

[DOI: 10.20472/IAC.2015.018.132](https://doi.org/10.20472/IAC.2015.018.132)

EBRU TÜZEMEN ATIK
Karamanoğlu Mehmetbey University, Karaman

THE SINGLE-MEMBER BOARD OF DIRECTORS ACCORDING TO THE NEW TURKISH COMMERCIAL CODE

Abstract:

The New Turkish Commercial Code was adopted on 13 January 2011 and entered into force with the exception of certain provisions on 1 July 2012. The New Turkish Commercial Code introduced many important innovations and changes, of which, those related to the law of corporations stand out. Especially, many obstacles encountered by foreign investors when they attempt to establish corporations in Turkey were eliminated by the New Turkish Commercial Code. Among the changes in question are many practical and functional innovations, such as the acceptance of independent auditing upon the abolishment of the board of auditors, which was previously a department of joint-stock companies, and the obligation for companies to set up a company web-site.

The New Turkish Commercial Code has enabled the joint-stock companies to comprise one shareholder only, which, earlier, could have been founded by at least five shareholders. Another complementary regulation was also made in relation to the structure of the board of directors in joint-stock companies: The board of directors, previously required to comprise at least three members, could henceforth be formed by a single member. This situation is the result of and the obligation from regulations in Turkish Law decreeing the possibility to establish joint-stock companies by a single shareholder. However, the field of application for the single-member board of directors adopted to provide coherence with the single-shareholder joint-stock company is, in fact, not limited to only such companies; a single-member board of director can also be preferred in joint-stock companies with multiple shareholders.

This memorandum was prepared to indicate the conditions and principles for the formation of the single-member board of directors in joint-stock companies. Some of the requirements for the membership in a multiple-member board of directors are not stipulated for single-member board of directors in Turkish law. In addition, principles for the representation, meetings, and decision-making of the single-member board of directors are different from those of multi-member board of directors in various cases. For this reason, this work aims to discuss the single-member board of directors in the New Turkish Commercial Code in general terms, inasmuch as it differs from the multiple-member board of directors.

Keywords:

Single-member board of directors, joint-stock company, board of directors membership, single-shareholder joint stock company, representation of the company, management of the company, new Turkish Commercial Code, Turkish law of corporations

JEL Classification: K20, K29, K00

Introduction

The Former Turkish Commercial Code (the “former TCC” – Code No. 6762) which had been applied in Turkey since 1956 had undergone many changes and had become unable to respond to the needs. Therefore, a new commercial code has been prepared as a result of approximately 6-year study and it was adopted on 13.01.2011. The new Turkish Commercial Code (the “new TCC” – Code No. 6102) entered into force with the exception of a few exceptional provisions on 01.07.2012. The new TCC has brought extensive innovations in many aspects with regard to joint stock companies (JSCs).

Among these changes, the recognition of the possibility to establish a single-shareholder joint stock company (JSC) is an important development in terms of Turkish law. Whilst, a joint-stock company could be established at least five natural persons or legal entities during the period of old Turkish Commercial Code, henceforth, it can be established by one person¹. Previously, in order to complete the five people, giving place to partners who are actually non-shareholder partner, which is referred as “straw man”, has been a forced application method for those who wish to set up a joint-stock company. This situation has been involved as a formidable formality in front of foreign investors wishing to set up joint stock companies to invest in Turkey. On the other hand, this condition is also a major obstacle in terms of companies which will be established by legal entities such as foundations, associations and universities. From this perspective, in fact, a condition that occurs actually often has gained legal basis with the new Code by allowing the establishment of JSC. In this case, it is possible to say that the possibility of the establishment of single-shareholder JSC is a realistic and practical solution in terms of Turkish law².

Permitting the establishment of a single-shareholder JSC by law has brought about the possibility of establishing a single-shareholder board of directors (BoD). However, it can be applied to the single-member BoD in not only single-shareholder JSCs but also multi-shareholder JSCs. Nevertheless, it should not be made inferences due to the permitting to the single-member BoD that the appointment of a single-member BoD is compulsory for the single-shareholder JSCs. On the contrary, whatever the number of shareholders in a JSC is, there is no a lower or upper limits on the number of members of the BoD.

