

## THE LIABILITY of BOARD MEMBERS

### A) Liability under Turkish Commercial Code numbered 6102

The liability of Board members under Turkish Commercial Code numbered 6102 (“TCC”) is divided into two categories as legal and penal. Since there is no special regulation under TCC for independent board members, their liabilities are the same with other members.

#### a. Penal Liability

The penal liabilities of board members are regulated under Article 562 of TCC. The act and related penalty is indicated in table below:

Act	Relevant TCC provision	Penalty (Administrative Fine)
Refraining from keeping the company books and ledgers	64	TRY 4,000.00
Refraining keeping the copies of company documents	64	TRY 4,000.00
Refraining validating company books for opening and closing	64	TRY 4,000.00
Keeping the company books and ledgers at odds with TCC	65	TRY 4,000.00
Taking inventory unfitting to the procedure	66	TRY 4,000.00
Refraining from presenting documents that have been transferred to image and data carriers	86	TRY 4,000.00
Keeping single and consolidated tables at odds with Turkish Accounting Standarts	88	TRY 4,000.00

Act	Relevant TCC provision	Penalty (Imprisonment or Judicial Fine <sup>1</sup> )
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<sup>1</sup> Court imposes a judicial fine with a minimum of 20 and a maximum of 100 Turkish Liras per day (should not exceed 730 days unless otherwise stated in the laws) in accordance with the 52<sup>nd</sup> Article of the Turkish Criminal

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Refraining from keeping reports regarding affiliated companies	199	Judicial fine corresponding at least 200 days
Preventing the supervision of Ministry of Customs and Commerce or not presenting necessary books, records and documents to the supervisors	562	Judicial fine corresponding at least 300 days
Making a transaction with the company without the permission of the General Assembly	395/1	Judicial fine corresponding at least 300 days
Non-shareholder board members or their non-shareholder relatives up to the third degree with affinity by blood or marriage becoming indebted to the company in cash. The company becoming a guarantor for these people or giving guarantee and security to them, assuming responsibility for them or taking on their debts.	395/2	Judicial fine corresponding at least 300 days
Refraining from keeping company books or having company books that do not involve any records or not keeping these books in accordance with the TCC	562	Judicial fine corresponding at least 300 days
Revealing company secrets at		Imprisonment from 1 year to 3

Code. Judicial fines are recorded in a person's criminal records in accordance with the 4<sup>th</sup> Article of Judicial Records Code.

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odds with the procedure	527	years and judicial fine up to 5.000 days
Forging documents regarding matters such as incorporation, increasing or decreasing capital, mergers, demergers, changing company types or issuing securities and intentionally keeping company books with false records	549	Imprisonment from 1 year to 3 years
Misstating capital and knowing insolvency	550	Imprisonment from 3 months to 2 years or judicial fine
Fraud in the appraisal of company properties	551	Judicial fine of minimum 90 days
Collecting money from the public without consent	552	Imprisonment from 6 months to 2 years
Managing body members of a company that has not formed a website	1524	Judicial fine from 100 days to 300 days
Managing body members of a company that has not placed information that must be in the website according to procedure	1524	Judicial fine up to 100 days

### **b. Legal Liability**

In contrast with criminal liability, legal liability is not listed under a single article in TCC. Legal liability of the board members are set forth in a number of different articles. The actions and operations that result in legal liability may also give way to criminal liability. The legal liability of the board members arising from the TCC are as follows:

- ❖ Liability due to documents and statements that are at odds with the law (Art. 549)
- ❖ Misstating capital and knowing insolvency (Art. 550)

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- ❖ Liability due to fraud in the appraisal of company properties (Art. 551)
- ❖ Liability due to collecting money from the public without consent (Art. 552)
- ❖ Liability of the board members due to nonfulfillment of responsibilities arising from law or the articles of association and liability due to the actions of people whom they transferred duty and authority to (Art. 553)

The company and the shareholders may claim damages from the board members pursuant to Article 555 of TCC if the board members or the people whom they transferred duty and authority to damage the company. Currently the lawsuit can be filed against all the board members and the proportion of their misconduct will be determined by the court. Board members will be held jointly liable in proportion to their misconduct.

To avoid liability due to misconduct voting nay on resolutions that are thought to result in damage to the company and to have this vote recorded in the minutes, not assuming duties or titles to represent and bind or not taking on signatory authority could be advised.

According to TCC Article 560 *“The right to claim damages from the responsible individuals prescribes two years after the claimant finds out about the damage and who the responsible individuals are and at discretion five years after the damaging action has occurred. If the act is penal and the Turkish Criminal Law stipulates a longer period for limitation of action, this limitation term is applied to the claim for damages.”*

### **B) Liability arising from 6183 numbered Law on Collection Procedure of Public Assets**

According to the 35<sup>th</sup> Article (duplicated entry) the uncollected remainder of public debts (e.g. tax, social security premiums, administrative fine etc.) of legal persons can be directly collected from related shareholders (if it is a limited liability company) and legal representatives (e.g. managers of limited liability companies, directors of board members of joint stock companies).

The principal of “differentiated continuity (for joint liability)” mentioned in the first section and determined according to the misconduct of the board members is not applied to public debts. The liability of each board member is deemed to be personal, unlimited and joint and the debt can be collected from the personal assets of the board member.

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For the liability of joint stock companies' board members a different approach is accepted in practice. According to Supreme Court decisions<sup>2</sup>, the board members **who do not possess signatory authority or the authority to represent and bind the company** will not be deemed liable for the public debts of the company.

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*The information given in this memorandum cannot be evaluated as legal advice, guarantee or commitment. Considering the frequently changing nature of the regulations, you can contact us either by phone (+90 212 288 04 04) or from [omerselamoglu@aydinorhan.av.tr](mailto:omerselamoglu@aydinorhan.av.tr) in order to get more detailed information.*

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<sup>2</sup> Supreme Court Assembly of Civil Chambers file no. 2009/10-36 E. and verdict no. 2009/822 K., 10th Civil Chamber of Supreme Court file no. 2010/5994 E. and verdict no. 2011/13984 K.