade may initiate proceedings for termination against commercial companies engaged in transactions or in preparations to carry out such transactions that are contrary to public order or to their field of activity or against companies engaged in collusive works and activities within one year following the uncovering of such transactions or preparations. Legal provisions stipulated in specific laws are reserved.

The prevailing view among scholars is that Art. 201/3 of TCC is only applicable in cases where operations outside the scope and field of activity are carried out on a continuous basis (Uzunalli, 2013, p. 148). Thus, a distinction is made between the individual or continuous operation of transactions outside the scope of business activity. The consequence of the individual transactions carried out contrary to ultra-vires rule is regulated by Art. 371/2:

2. Scope and Limit

Article 371-... (2) The transactions, which are conducted with third parties outside the scope and field of activity by those who are authorized to represent, shall bind the company; unless it is proven that the third party was aware that the transaction is outside the scope and field of activity or they were capable of being aware given the circumstances. The announcement of the company's articles of association shall not serve as sufficient evidence alone to prove such knowledge of the third party.

As seen above, transactions carried out contrary to ultra vires rule are no longer considered related to qualification and legal personality issues under Turkish Law and they are now subject to consequences of representation without authorization.

In those periods where the ultra-vires rule had a strict application in Turkish Law, legal transactions executed contrary to ultra vires rule were legally deemed void which was posing a serious threat to the transaction security (Bahtiyar, 2001, p. 121; Uzunalli, 2013, pp. 12-15). Therefore, giving green light to transactions contrary to ultra vires rule by Art. 125 TCC while determining the legal capacity of rights and obligations of companies, is considered as a positive improvement by both scholars (Gucluturk, 2015, p. 272; Bilgili & Demirkapi, 2013, p. 53-54) and practitioners. However, Art. 210/3 of TCC which enables the Ministry of Trade to initiate proceedings for termination of the company in case of continuous transactions outside the scope and field of activity demonstrates that the legislator still attributes a value and function to the scope and field of activity of companies. With regards to individual transactions carried out contrary to ultra vires rule, the effect of such function is to bring along the consequences of unauthorized representation.

In our opinion, Art. 371/2 TCC is an accurate regulation, even though it contradicts with Art. 125 TCC. Undoubtedly, in the modern Company Law, the ultra-vires rule is gradually losing its effect (Bahtiyar, 2001, p. 123-124; Bilgili & Demirkapi, 2013, p. 53-54), and it preserves its importance only with regards to companies that are subject to the State supervision which require special authorizations for their establishment and any amendments to be made to their articles of association. However, joint stock companies that are not subject to any authorization also need protection against transactions outside the scope and field of activity. Although it might be suggested that such need is already satisfied with the provisions regarding the personal liability of board members, the preventive restriction imposed by the legislator within Art. 371/2 may serve to such purpose in a more effective way. However, several authors evaluate this norm as a "ruins" of *ultra vires* (Moroglu, 2005, p. 140; Kendigelen, 2012, p. 122; Bilgili & Demirkapi, 2013, p. 54).

In practice, the inconveniences caused by the said provision for the company may be overcome by elaborately designing the scope and field of activity in the articles of association. Likewise, any inconvenience for the counter-party of the legal transaction may be overcome by reviewing the relevant provisions of articles of association regarding the company's scope and field of activity prior to the execution of transaction. In the event that such transaction is carried outside the scope and field of operation without taking aforementioned measures, the unauthorized representation rules (Art. 46, 47 TCO) shall apply.

4. Delegation and Limitation of the Representation Authority

Unlike limited liability partnerships, in joint stock companies board of directors are entitled to appoint the representatives of the company. In practice, following its election by general assembly, board of directors shall convene and appoint the president and the vice-president and shall also take a resolution regarding the representation authorities. At least one board member must maintain the authority to represent the company (Art. 370/2 TCC). In cases where there is a sole director authorized to represent the company, the said member's authority to represent the company can only be restricted with requirement of joint signatures.

In cases where representation authority is delegated to specific members of the board instead of any two directors or delegated to third persons outside the board in accordance with Art. 365 TCC, provisions regarding transfer of the representation authority will apply. In all cases within the scope of the said situation, the representation authority is being taken away from board of directors and transferred to specific member(s) or to third persons outside the board (Pulasli, 2015, p. 1105). Transfer of representation authority is effectuated through a board resolution. With such a resolution, the legal regime of "representation of the company with the joint signatures of any two members of the board" is abandoned.

In the event that while being delegated, the representation authority is also restricted, this time a distinction must be made regarding the method to be followed. If the representation authority is being limited to “transactions of the headquarter or branch offices” or “requirement of joint signatures”, in this case both transfer and restriction may be effectuated through a single board resolution (Akdag Guneş, 2017, p. 114; Sener, 2017, pp. 377-378). Whereas, in case of introducing material or monetary limitations to the representation authority, an internal directive must be prepared in compliance with Art. 371/7 TCC. This matter will be discussed in detail in Section 5.

