

Legal and Penal Liability of Directors and Board Members According to the New Turkish Commercial Code

by Fatma Bilim

The New Turkish Commercial Code Law No. 6102 sets for the legal and penal liability of the company's directors/board members and/or responsible persons. Because appropriate knowledge in this field is extremely important for the companies' directors and responsible people, below, you can find a list of the most important liability provisions in the New TCC. The omission or incorrect action with regard to the following requirements becomes a basis for liability:¹

- The commercial books shall be kept in a way that they will form an opinion on third party experts during their inspection on the aforementioned books which shall be held within a reasonable period of time on the commercial undertaking's activities and financial status. Formation and development of the activities of the undertaking should be traced down from the books. (Art. 64/I 2,3) **(4.000 TL administrative fine)**
- The Merchant is obliged to keep a copy (such as a photocopy, carbonaceous copy, microfiche or computer records) of each document sent out in connection with his undertaking in a written, visual or electronic environment. (Art. 64/II) **(4.000 To administrative fine)**
- Books and other related records are kept in Turkish. In case of abbreviations, numbers, letters and symbols are used, their meanings must be clearly indicated. Writings in the books and other necessary records shall be adequate and true and shall be made timely and regularly. Any writing or record may not be deleted or crossed out to make the previous content illegible. Revisions are forbidden in case their timing, whether during the inserting of such record or afterwards, cannot be understood. Books and other necessary records may be kept by the way of filing of the documents determining matters and transactions or through data transporters. In case the books and other records are kept in electronic environment it must be ensured that the information is easily accessible and legible throughout the term they are being kept. In cases of electronic keeping the aforementioned provisions shall be applied by analogy. **(4.000 To administrative fine)**
- According to Article 86, a person who can submit documents mandatory to be stored only in a visual or any other data transporter is obliged to make available, at his own expense, auxiliary devices enabling such documents to be read. When necessary and at his own expense must have the documents printed and submit legible copies without having a need for auxiliary devices. **(4.000 To administrative fine)**
- According to Article 88, when preparing the individual or consolidated financial statements shall be made according to the Turkish Accounting Principles. **(4.000 To administrative fine)**
- Regarding affiliated and main companies, the board of directors of the affiliated company shall draw up a report within the first three months of the activity year on relations with the affiliated company. In the report, all legal proceedings performed with the main company or any of the affiliated companies or by the reason of these companies or to the interest of these companies as well as all measures taken or avoided by reason of or to the interest of such companies in the last activity year. The actions and counteractions in legal proceedings and the reasons of

¹ The foreseen punishments are given in parentheses at the end of each item.

measures, and the losses caused and the benefits provided through such measures shall be specified. It shall be indicated in detail how the losses have been balanced actually within the activity year of which rights to claim for which benefits have been vested to the company. (Article 199/I)

Each member of the board of the main company can at all times request from his own board of directors to have someone draw up a report, carefully prepared according to the accounting principles and that reflects the truth duly and fairly, on the financial status and assets of the affiliated companies and the results of quarterly accounts and the relations of the main company with the affiliated companies, of the affiliated companies among each other and of the main company and the affiliated companies with the shareholders and their relatives, the transactions they have carried out and the consequences and effects thereof, and request the report to be submitted to the board of directors and attached to the annual report and the audit report. Unless the affiliated companies evidence the existence of a justified reason as clearly as not to allow any interpretation, they shall submit the information and documents required for the drawing up of such report to the experts of the main company assigned for this task. The liability of the member of board making such a claim for the interest of another person reserved. (Not less than 200 days judicial fine)

- The shareholders are not allowed to borrow money from the company, insofar as the have not render the capital contribution and insofar as the reserve fund of the company and the profit is as high as the loss of the prior year. (Article 358) **(Not less than 300 days judicial fine)**
- According to Article 395, the board members who are not shareholders and the persons of the kinship in the direct line (antecedents, descendants or spouse of third degree blood relations; including third degree) and their wife/their husband are not allowed to borrow money from the company. The company itself is not allowed to give warranty, avail or guaranty or assurance, to assume responsibility or to take over the aforementioned persons debts. **(Not less than 300 days judicial fine)**
- The persons who prepare document and make commitments contrary to the law related to in-

corporation, capital increase, reduction of capital, merger, partition, conversion of status, or issuance of securities, without reflecting the facts in the real manner, shall be responsible from the damages caused by such dishonest acts and declarations concealing the truth; those who have participation in these activities shall also be held responsible if they are found faulty. (Article 549) **(Penalty for a period of time from 1 year to 3 years)**

- Those who show as if the capital is fully subscribed or paid although the case is on the contrary, as well as the authorized persons of the company, if they are faulty, shall be assumed to have undertaken these shares and are severally and jointly held liable for payment of the consideration, plus the incurred interest. Those who cast affirmative vote being aware of incapacity of the subscribers to pay consideration shall be responsible for the damage caused by failure in payment of this debt. (Article 550) **(Penalty for a period of time from 3 months to 2 years or judicial fine)**
- Those who appraise exorbitant price during appraisal of capital in kind, transfer of enterprises and revaluation of assets when compared with the precedents, or reflect the condition of the enterprise or property differently, or involve in a corruption in some other way, shall be responsible for damages encountered thereof. (Article 551) **(Not less than 90 days judicial fine)**
- To collect contribution from the public for incorporation of a joint stock company or capital increase without the consent of the Capital Market Board. (Article 552) **(Penalty for a period of time to 1 year)**
- Not to set up the obliged web-site or not to allocate a certain section of a current web-site with the obliged topics. (Article 1524) **(For the responsible board member, from 100 to 300 day judicial fine for the first topic and for the second topic to 100 days judicial fine)**

It is important that the companies and the companies' board members', directors' or responsible people to discuss the aforementioned requirements with a legal expert in order to understand the liability provisions and to ensure the compliance with the New Turkish Commercial Code.