With the regulation, the BoD of JSC which must previously consist of three people, henceforth, has been freed to consist of the members who do not have the identity of BoD as de facto. The company's management and representation may be performed more easily and in a more practical way with the single-member BoD. In Turkish law, the main reasons in the adoption of the single-member BoD for JSCs are a) ensuring compliance with EU law by the adoption of the single-shareholder JSCs due to the application of the same rule by many EU countries like Germany and some other

¹ For further information about single-shareholder joint stock company please see Arslan, 2008, p. 123-176; Tekinalp, 2011, p. 69-104.

² The companies whose shares are listed in the stock exchange (publicly traded JSC) constitute an exception to this rule in accordance with the communiqué issued by the Capital Markets Board of Turkey. Because the numbers of members of the BoD in companies whose shares are listed in the stock exchange are set at a minimum of five with the communiqué of Serial IV No 56 (please see. Pulaşlı, 2015, p. 975-976, No. 142-143). Furthermore, according to Article (Art.) 23 of the Banking Law (Code Number: 5411): “The board of directors of any bank shall have at least five members including the general manager” (source:<http://webcache.googleusercontent.com/search?q=cache:P3KbGiJbR-kJ:www.tbb.org.tr/english/5411.doc+&cd=1&hl=en&ct=clnk&gl=tr>).

European countries like Switzerland and b) allowing the implementation of easier management methods at the main companies with the small JSCs (TCC Draft and Justice Committee Report, Docket No: 1/324, Preamble of Art. 359/a, p. 105). The following factors have been effective in bringing this opportunity: providing flexibility and convenience, and the thought that it would be beneficial to especially creating community, institutionalization and even in division with the professionalization (TCC Draft, Preamble of Art. 359/a, p. 105).

The single-member BoD was also recognized in the second subsection of 76th paragraph in German Stock Corporation Act³ as it is in the Article No 707/1 of the Swiss Code of Obligations⁴ which can be considered the source of Turkish Company Law. Similarly, it is arranged in British Companies Act that the BoD can be composed of one person but public JSCs have been kept an exception⁵.

The expression of single-member BoD may be found odd at first glance. Criticisms have also been introduced in Turkish law due to the giving name as "board" to the management organ consisting of a single member⁶. According to this criticism, the one-person entity must not be referred as "Board of Directors" but as "director" because now it is not a board at all or in its essence, it should be defined as "the managerial position" (Cevdet Yavuz, İbrahim Arslan, TTK Tasarısı Toplantıları, p. 637; Moroğlu, 2009, p. 159-160). While the new TCC was still in the draft stage, it was an explanation on this with Article justification (TCC Draft, The Preamble of Art. 559/1, p. 105). According to the justification; "it should not be thought that the expression of board with single person can create conflict because, the word of "board" here refers to an "organ", rather than a person. The meaning of multiple people of "board" has lost its emphasis day by day in the understanding of Modern Company Law. Single-member board may work with many committees and commissions and create a management organization". Indeed, the single-member BoD also works as "board" (Tekinalp, 2011, p. 117, §. 12-12). When it is a necessity, this BoD takes decision in the form of BoD decision as well. The use of these concepts without any change is appropriate for the term union. On the other hand, we suggest that the expressions which can be used as an alternative such as director and managing body are inadequate for explaining the purpose of the concept and expressing the position.

Due to the importance of single-member BoD in practice, their formation, decision-making, representation of the company, delegation of authority and responsibility will be tried to be examined below. Against the presence of numerous works discussed the BoD of JSCs in many ways, descriptions need to be done on the single-member BoD are also a lot. In this paper, it is aimed to provide information roughly about the differences of single-member BoD from multi-member BoD and the principles that govern the single-member BoD.

³ The first sentence of the second subsection of 76th paragraph in German Stock Corporation Act as follows: "Der Vorstand kann aus einer oder mehreren Personen bestehen".

⁴ In accordance with Article No 707/1 of the Swiss Code of Obligations: "Der Verwaltungsrat der Gesellschaft besteht aus einem oder mehreren Mitgliedern".

⁵ In accordance with Companies Act 2006, 154: "A private company must have at least one director".

