



Turkey: How to Replace the Independent Auditor?

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I. General Overview

Under Turkish laws, companies that are subject to independent audit are determined based on certain criteria set forth by the legislators and those companies must appoint an independent auditor and have their financial statements audited by the independent auditor.

Independent auditor, as a rule, is appointed by the general assembly of shareholders of the company and then registered with the trade registry to become publicly available information. Independent audit is carried out based on an agreement that is executed between the independent auditor and the company seeking to receive independent audit services. Technically and legally, independent auditor should fulfil its duties and obligations until the end of the fiscal year in which it has been appointed and prepare an independent audit report reflecting its observations during the relevant fiscal year.

Independent audit agreement cannot be terminated unless it is in line with the Turkish Commercial Code (“TCC”). Accordingly, independent audit agreement may be terminated if (i) there is a just cause and (ii) the company files a lawsuit to dismiss the independent auditor. Parties cannot include further resignation and/or dismissal reasons in the independent audit agreement other than the ones already stipulated in the TCC. The reason why the independent audit agreement cannot be terminated easily is to prevent parties from terminating the agreement at their discretion. Although independent audit agreement may be terminated by the independent auditor in case of just cause, in this article, our aim is to take a deep dive into dismissal of the independent auditor by the company.

II. Removal of the Independent Auditor

In order to achieve the desired purpose of the independent audit envisaged in the laws, to ensure the independency, and to prevent arbitrary behaviour, certain restrictions are imposed on the dismissal of the appointed auditor. For this reason, the company is not eligible to directly dismiss the already appointed auditor. To do so, only certain persons that are listed in limited number in the TCC may file a lawsuit before the commercial court of first instance where the company’s headquarters is located within the prescribed time. This provides an assurance system for the independent auditor so that it would carry out audit activities without being under pressure and perform its obligations in accordance with the principles of independency and impartiality. It is worth mentioning that dismissal of the current independent auditor depends on appointment of the new one. In other words, the court should

simultaneously rule on dismissal of the current independent auditor and appointment of the new auditor so that the principle of continuity of the independent audit is protected.

Similar to the obligation of registration of the independent auditor appointment, Article 108/2 of the Trade Registry Regulation obliges the company to register the dismissal of the current independent auditor and appointment of the new one by the court.

According to Article 399/6 of the TCC, it is also possible to file a lawsuit for appointment of the independent auditor, if (i) the auditor cannot be appointed until the fourth month of the relevant fiscal year, (ii) appointed auditor rejects its duty or terminates the agreement, (iii) the resolution as to the appointment is cancelled or becomes null, (iv) the auditor cannot fulfil its duties due to legal or any other reasons or (v) the auditor is forbidden from carrying out its duties. In such cases, the ruling of the court regarding appointment of the auditor is final. Although Article 399/6 of the TCC explicitly states the court ruling is final, Article 399/4 of the TCC, regulating the lawsuit filed by the company, remains silent on this matter. In the legal doctrine, some opines that the Turkish lawmakers should have explicitly stated in Article 399/4 of the TCC that the court rulings are final, while others states that court rulings are final regardless of the Turkish lawmakers being silent on this matter.

III. The Term “Just Cause” for Dismissal

Article 399/4 of the TCC states that the court may only order dismissal of the independent auditor if there is a just cause. The term just cause is not explicitly defined under the TCC. Preamble of Article 399 of the TCC stipulates that “just cause” term mainly refers to the reasons related to the personality of the independent auditor such as professional inadequacy, deficiency in the knowledge, post-education training, lack of staff, experts, equipment, loss of reputation, etc. On the other hand, differences in opinions may only be accepted as a just cause only if the case at hand supports it.

As it may be seen Turkish lawmakers refrain from providing an explicit definition of the just cause term for dismissal of the independent auditor. Rather, they exemplify some just cause scenarios and delegate this duty to the doctrine and the courts. In this regard, Turkish law doctrine and courts consider the following as just cause: continuous diseases, accidents and the cases which cause independent auditor not to fulfil its duties, independent auditor’s rejection to carry out its obligations, negligent acts and malpractice.¹

IV. Who is Entitled to File the Lawsuit?

The persons who are entitled to file the lawsuit for dismissal of the independent auditor are listed in limited numbers in Article 399/4 of the TCC. Accordingly, (i) the board of directors

¹ Poroy/Tekinalp/Çamoğlu, p. 465. Istanbul Commercial Court of First Instance, E.2019/387 K. 2019/1245 T. 26.12.2019.



and (ii) the shareholders representing 10% of the total share capital (5% of the share capital in publicly-held companies) may file the lawsuit.

In line with Article 390/1 of the TCC, in order to adopt the decision on filing the lawsuit, board of directors should convene with the majority of its total number of members and take the decision with the majority of the members being present at the meeting, unless otherwise is stipulated in the articles of association of the company. As for filing the lawsuit by the minority shareholders, they should have voted against the election of the auditor at the general assembly, recorded the counter-vote in the minutes and been shareholders for at least three months before the general assembly meeting date as to appointment of the independent auditor.

V. Timing for Filing the Lawsuit

Article 399/5 of the TCC allows filing the lawsuit within three weeks as of publication of the independent auditor appointment on the Turkish Trade Registry Gazette. The law does not explicitly state whether it is possible to file the lawsuit after such three-week period. However, Turkish law doctrine is of the opinion that the board of directors and minority shareholders cannot file the lawsuit for dismissal of the independent auditor after completion of this period.²

VI. Conclusion

In order to protect independency of the auditor, termination of the independent audit agreement by the company is subject to strict rules. To do so, the board of directors or minority shareholders should file a lawsuit within three weeks as of the publication of the independent auditor appointment on the Turkish Trade Registry Gazette. The court may only rule on dismissal of the independent audit agreement, if there is a just cause and provided that dismissal of the current auditor and appointment of the new one are ruled simultaneously. Although the law does not define the just cause for dismissal of the independent auditor, its preamble includes samples for the just cause and moreover this matter has been delegated to the courts and doctrine, as it would be difficult to list each case that might constitute just cause for the dismissal.

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(First published by Mondaq on August 12, 2021)

² Poroy/Tekinalp/Çamoğlu, p. 464.