

## The Concept of 'Commercial Representative' under Turkish Law

---

### Introduction

Commercial representative is defined under Article 547/1 of the Turkish Code Obligations ("TCO") as "*the person who has been authorized, explicitly or tacitly, by the merchant to manage the commercial enterprise and to represent the merchant under the trade name in transactions relating to the enterprise.*"

1

Indeed, the commercial representative is so-called a "merchant assistant" entrusted with extensive authorities. The scope of authority of the commercial representative is the broadest compared to that of other type of merchant assistants (e.g. commercial agent), and his authority towards third parties cannot be limited by means of subject matter or by monetary thresholds.

In this article, we will explain how and by whom the commercial representative is appointed and dismissed, what transactions can be made by a commercial representative, and how and to what extent his powers can be limited.

### I. Authorisation of the Commercial Representative

#### 1.1. Competent Person/Body for Appointment

In legal terms, a commercial enterprise is owned or operated by a merchant, who may be a real person or a legal entity such as a

commercial company, foundation or association. Hence, the competent person/body for the appointment of the commercial representative varies depending on the legal nature of the merchant.

Naturally, real person merchants appoint the commercial representative by themselves. In case the commercial enterprise is operated by an ordinary partnership (e.g. a joint venture) consisting of multiple real persons and/or legal entities, the appointment must be made by unanimous decision of the partners.

As for the legal entity merchants, the explanations in this article will be intentionally confined to the “capital companies” (i.e. the Joint Stock Company and the Limited Liability Company), as they are the most common business formations preferred both by local and foreign investors.

### *>> In Joint Stock Companies*

In Joint Stock Companies, the authority to assign commercial representatives rests with the board of directors. Besides, the appointment of commercial representative is among the non-assignable and inalienable duties and powers of the board of directors, as per the Article 375/d of the Turkish Commercial Code (“TCC”).

In this regard, the board of directors cannot transfer such authority to the shareholders assembly nor can the latter take over such power. Any contrary decision taken by board of directors or shareholders assembly shall be null and void. Contrary provisions to be stipulated in the articles of association shall be null and void as well.

### *>> In Limited Liability Companies*

In Limited Liability Companies, the authority to assign commercial representatives belongs to the shareholders assembly. Unlike joint stock companies however, such authority is not exclusively vested in the shareholders assembly. Such power may be delegated to the manager(s) of the company through a special provision to be stipulated in the articles of association.

The manager (or the majority of managers) may suspend the commercial representative any time. If the commercial representative is assigned upon a decision of the shareholders assembly, the manager may immediately call the meeting of shareholders for dismissal.

### 1.2. Authorisation Procedure

Although extensive powers are granted to the commercial representative, the law does not prescribe a formal requirement for the authorisation. That means, a person can be authorised as commercial representative even by verbal declaration.

In practice, however, the authorisation is often made by way of a written power of attorney drawn up and attested by a notary public. Such a power of attorney is used as a proof towards third parties when making a transaction that falls within the scope of the commercial representation authority.

### 1.3. Registration Requirement

The authorisation of the commercial representative is required to be registered with the commercial register. Nevertheless, the liability of the merchant from the acts and omissions of the commercial representative is irrespective of the registration. In other words, the transactions made by the commercial representative on behalf of the commercial enterprise have a binding effect over the commercial enterprise whether or not the authorisation thereof has been registered. In this sense, the registration requirement does not constitute a validity condition for commercial representation.

For registration of the commercial representative, following documents must be submitted to the registry of commerce;

- (a) A notarized copy of the document regarding the appointment and scope of the powers granted to the commercial representative, and
- (b) A notarized signature specimen of the commercial representative as signed under the trade name.

The application for registration should be made within 15 days after the date of authorisation. The registration should also be announced in the commercial registry gazette.

### II. Scope of Powers

The legal scope of powers conferred upon the commercial representative is drawn in the Article 548 of TCO. According to the provision, the commercial representative, in dealings with *bona fide* third parties, shall be deemed authorised to draw up negotiable instruments on behalf of the merchant and carry out all types of transactions in line with the purposes (i.e. business fields) of the commercial enterprise.