⁶ Initially, the term of "the single-shareholder company", like "the single-member BoD", has been found odd and criticised because of being new in Turkish Law (Please see Aydoğan, 2012, p. 5-12 for a conceptual review and evaluation about the term of "the single-shareholder company").

I. The Benefits and Drawbacks of the Single-Member BoD

The possibility of the establishment of single-member BoD is particularly important in terms of ensuring compliance with the single-shareholder JSCs. However, as previously stated, the application field of single-member BoD is not limited thereto in the face of the possibility to be implemented in the multi-shareholder JSCs. Companies, in line with the requirements, are free to choose the appointment of single-member BoD regardless of the number of shareholders.

The single-member BoD is a practical solution in terms of functional use of duties and powers of BoD. Single person who is the member of BoD can take decisions easily and quickly, apply them by realizing meetings easily. Thus, inconveniences caused by disagreements can be disposed. The single-member BoD receives and gives instructions easily (Tekinalp, 2011, p. 117).

By opening an important door in terms of putting corporate governance principles into practice, the New TCC removed the requirement to have at least a share for BoD members (Çamoğlu, 2010, p. 5-6). As a result of this, the appointment of one person who is the member of BoD from outside provides the opportunity to be managed company by the professional people. In the cases that the only partner of JSC is natural person of public or private law, giving the company's management to a professional person is one of the outstanding benefits of this institution (Çamoğlu, 2011, p. 198).

In JSCs, conditions such as the difficulties in coming together for meetings of BoD and lack of opportunities for the occurrence of quorum for meetings (TCC art. 410/2) would not be concerned in terms of the single-member BoD. This situation will prevent deadlock in the operation of the JSCs.

The single-member BoD, as previously stated, is an appropriate tool for the companies managing their group with small JSCs. This case has gained deeper meaning especially in a system where board members can be legal entities (TCC Draft, The Preamble of Art. 359/a, p. 105). In particular, the single-member BoD offers an appropriate solution to the objective for the single-shareholder JSCs which are small, included in a group of companies, established for the purpose of direct investment of foreign capital (Tekinalp, 2011, p. 114). However, the appointment of the single-member BoD is possible for the all type of companies subjected to Turkish Commercial Code because of not having separation such as large and small for JSCs in Turkish Law.

In accordance with the provisions of the TCC; unless otherwise agreed, the members of JSCs' BoD can use their representative authority via the dual signature way. In contrast, it is possible to represent the company only with their signature for the member of the single-member BoD (TCC art. 370/1). This will provide a much more practical form of accomplishing to represent the company.

On the other hand, the possible drawbacks of the single-member BoD should not be ignored. The BoD's representative authority, which is used with double signatures as a rule, serves to provide being seen the transactions by two different perspectives, preventing authorities doing transactions in rush and doing them in more rigorous way. Whilst representative authority with a single signature can also be recognizable in the multi-member BoD, this authorization is used by only one member in the usual way in single-member BoD. In this case, the single member's reliability, professional knowledge and experience will be more important.

The attention of company in the election of the single member for BoD should be more than the election of members to the multiple-member BoD. Since this single member is individually responsible and competent on the issues such as decision-making, implementation and representation. In this case, although the company's the risks assumed in all these operations are essentially the same, the level of attention for the election of the single member should be higher.

II. The Requirements for the Establishment of Single-Member BoD

The conditions which are sought for constituting the BoD in JSCs, to the extent that corresponds to the qualifications, are also valid for single-member BoD. As these conditions may be consisted of only legal requirements, there have been additional conditions with the articles of association of the company.

It is possible to say that legal requirements have become flexible compared to the former TCC. Indeed, several conditions sought to become a member of the BoD eliminated with the new TCC. The condition of being a shareholder was required for the members of BoD in the former TCC. However, this requirement has found unnecessary and it was excluded from the new TCC. Henceforth non-shareholders can be chosen and served as a member of BoD. In other words, a board member no longer need not necessarily be a shareholder. Thus, it has been allowed for both the establishment of multi-member BoD in JSCs with fewer partners and the establishment of expert and professional BoD without resorting to artificial and fraudulent solutions (TCC Draft, The Preamble of Art. 359/b, p. 105).