The essence of the limitation of representation authority lies within economic reality. Various factors such as the scope of activity of the company (Kirca et al., 2013, p. 628), its complexity and the geographical extent of these activities require appointment of a large number of representatives on one hand and surveillance over these appointed representatives on the other. The fact that management and representation are separated (Akdag Guneş, 2010, p. 168 ff.) does not constitute alone a sufficient guarantee in terms of controlling whether the representatives act in accordance with the resolutions of the managers.

If the representative is granted a significant liberty to act on its own initiative, the risk of financial indebtedness for the company becomes more severe. Since not every joint stock company is investing on effective reporting systems, such lack of reporting impedes also the functionality of internal audit (Ozkorkut, 2013, p. 29-30; Kayihan, 2011, p. 25 ff.). As we have already pointed out, the legal regime for the personal responsibility of the organs of the company (managing organs and representative organs) always steps in later and it does not promise effective results, yet again some scholars point out the relative preventive function of civil liability regime (Akdag Guneş, 2010, p. 44; for the legal nature of the civil liability for board members please see Camoglu, 2010, p. 13 ff.). Therefore, the most effective solution to keep the use of such authority under control is to limit the representation authority along with its transfer.

Both Art. 718a OR and Art. 371/3 TCC stipulate that solely limitations of representation authority regarding “transactions regarding the headquarters or branch offices” or “requirement of joint signatures” may be claimed against third parties. In the first version of Turkish Commercial Code, no other regulations regarding the limitation of representation authority were included. However, the necessities in practice, impelled the legislator to regulate material and monetary limitations as well. Such limitations in terms of subject and quantity shall be implemented through a special procedure and by the virtue of their registration and announcement, they may be claimed against third parties to eliminate their good faith. To be more specific, in the event that a representative exceeds the scope of its authorization which was limited in terms of subject and quantity by an internal directive prepared in accordance with Art. 371/7 and duly registered and announced at the trade registry, the excess part of such transaction shall not be binding for the company.

5. Limitation of Representation Authority in Terms of Subject and Quantity and Issues Arising from Its Implementation

5.1. Criticism of Flaws in the Legal System

The legislator while drafting Art. 371/7 TCC, confused the concepts of “management with representation” on one hand and “joint stock company with commercial enterprise” on the other. Whereas TCC numbered 6102 is drafted by a legal committee composed of scholars and expert practitioners, the Law numbered 6552 which puts TCC into effect, has severe contradictions regarding the legal terms. Several authors have made similar criticism of the use of concept (Kirca, 2014, p. 37; Akdag Guneş, 2014, pp. 1-2; Gucluturk, 2015, p. 277).

Firstly, the representative to be authorized along with several material and monetary limitations must be still considered as a representative body of the corporation. Therefore, it is definitely inappropriate to denominate the representatives with limited authorities as “commercial agent” or “other associates of the merchant”. Secondly, another incorrect approach is to suggest that limitation of the representation authority in terms of subject and quantity shall be effectuated through an internal directive to be prepared in accordance with Art. 367 TCC.

Art. 367 TCC regulates the delegation of management powers through a board resolution provided that there is an article permitting such delegation in the articles of association of the company (Pulasli, 2015, p. 1007; Dogan, 2011, p. 125; Altay, 2012, p. 170; Unal, 2014, p. 121). Transfer of management powers indicates a total or partial transfer of management authorities to certain board members or to third persons outside the board and from certain perspectives it is different from transfer of representation authorities.

Firstly, whereas a provision in the articles of association of the company that allows transfer of the management powers is compulsory to effectuate a transfer of management powers (Kirca et al., 2013, p. 599 ff.); such an article is not required for transfer of representation authority (Yanlı, 2013, p. 448; Kirca et al., 2013, p. 627; also see p. 600-601; Gucluturk, 2015, p. 274). We should note that Bahtiyar (2019, p. 234) criticizes the current regulation and points out the need for a new one, which would require a basic AoA clause for the delegation of representation powers and Tekinalp (2013, No. 12-75) claims that such clause is already *de lege lata* required. Moreover, management authorities may be transferred as a whole to third persons outside the board whereas transfer of representation authority cannot be completely transferred to third persons outside the board (Kayar, 2015, pp. 444-445). As a last point, the internal directive regarding the management authorities is not subject to registration and announcement at the trade registry (Altay, 2012, p. 174). However, material and monetary limitations on representation authority must be registered and announced. Once these differences are taken into consideration, the reference made to the internal directive regarding transfer of management powers is incorrect as to the internal directive to be prepared within the frame of Art. 371/7 TCC regarding the transfer of representation authority.