In capital companies, however, transactions made by the commercial representative are not required to be in line with business fields of the company. This is because the outdated *ultra vires* doctrine has been discarded with the enactment of the new TCC in 2011. According to Article 371/2 of the TCC, transactions that do not fall within business fields of the company shall also be binding upon the company, unless it is proven that the third party knew or should have known of the transaction being outside the company's business fields.

Here, the burden of proof lies with the company. Moreover, the fact that the company's articles of association have been publicly announced does not constitute sufficient evidence by itself in terms of proving the third party's bad faith.

In this scope, the commercial representative may perform, including but not limited to, the following acts;

(a) to execute, perform and terminate a wide spectrum of contracts,

→ *e.g. sale contracts, construction contracts, employment contracts, rent contracts, insurance contracts, carriage contracts, license contracts, utility contracts, loan agreements, etc.*

(b) to transfer or pledge intellectual property rights, ships, motor vehicles,

(c) to accept payments,

- (d) to issue invoices and receipts,
- (e) to give surety or guarantee for securing third parties' debts,
- (f) to release debts,
- (g) to make donations,
- (h) to open bank accounts, make deposits and withdrawals,
- (i) to draw up or endorse negotiable instruments (i.e. bill of exchange, promissory note or cheque),
- (j) to file and follow up lawsuits and enforcement proceedings,
- (k) to request for provisional injunctions and attachment orders,  
or
- (l) to issue and submit tax declarations.

On the other hand, the second paragraph of Article 548 leaves some transactions over immovable property out of the scope. As per the paragraph, the commercial representative may not transfer or establish encumbrance on real property, unless he is expressly authorised for such transactions.

5 Such authorisation does not need to be granted for transactions where the commercial enterprise is the transferee of the real property. That is to say, the commercial representative may acquire real property or limited real rights on behalf of the commercial enterprise without specific authorisation.

### III. Limitation of Powers

Article 549 of TCO provides for the limitations that can be imposed on the powers of the commercial representative in terms of the transactions with third parties. The authority of commercial representative may only be limited with;

- (a) branch office (or headquarters) affairs, and/or
- (b) joint signature requirement.

Where the representation powers are restricted with joint signature requirement, the commercial representative's sole signature in transactions with third parties will not be binding on the commercial enterprise.

Aforesaid restrictions are effective *vis-à-vis* third parties only if they have been registered to the commercial register. Otherwise, such restrictions would be invalid against third parties acting in good faith.

Any other restriction other than those mentioned above, such as specifying monetary caps or allowing/prohibiting certain transactions, will not be effective towards *bona fide* third parties, even if they are registered.

Nevertheless, all kind of restrictions, regardless of whether they have been registered with the commercial register or not, are effective *vis-à-vis* third parties, if the third party knows or ought to know of the restriction.

#### IV. Revocation of Powers

As might be guessed, the dismissal of the commercial representative can be made by the same person/body that is competent to appoint him.

6 As per Article 550 of TCO, revocation of the commercial representation authority must be registered, even if the authorization has not been entered in the commercial register. The registration should be announced in the commercial registry gazette as well.

In comparison to the publicity of the authorisation, the publicity of the revocation of powers is of the utmost importance to the operation of the commercial enterprise. In case the revocation is not registered and published in the commercial registry gazette, the commercial representation authority remains in effect *vis-à-vis* third parties acting in good faith.

## GURULKAN ÇAKIR AVUKATLIK ORTAKLIĞI

Polat İş Merkezi, Offices 28-29  
Mecidiyeköy 34387  
Istanbul, TURKEY

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



---

Gurulkan Çakır Avukatlık Ortaklığı ("Gurulkan Çakır") is an attorney partnership registered at Istanbul Bar Association with a license number 105 and at the Union of Turkish Bar Associations with a license number 206.

This publication provides general information only and should not be relied upon in making any decision. It is not intended to provide legal or other advice. Gurulkan Çakır and its partners will not be liable for any loss or damage arising from reliance being placed on any of the information contained in this publication.

Before acting on any information, readers should consider the appropriateness of the information provided herein, having regard to their legal and financial status, objectives and needs. In particular, readers should seek independent professional advice prior to making any decision.

This publication may not be reproduced, in part or whole, by any process without prior written consent of Gurulkan Çakır.

---