Another important innovation in this regard, legal entities may henceforth be also a board member. In the provisions of the former TCC, it was accepted that the BoD of JSC could only consist of natural persons. In contrast, the new TCC allowed to legal entities to be member of BoD. In this case, the single member of the board could also be a legal entity. In case of a legal entity elected to the BoD; with the legal entity, only a natural person who is determined by the legal entity is also registered and announced on behalf of the legal entity (TCC art. 359/2). On behalf of the legal entity, only this registered person can attend meetings and vote. The used vote belongs to this legal entity.

In the companies owned by the state, special provincial administration, municipality, village and other public legal entities; mentioned legal entities or the representative natural persons of them can also be elected to BoD (TCC art. 359/5). In other words, there is no obstacle to the formation of the single-member BoD by public legal entity.

In accordance with the final version of the new TCC, the main condition to be searched for natural person who is the member of BoD of JSC is to have capacity to enjoy full (examiner and majority). If the member of BoD is a legal entity, this condition is also sought for the natural person who represents the legal entity (TCC art. 359/3).

The reasons for the termination of membership are obstacles to be elected as well (TCC art. 359/4). In this case, if the circumstances causing the termination of the membership of BoD are arisen initially, they emerge as obstacles to be elected.

The BoD of JSCs is appointed at the establishment phase by the articles of association. Then, instead of ending BoD, the new BoD is elected by the General Assembly. There are no barriers or differences in terms of having single-member BoD of a JSC at the establishment phase or later. General assembly in the single-shareholder JSC consists of a single person. This shareholder can appoint her/himself as the member of BoD or

select a BoD consisting of one or more people from the outside. Even the single shareholder can also set up a BoD composed of non-shareholders with her/him.

In the first version of the New TCC adopted by the Grand National Assembly of Turkey, some strict conditions for the formation of the BoD were included: Accordingly, at least one member authorized to represent in BOD must reside in Turkey and be a Turkish citizen. Furthermore, with the exception of the single-member BoD, it was obliged to have higher education for at least one quarter of the BoD. However, before the entry into force of the new TCC, these conditions abolished, as it should be, with Law No. 6335 dated 30.06.2012. In summary, there is no obstacle to be member of single-member BoD in terms of both non-Turkish citizens and any kind of education status.

III. The Duties and Authorities of the Single-Member BoD

A JSC is managed and represented by the BoD in accordance with the new TCC art. 365/1. All rights and authorities in this context are used by this single member in BoD. The single member of BoD can both take decisions alone and represent the company with only his/her signature. As stated previously, the presence of the single-member BoD in the representation of JSCs constitutes an exception to the double signature rule (TCC art. 370/1).

Due to the importance of their duties and authorities, many regulations regarding the joint-stock company's BoD have been included in the TCC. The implementation of some of these regulations to the single-member BoD is not possible because of the nature of them. While some provisions are regulated, the application field of provision is clearly stated with the statements like the exception of the single-member BoD (eg. TCC art. 370/1). However, an exception related to this is not shown in some provisions (eg. TCC art. 363/1, 366/1, 390, 392, 393). Owing to fact that what kind of solution that should be followed in such cases is not clearly determined by TCC, the solution of the issue would be left to practice and therefore to the practitioners.

The single-member of BoD may take the board decision at any time or place in which he/she wished (Çamoğlu, 2011, p. 206). Since the quorum for meeting and decision cannot be required in the single-member BoD, Article 390 of the TCC relating to the procedure of the meeting cannot also be applied on the single-member BoD.

Because of the nature of single-member BoD, the procedures like the election of the chairman and vice chairman are not applicable for this board as well. However, the single-member BoD can set up committees and commissions for the purpose of internal audit, the enforcement of their decision or prepared reports on issues to be submitted to her/him (TCC art. 336/2). Moreover, the single-member BoD can appoint commercial representatives and commercial agents (TCC art. 368/1). For the single member of BoD, it is not possible to delegate their authority of signature and representation completely in all these circumstances (Çamoğlu, 2011, p. 205). However, the delegation of authority rendered specific to the BoD by law is not possible in any way.

The delegation of management is arranged at Article 367/1 of the TCC. Accordingly, with a provision to be placed to the articles of association, BoD may be authorized to delegate their management partially or completely to one or more board members or to third parties based on an internal instruction organised by BoD.

