

BULLETIN

26 May 2022 2022/11

Prohibition Of Competition for Board of Directors

As stated in the Turkish Code of Obligations, the Board of Directors has an obligation of loyalty to the company, as a result prohibition of competition arises for the Board of Directors. While the prohibition of competition can be removed with a decision of the general assembly, if shareholders want with adding an article company representatives, company officials, memorandum manager and partners may also be included to the prohibition of competition by the articles of incorporation or shareholders agreement.

The basis of the Prohibition of Competition is to prevent the company from taking actions that hinder its activities, and also to be sure that the board of directors leave their time only to the company. The non-compete clause in the articles of incorporation can be removed at any time by the decision of the general assembly or if there is no such a thing prohibition of competition can be added to the agreement with the decision of the general assembly.



The economic life of the person who has been banned from competition should not be completely over, his career should not be prevented. For that reason, the prohibition of competition should always be limited with a place and time. This limitation should be as narrow as possible, not as wide as domestic.

The general assembly may use the rights recognized by the law about the member of the Board of Directors who does not comply with the prohibition of competition.

Accordingly, from a member who does not comply with the prohibition of competition

1. The company's loss can be compensated.
2. May be request that the transaction be deemed to have been made on behalf of the company.
3. May be request the transfer of interest in transactions made on behalf of a third party.
4. If the member of the board of directors has unlimited liability in another company, general assembly may request his withdrawal from the company and the transfer of his interests.

In addition to all these, the member who violates the prohibition of competition may be decided to his dismissal.

Yet, the validity conditions of the Prohibition of Competition are also important in terms of time and place. The prohibition of competition cannot be imposed on a lifetime and a whole geography. So there is usually a restriction such as:

1. After the end of Board of Directors duties, restricting the establishment of a company for a certain period of time in the activities of the former company,
2. restricting the former company from doing business with its customers for a certain period of time

Times are usually like this:



Not establishing a company for 3 years and not doing business with former company customers

These periods should be limited with a city at least in terms of the region, and the person whose board membership has been finished should be prevented from doing business in the same city, region and area during that period. Thus, this prohibition will also affect the former Board Member, if the members of the Board of Directors deal with the business that the company is actually dealing with, and even if it is not written in the articles of association, they start to deal with a business that the company does not actually deal with.

Although there is no law preventing the former member of board of directors from joining associations and foundations dealing with the same business, it has been prevented from entering commercial companies and ordinary partnership within the scope of the prohibition of competition, and so companies has an advantage in terms of a certain time and place.

