

LIABILITIES OF THE MEMBERS OF THE BOARD OF DIRECTORS AND THE GENERAL MANAGER

As is known New Turkish Commercial Code numbered 6102 ("**NTCC**") will enter into force as of 01.07.2012. In conjunction with entering into force of NTCC, it is important to know the changes regarding the liabilities of the directors of joint stock companies beside the current Turkish Commercial Code numbered 6762 ("**CTCC**"). In this context, the financial, legal and penal liabilities of the members of the Board of Directors and the General Managers both in the NTCC and CTCC and the sanctions regarding these liabilities are examined below comparatively, further liabilities of the members of the Board of Directors and the General Managers under other relevant laws are also examined.

Generally the liabilities of the Board members and the General Manager of a joint stock company are based on fault (to which negligence is also included), in other words the damage has to be occurred due to the faulty actions of the Board member or the General Manager.

The Board member shall cast negative vote to the resolution, have this written in the minute and additionally notify the auditor in written regarding the situation in order to refute the presumption of fault arising from the matters which are subject to a resolution of Board of Directors. The General Manager, on the other hand, has to prove that he does not have fault for the occurrence of the damage within the general terms.

The liabilities of the Board members have been listed in several articles in the CTCC and the NTCC and we will list these liabilities below. On the other hand the liabilities of the General Manager is not explicitly listed in the law and a general provision has been given to determine these liabilities. Accordingly, the General Manager, who does not fulfill his obligations arising from law, articles of association and other documents in which his working conditions are determined (i.e. employment agreement), is personally liable for the damages that would arise. The members of the Board of Directors shall not be liable for the damages that the General Manager caused. This being said, however, if they have not appointed a capable manager, if they have tolerated the manager's works and transactions which damage the company and if they have not determined the responsibilities of the managers within their own scope of authority, they would be liable for the damages that the General Manager caused. On the other hand, in the NTCC the members of the Board of Directors are liable for the damages caused by the managers to the extend that they have appointed capable managers and that they would be able to control the works and transactions of the managers.

The following list shows the specific liabilities of the Board of Directors mentioned in the CTCC, the NTCC as well as some other laws. In the third column we have mentioned whether the General Manager is also liable for the specific matter for which a Board member is liable.

Subject of Liability	Board Member	General Manager	Form of Liability	Sanction
Inaccuracy of the payments made by shareholders for the shares	CTCC: Yes NTCC: Yes	CTCC: If this transaction was made by the General Manager Yes NTCC: If this transaction was made by the General Manager Yes	Jointly	Shall be responsible to the company, shareholders and the creditors of the company for the damages, in the NTCC imprisonment or judicial fine.
Inaccuracy of the dividends distributed and paid	CTCC: Yes NTCC: Indirectly yes	CTCC: If this task is given to the General Manager Yes NTCC: If this task is given to the General Manager Yes	Jointly	Shall be responsible to the company, shareholders and the creditors of the company for the damages
Non-existence of the legal books or keeping of legal books irregularly	CTCC: Yes NTCC: Indirectly yes	CTCC: If the task of keeping books is given to the General Manager Yes NTCC: If the task of keeping books is given to the General Manager Yes	Jointly	Shall be responsible to the company, shareholders and the creditors of the company for the damages and be sentenced to judicial fine severally.
Non-performance of decisions of general assembly without a cause	CTCC: Yes NTCC: Indirectly yes	CTCC: No NTCC: No	Jointly	Shall be responsible to the company, shareholders and the creditors of the company for the damages
Non-performance of the duties under law and articles of association intentionally or by negligence	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Jointly for the Board members, severally for the General Manager	Shall be responsible to the company, shareholders and the creditors of the company for the damages

Tort Liability	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall be responsible for the damages.
Appointment of unqualified managers by the Board members	CTCC: Yes NTCC: Yes	CTCC: No NTCC: No	Jointly	Shall be responsible to the company for the damages.
Irregular capital increase	CTCC: Yes NTCC: Yes	CTCC: No NTCC: No	Jointly	Shall be responsible to the company, shareholders and third persons for the damages.
Issuance bonds unlawfully	CTCC: Yes NTCC: Indirectly yes	CTCC: No NTCC: No	Jointly	Shall be responsible to the owner of the bonds and creditors of the company for the damages.
File a law suit for the annulment of the general assembly resolutions in bad faith	CTCC: Yes NTCC: Yes	CTCC: No NTCC: No	Jointly	Shall indemnify the damages of the company.
Attending to the negotiations related to his own benefit or the benefits of his relatives	CTCC: Yes NTCC: Yes	CTCC: No NTCC: No	Severally	Shall indemnify the damages of the company.
Conducting commercial transactions with the company	CTCC: Yes NTCC: Yes	CTCC: Indirectly yes NTCC: Indirectly yes	Severally	Nullity of the transaction and indemnifying the damages of the company.
Borrowing money from the company by the board members or their relatives or the companies related with such persons.	CTCC: No NTCC: Yes	CTCC: No NTCC: No	Severally	The creditors of the company are entitled to precede such Board members for the amount owed to the company. Board members shall be sentenced to judicial fine.
Breach of prohibition of competition	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	The company is entitled to demand compensation from such Board member or the General Manager or deem that