The delegation of authority in JSCs took place in the Article 370/2 of the TCC. Accordance with this article, BoD may delegate its representative authority to one or

more executive directors or to third parties as a manager. However, at least one member of BoD must have the representative authority in pursuance of this regulation. In this case, it is not possible to delegate his/her representative authority for the single-member BoD because; this would mean that the single-member BoD will be completely devoid of its representative authority. Therefore, it has not been accepted by Article 370/2 of the TCC. In the case that such a need arises, the most reasonable solution is to select the person requested for representative authority as a member of BoD.

The Article 360 of the TCC which is the regulation for the representation of certain groups on the BoD also lost its function in the single-member BoD (for opposing views, please see Çamoğlu, 2011, p. 201-202; Poroy/Tekinalp/Çamoğlu, 2014, p. 442, No. 623f). As such, the Article 366/1 of the TCC which regulates the distribution of tasks in BoD is not applicable for the single-member BoD as well.

The prohibition of participation to negotiations in BoD is included with Article 393/1 of the TCC. According to this, the board member cannot participate in negotiations on the subject that non-corporate personal interests of the member or the personal and non-corporate interests of one of his/her upper and lower ancestry or up to third degree (including third degree) blood and beech relatives' interests of the member or his/her spouse conflict with company benefits. This prohibition also applies in the cases that not participating in negotiations of board member is the requirements of good faith. When such drawbacks are concerned in the single-member BoD, it has not been regulated how to act. However, this provision is unfit to be implemented on the single-member BoD. It must be noted that a similar situation is also relevant in terms of vote deprivation status (Please see TCC art. 436).

BoD members' prohibition of transactions with the company is regulated by the Article 395/1 of the TCC. Accordingly, board member, without permission from the General Assembly, cannot do any transaction with the company on behalf of itself or anyone else. Otherwise, the general assembly is entitled to argue the transaction as invalid. In contrast, it is not entitled to make such a claim to the opposite side of the transaction.

The prohibition of transactions with the company (and borrowing to the company) is valid for the single-member BoD as well. In case that the single member of BoD in the single-shareholder JSC is the single member; this procedure must be followed although there will be no practical importance of mentioned rule. On the other hand, the single member of BoD is assigned from the outside in a single-shareholder JSC or the single member of BoD in the multi-shareholder JSC cannot do any transaction without permission from the general assembly and this situation carries value in practice.

If this single shareholder is the single member of BoD in the single-shareholder JSC at the same time, the regulation on the prohibition of transactions with the company will not have a practical importance as well. Nevertheless, the board member will need to fulfil the procedural requirement that a decision must be taken as the general assembly decision before making transactions with her/his own. However, even if this is not fulfilled, asserting this may be considered as abuse of right due to the absence of a partner who will argue the void of the transaction.

The TCC is regulated BoD members' prohibition of competition in parallel with the former TCC. As per the Article 397/1, the related issues have been adapted as following: without the permission of the general assembly, the board member cannot a) make a transaction which is a type of commercial business within the company's

business subject on her/his own account or on someone else account, b) be a shareholder who has unlimited liability in a company dealing with the same type of commercial business. The company will have elective rights in case of behaviour contrary to the prohibition of competition. These elective rights are: claim a compensation or the transactions made instead of compensation is assumed to be made on behalf of the company, suing that the benefits arising from contracts made on third parties' account belong to the company. In the law, it is not clear who will choose the rights owned by the company to use. In this regard, taking decision on the elective rights by general assembly and representing the company in the court by representative trustee is the most appropriate solution method (Çamoğlu, 2011, p. 206-208; Pulaşlı, 2015, p. 1007, No. 238; Poroy/Tekinalp/Çamoğlu, 2014, p. 446, No. 623n).

IV. Civil Responsibilities of Board Members

The responsibility of the BoD' single member is usually the same as the multi-member BoD. If the board member violates liabilities arising from the law and the articles of association with his/her defects, he/she is responsible for the given damage. This liability is to the company, shareholders and the company's creditors (TCC art. 553/1).

