

BULLETIN

August 19, 2022 2022/18

Compliance in Joint – Stock Companies in the Scope of Turkish Law

The Meaning of Compliance

Compliance, as a technical legal term in Turkish law specifies the meaning of “to comply, to adjust, to consent”. Compliance is seen mainly within the context of corporate law doctrine and it is used in the place of the expressions “acting in accordance with law” or “audit of legal accuracy”.

The phrase Compliance indicates that the requirements of legislations are met and generally the rules of law are also abided. In other words, Compliance means not only acting in accordance with law, also means ensuring and observing the compliance with law. Briefly, Compliance means actually abiding with all legal and behavioral rules that are important and binding for the business of the company and supervision of this.

Compliance with the rules of law in terms of the legal personality of the company depends on the compliance of the company organs and the persons to whom the authorities and duties are delegated to the rules of law. This is ensured by the fact that the actions taken are in compliance with the law, through the internal audit system established by the companies.

2. Advantages of Compliance

Through compliance, companies act in accordance with the rules of law in their internal and external relations, prevent illegal violations, identify existing illegal violations and those responsible. With compliance practices, companies supervise the legality of the actions of their organs and employees, resulting with the minimalization of the legal and criminal liability and prevention of financial and reputational losses.

Since the loss of reputation is less in companies that comply with the rules of law, the potential of the company to compete with other companies increases and its earnings increase depending on the increased motivation of the employees.

In addition, the companies that have adopted the compliance principles strengthen their commercial relationships with investors and their customers, resulting with an increased encouragement of entering into new business relationships with the company.

3. Compliance in Turkish Legislation

Turkish legislations, regulations and primarily the Turkish Commercial Code do not include any provisions regarding Compliance. However, in Turkish Law, companies are audited through public audit and the care and management responsibility imposed on company managers in accordance with the Turkish Commercial Code. In addition, the establishment of some of the companies, their ability to issue communiqués, their termination, and some transactions as per the regulation are subject to the permission of the Ministry of Commerce.

In accordance with the Turkish Commercial Code, the persons in charge of managing the company should act with the care of a prudent manager while performing their duties, and pay attention to the fact that the decisions they make are of a nature that will benefit the company's profits, eliminate the issues that may pose risks for the company, and should not constitute a crime.

Considering all these, it is understood that the phrase of compliance is included in the act of management. The board of directors, while exercising its management right with the instructions it gives, should also take care of the company's interests and the rights of third parties.

In this regard, conducting a compliance inspection on election, appointment and dismissal of company representatives, execution of General Assembly resolutions, supervision of compliance to the directives, and compliance audit on articles of association, internal directive and written instructions are essential for the early evaluation of the risks and to utilize the Compliance relevant to its purposes.

In this context, it can be stated that the duty to ensure the requirements of the compliance practice is upon the board of directors. Hence, as it is provisioned by the Turkish Commercial Code, the board of directors shall ensure (i) being informed about the risks that the company may face, (ii) determination of the appropriate Compliance system for the company, taking into account the activities and structure of the company after the risk analysis, (iii) integrating the created Compliance system into the operations of the Company through its purposes.

4. The Results of Non-Compliance

In accordance with the provisions of the Turkish Commercial Code, if the members of the board of directors violate their obligations arising from the company's articles of association or the law, they are liable to the company, shareholders and company creditors.

In order for the members of the board of directors to be legally liable for breach of compliance, first of all, a damage (compliance risk) must occur. The scope of damage suffered by the company in violation of compliance includes issues such as the company's payment of compensation to third parties as a result of non-compliance, termination of contracts, damage to the company's reputation, loss of value in the stock market.

The listed damages must be caused by the unlawful behavior of the members of the board of directors. Non-compliance can both arise from the willing acts of the members of board of directors and their negligence. In other words, as explained above, any breach of the duty of care or supervision arises the legal liability of the members of the board of directors.

5. Evaluation

Compliance in company law is an arrangement that ensures compliance with the law as a whole with the organs and employees of the company and compliance with legal regulations in their daily activities within the company. Through compliance, a decrease in the company's assets or reputation or the realization of a criminal act is prevented due to unlawful violations. The superior management and supervising obligation imposed on the board of directors within the scope of the law constitutes the basis of the compliance obligation, and in case of compliance risks, the board of directors has legal and penal liability.