				related transactions are made on account of company.
Taking dividend share unlawfully and in bad faith or three years before the opening of bankruptcy.	CTCC: Yes NTCC: Yes	CTCC: No NTCC: No	Severally	Shall repay such dividend share.
Breach of liability of acting prudent and careful	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall indemnify the damages of the company.
Offense of unfair competition by the company	CTCC: Yes NTCC: Yes	CTCC: No NTCC: No	Severally	Board members shall be sentenced to penalty of imprisonment and judicial fine.
Simulating third parties regarding current situation of the company	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall be responsible for the damages.
Fail to inform the auditors by the new board members about the illegal transactions of predecessor board members	CTCC: Yes NTCC: No	CTCC: No NTCC: No	Jointly	Shall be responsible jointly with the predecessor board members
Manipulating the value of the assets or enterprises while acquiring thereof.	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall be responsible for the damages.
Negligence of first board members on researching the correctness of establishment transactions	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall be responsible for the damages.
Non-registration of the issues that are required to be registered	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall be sentenced to judicial fine, if the conditions set out in law exist.
Misrepresentation regarding registration and recording issues, composing and using unlawful trade name or	CTCC: Yes NTCC: Yes	CTCC: No NTCC: No	Severally	Imprisonment and/or judicial fine. Injured persons are entitled to demand compensation.

enterprise name, non-placing of trade name in the entrance façade of the enterprise, transferring of the trade name unlawfully				
Breach of liabilities under law and articles of association	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall be responsible to the company, shareholders and the creditors of the company for the damages
Non-performance of the equalization of the affiliated company's loss by the controlling company.	CTCC: No NTCC: Yes	CTCC: No NTCC: No	Severally	Shall be responsible to the company, shareholders and the creditors of the company for the damages
Breach of the prohibition regarding the subscription of company's shares.	CTCC: No NTCC: Yes	CTCC: No NTCC: No	Severally	In the event of capital increases board members shall be deemed to subscribe such shares and they shall be responsible from the price of the shares.
Misrepresentation regarding the capital of the company, although it is not fully subscribed or paid.	CTCC: No NTCC: Yes	CTCC: No NTCC: No	Jointly/Severally	Defective board members shall be deemed to subscribe such shares and shall pay the prices of such shares and the damages with their interest jointly. Board members shall be sentenced to imprisonment from three months up to two years or judicial fine.
Collecting money from public by breaching the terms and conditions of Capital Market Board's	CTCC: Yes pursuant to Capital Market Board laws NTCC: Yes	CTCC: Yes pursuant to Capital Market Board laws NTCC: Yes	Jointly/Severally	Shall be responsible jointly to deposit immediately the collected money into the bank determined by

regulations.				Capital Markets Board. Shall be sentenced to imprisonment up to six months.
Breach of the report preparation liability regarding the relations between controlling company and affiliated company by board of directors of affiliated company.	CTCC: No NTCC: Yes	CTCC: No NTCC: No	Severally	Shall be sentenced to imprisonment up to two years and judicial fine.
Non-publication of the issues that are required to be published.	CTCC: Yes NTCC: Yes	CTCC: Yes NTCC: Yes	Severally	Shall be sentenced judicial fine.
Breach of the liability of composing the website of the company with the content required under law as of the date following three months the date of enter into force of NTCC.	CTCC: No NTCC: Yes	CTCC: No NTCC: No	Severally	Shall be sentenced to imprisonment up to six months and judicial fine.
Giving unreal information to the public or in the reports submitted to the general assembly that suffers related person	Turkish Criminal Code: Yes	Turkish Criminal Code: Yes	Severally	Shall be sentenced to imprisonment from six months up to three years and judicial fine up to a thousand days.
Disclosing commercial confidential information and documents to the unauthorized persons	Turkish Criminal Code: Yes	Turkish Criminal Code: Yes	Severally	Shall be sentenced to imprisonment from one year up to three years and judicial fine up to five thousand days.
Nonpayment of premiums in due time pursuant to	Law of Social Insurance: Yes	If this task or general management of	Jointly	Relevant amount shall be obtained from the personal

Law of Social Insurance		the company is given to the General Manager: Law of Social Insurance: Yes		assets of the authorized representatives
Non-performance of the tax liabilities by the authorized representative of the company, in the event of such amount could not be obtained from the assets of the tax payer	Tax Procedure Law: Yes	Tax Procedure Law: Yes	Jointly and Severally	Relevant amount shall be obtained from the personal assets of the authorized representatives.
Public debts that could not be collected from the assets of the company.	Law regarding Collection of Public Debts: Yes	Law regarding Collection of Public Debts: Yes	Jointly and Severally	Relevant amount shall be obtained from the personal assets of the authorized representatives
Damaging the creditors of the company purposely by not paying the debts of the company.	Bankruptcy And Enforcement Law: Yes	Bankruptcy And Enforcement Law: Yes	Severally	Imprisonment from six months up to two years and judicial fine up to five thousand days by complaint of the creditor.

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