The liability of board member is a defects liability. Board members can only be released from liability by proving their faultlessness. However, board members cannot be held responsible for contradictions or frauds, which are outside of their control, to the law or the articles of association (TCC art. 353/3). Board members must act with the care of a prudent manager in fulfilling their obligations. This liability also requires board members to act within "business judgement rule" (Çamoğlu, 2011, p. 208; Tekinalp, 2011, p.159, No. 12-118).

The principle of differentiated solidarity as regards the liability of board members in Turkish law was adopted by the New TCC. This principle states that each member is responsible for the damage at the rate of contribution to the formation of the damage (for further information please see Akdağ Güney, 2007, p. 1207 et sequences). In the single-member BoD, this principle can only be applicable in the case that the board member are also held responsible for the damage along with one or more other executives of the company (Çamoğlu, 2011, p. 211).

The company and each shareholder may request the compensation of the damage suffered by the company. Shareholders may request the compensation which is paid to only the company (TCC art. 555/1).

In case of bankruptcy of the company, the company's creditors will also have the rights to want the compensation of damage for the company. However, the request of the shareholders and creditors of the company is firstly claimed by bankruptcy administration (TCC art. 556/1).

The liability of BoD is operated through liability lawsuit. Authority in taking responsibility for the decision to open proceedings of liability lawsuit and the representation of company in the court belongs to the BoD which is the general competent organ. However, in the single-member BoD, the decision on this issue must be taken by the general assembly because it cannot be expected that the member will take the decision to open proceedings against himself. Again, if the single member is held responsible, this lawsuit will be filed by the new BoD elected to this position or a representative

trustee assigned by the court according to the provisions of the Civil Code (Poroy/Tekinalp/Çamoğlu, 2014, p. 447, No. 623ö).

V. The Termination of Membership in the Single-Member BoD

Provisions relating to the termination of BoD membership apply in terms of the single-member BoD as well. These cases are dismissal, resignation and instances of dissolution.

A. Dismissal

Board member can be dismissed at any time by the general assembly even if he/she is assigned with the articles of association. For this, a related substance should be on the agenda or it requires the existence of a justified reason even substances is not on the agenda (TCC art. 364/1). If the board member is a legal entity, this legal entity may be dismissed by the decision of general assembly whether it is a public or private legal entity. In addition, the legal entity which is the member of BoD has the right to change the natural person registered in its name at any time.

B. Resignation

Board member may terminate the contractual relationship between the company and itself through resignation as well. When the resignation of member reaches the company, it will have consequence. However, to be able to influence third parties, it requires registration and announcement of this transaction. The good faith of third parties is protected until it has been registered and announced.

C. The Instances of Dissolution

This is the expiry of term of office of BoD membership and the loss of the ability to be elected.

Board members are elected to serve for a maximum of three years. In case of expiry of the incumbency, board membership is automatically terminated. Provided that there is not a contrary provision in the articles of association, the same person can be elected again as a member of the BoD (TCC art. 362/1). In this case, as long as a contrary provision is not existed in the articles of association, there are no legal obstacles to elect the same person multiple times and/or consecutively as single member to the BoD. However, the re-election of the same person is not compulsory, of course.

The loss of the ability to be elected also requires the dissolution of BoD membership. Some of these reasons are included in the TCC. Accordingly, the membership of board member ends in the following cases; deciding the bankruptcy or the restriction of capacity of board member; and losing legal requirements for membership or prescribed qualifications in the articles of association (TCC art. 363/2). These circumstances are the cases of dissolution. In such cases, there is no need to take a further decision by the general assembly for the termination of membership. The bankruptcy of the BoD member of legal entity or the termination of the legal entity for another reason also finishes the membership (Poroy/Tekinalp/Çamoğlu, 2014, p. 364, No. 552).

In addition, the presence of cases of deprivation of the rights of Turkish Criminal Code also terminates the board membership spontaneously. As per the article 53/1 of Turkish Criminal Code, a person sentenced to imprisonment because of an intentional crime are deprived of being company managers until finishing the execution of

provision. If this decision is given and become final while board membership continues, the title of BoD membership falls spontaneously.

D. Election of New BoD Members

The new member or members of BoD are elected by the General Assembly in cases of the dismissal, resignation, the expiry of the term of board membership and the loss of the ability to be elected.