On the other hand, it is definitely unnecessary to emphasize that the said internal directive is not a means of appointment of commercial agents or associates of merchant since it is an internal directive concerning the limitation of representation authority in terms of subject and quantity.

Lastly, stipulation in Art. 371/7 TCC indicating that the board of directors shall be liable for any damages caused by representatives with limited authorities towards the company or third persons is of no significance. The legislator, at this point, seems to have abandoned the distinction between management and representation adopted by Art. 365 TCC in parallel with Swiss Law. However, as is known, whomever authorizes a representative to carry out a specific transaction, the same board member or director shall also be held directly and personally liable for any damages caused by the said transaction whereas other members of the board and directors shall only be held liable within the scope of their surveillance task. According to this, if a representative is granted authority to decide and perform a specific transaction at its own discretion, in case of any damages arising from such transaction the representative shall be directly held liable for the damages caused (Altay, 2012, p. 113, 195). However, if the said decision has been made by another director, the representatives shall only be held liable due to their warning duty arising from their managerial position either in board or in the company itself.

5.2. Our Suggestion Regarding A New Draft Article in Terms of Restriction of Representation Authority

In the light of perspective we pointed out above, the legal structure regarding the limitation of representation authority must be approached in a systematic way in Turkish Law and regulated by a new legal provision. In our opinion, characteristics and scope of such regulation should be explained as follows:

All limitations regarding the representation authority must be regulated within the frame of a unique legal provision, on a common ground.

An explicit provision of law must be introduced by the legislator in order to clarify whether registration and announcement of such limitations is sufficient to eliminate the good faith of third parties.

In case the representation authorities will be regulated by an internal directive, it must be drafted separately from the internal directive regarding the transfer of management authorities.

In the draft legislation to be prepared, a meticulous distinction between management and representation matters must be included.

Any attempt to regulate liability matters within the provisions of law must be avoided, since, the legal structure regarding the personal liability of board members and directors is already regulated in a detailed way in Art. 553 TCC ff. in compliance with Art. 752 ff. OR.

Within the lights of these principles, we present hereinbelow our draft law article regarding the limitation of representation authority. The said draft article is solely related to limitation of representation authorities and therefore during its entry into force, all other provisions regarding the representation must be preserved.

5.3. Draft Law Article- Limitation of Representation Authority

(1) The representation authority may be limited according to the following methods: Requirement of joint signature, limitation to transactions regarding the headquarter and branch offices, limitation in terms of subject and quantity.

(2) While introducing the limitation of the representation authority, only one, several or all of these methods may be adopted. In cases where there is a sole director authorized to represent the company, the said member's authority to represent the company may only be restricted by requirement of joint signatures.

(3) To regulate the representative positions which are to be created without any limitation to their authorities or through limitation of representation authority, an internal directive is to be prepared by the board of directors and it shall be registered and announced.

(4) In accordance with the internal directive, the board of directors shall determine the representatives that will be assigned in different representation positions and this decision shall also be registered and announced.

(5) The signature circular to be issued for the company shall include both the said internal directive (if there is any) and the board of directors' resolution regarding the appointment of a representative.

Conclusion

In the present study, we have examined Art. 371/7 TCC introduced in Turkish Law differently from Swiss Law with respect to limitation of the representation authority in terms of subject and quantity and the draft article that we suggest, is formulated within the scope of following principles:

All limitations regarding the representation authority must be regulated within the frame of a unique legal provision, on a common ground.

An explicit provision of law must be introduced by the legislator in order to clarify whether registration and announcement of such limitations is sufficient to eliminate the good faith of third parties.

In case the representation authorities shall be regulated by an internal directive, it must be drafted separately from the internal directive regarding the transfer of management authorities.

In the draft legislation to be prepared, a meticulous distinction between management and representation matters must be included.

Any attempt to regulate liability matters within the provisions of law must be avoided, since, the legal structure regarding the personal liability of board members and directors is already regulated in a detailed way in Art. 553 TCC ff. in compliance with Art. 752 ff. OR.

Abbreviations

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|----------------|---------------------------------------|
| AoA | Articles of Association |
| Art. | Article |
| Batider | Journal of Banking and Commercial Law |
| Ed. | Edition |
| IULR. | Istanbul University Law Review |
| No. | paragraph number |
| p. | page |
| par. | paragraph |
| TCC. | Turkish Commercial Code |
| TCO. | Turkish Code of Obligations |
| TOG. | Turkish Official Gazette |
| V. | volume |

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¹ Except for the article of Osman Gazi Gucluturk, which has been written in English, other titles of the sources of Turkish Law have been specified in English language.