The discharge of membership in BoD is regulated in the article 363/1 of TCC. Accordingly, in case of a vacancy in the board membership for any reason, the BoD will choose a member who has eligibility requirements and will submit to the general assembly for approval. However, that provision is not applicable for the single-member BoD. In such cases, making arrangements for the appointment of an alternate board member has been proposed in the doctrine (Bahtiyar, 2008, TTK Tasarısı Toplantıları, p. 701-702). A clear solution method has not been introduced for this with TCC yet. Therefore, if the duty of the single-member BoD ends for any reason, the new member(s) will be elected by the general assembly which is the competent committee on this issue. In case of prolonged inability to elect a BoD, as per article 530 of TCC, the dissolution of company will come to the fore due to occurring the lack of organ (see also Poroy/Tekinalp/Çamoğlu, 2014, p. 355, No. 547a).

Conclusion

The single-member BoD is among the outstanding innovation in the field of company law of the new TCC. This innovation has become more meaningful with the opportunities of the appointment from outside (non-shareholders) to board membership and being board member for legal entities. Despite the need to be more cautious and careful in the selection of board member, the establishment of the single-member BoD provides management and representation opportunities to companies in more realistic, professional and practical way.

The single-member BoD is subject to the provisions that are brought about BoD in many aspects, to the extent consistent with the nature of it. Accordingly; the issues such as the appointment of, the term of office of, the responsibility of and the termination of the membership of BoD essentially is the same as the multiple-members BoD. Even though the provisions on the multiple-members BoD do not seem possible to apply to the single-member BoD in certain respects, these aspects are issues that either not need in cases of the single-member BoD or can be resolved by the high court jurisprudence in practice.

The given permission to establish the single-member BoD in JSCs is also significant in Turkey's EU accession process in terms of the harmonization of the laws with many European countries. Particularly, when provisions relating to the single-shareholder JSC are considered together with foreign investors wanting to invest in Turkey, the given permission to establish a single-member BoD can be considered as an important and realistic possibility. Moreover, the application field of the single-member BoD is not limited to the single-member BoD and hence this greatly expands the application field of this institution. Thus, companies subject to the TCC regardless the number of shareholder can be managed and represented from a single source and quickly without causing any disagreements by choosing a single-member BoD.

References

- AKDAĞ GÜNEY, N. (2007) Bankalar Kanunu'na Göre Yönetim Kurulu Üyelerinin Verdikleri Zararla Sınırlı Şahsî Sorumluluklarının İsviçre Borçlar Kanunu Art. 759'da Yer Alan Farklılaştırılmış Teselsül (Differenzierte Solidarität) ile Karşılaştırılması, Prof. Dr. Hüseyin Ülgen'e Armağan, Voume I, İstanbul 2007.
- ARSLAN, İ. (2008) Tek Kişilik Anonim ve Limited Şirket, Konya 2008.
- AYDOĞAN, F. (2012) Tek Kişi Ortaklığı, İstanbul 2012.
- ÇAMOĞLU, E. (2011) Anonim Ortaklıkta Tek Kişilik Yönetim Kurulu, Prof. Dr. Ata Sakmar'a Armağan, GSÜHFD, 2011/1, p. 197-212.
- ÇAMOĞLU, E. (2010) Anonim Şirket Yönetim Kurulu Üyelerinin Hukukî Sorumluluğu, 3rd Edition, İstanbul 2010.
- MOROĞLU, E. (2009) Türk Ticaret Kanunu ile Yürürlük ve Uygulama Kanunu Tasarıları, Değerlendirme ve Öneriler, 6th Edition, İstanbul 2009.
- POROY, R.; TEKİNALP, Ü. and ÇAMOĞLU, E. (2014) Ortaklıklar Hukuku I, 13th Edition, İstanbul 2014.
- PULAŞLI, H. (2015) Şirketler Hukuku Şerhi, Volume I, 2nd Edition, Ankara 2015.
- TEKİNALP, Ü. (2011) Tek Kişilik Anonim Ortaklık I, İstanbul 2011.
- TTK Tasarısı Toplantıları I-II-III (2008) Türkiye Barolar Birliği 25-26 Aralık 2007, Ankara 2008.