

# BULLETIN

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## **Responsibilities and Liabilities of The Members of The Board of Directors of Joint Stock Companies**

According to the Turkish Commercial Code (TCC), Joint Stock Companies has two mandatory organs, the general assembly and the board of directors. In this article, we will summarize the responsibilities and liabilities of board of directors' members.

### **A. Responsibilities of board members:**

#### **1. The untransferable and indispensable duties and powers of the board of directors are the following:**

- Senior management of the company and giving instructions about them,
- Determination of the company management organization,
- Establishing the necessary order for financial planning as required by the accounting and financial audit and the company's management,
- Appointment of directors and persons with the same function and signatory authority and their dismissal,
- Overseeing the persons in charge of management whether they are acting in accordance with especially the laws, articles of association, internal directives and written instructions of the board of directors,
- Keeping the share, board of directors' resolution and general assembly meeting and negotiation books, issuance of the annual report and corporate governance statement and presentation to the general assembly, preparation of general assembly meetings and execution of general assembly resolutions,
- Notifying the court in the presence of insolvency.

According to TCC it is an objective duty of care for the board members to act diligently and cautiously and to observe the company's interests by abiding honesty rules. That means that a member of board of directors shall always perform his/her duties with a care of a cautious manager, which exceed the average duty of care.

## **2. Representation of the joint stock company:**

Board members shall represent the company in relation with shareholders and with third parties.

## **3. Shareholders equal treatment:**

Board members should treat the shareholders equally within the scope of the law and the articles of association.

## **4. Prohibition from attending meetings:**

Board members cannot attend the negotiations about the subjects in which their personal interests, conflict with the interests of the company. That includes the personal interests of one of their lower and upper ancestry, spouse, or blood relatives and relatives in-law, including and up to the third degree.

## **5. Prohibition of performing transactions with the company:**

Board members cannot perform any transactions with the company on behalf of themselves or anyone else, without the permission of the general assembly. Non-shareholder board members and the non-shareholder relatives of the board members which include their lower and upper ancestry, spouse, or blood relatives and relatives in-law, including and up to the third degree are prohibited from cash loaning from the company. The company cannot warrant, guarantee and collateral for the aforementioned persons, cannot assume liability, nor can it take over the debts of those persons.

## **6. Prohibition of competition with the company:**

Board members cannot carry out a commercial transaction which falls within the scope of the company's business on behalf of themselves or anyone else, without the permission of the general assembly, also cannot enter a company engaged in the same type of commercial business with the company, as a partner with an unlimited liability.

## **7. Prohibition of disclosing any information considered confidential:**

Board members must keep confidential all the information they learn about the company. It is accepted as a part of the duty of loyalty arising from the relationship between the board members and the company.

## B. Liabilities of board members:

Should the board members violate their obligations arising from the law and the articles of the association by fault, they are liable for the damages they have caused to the company, shareholders and creditors. These are some liability cases listed by the Turkish Commercial Code:

### 1. Unlawful documents and statements:

Board members (or any person) are liable for the damages caused by the issuance, declaration or participation of any false, fraudulent, fake or untrue documents, prospectuses, commitments, statements and guarantees related to the establishment of the company, increase and decrease of its capital, merger, division, change of type and issuance of securities, concealment of the truth and other breaches of law.

### 2. False statements about the capital and knowing the inability to pay:

Board members are liable for any damages and the interests, resulted from false statements about the capital of the company and the knowingly approvement of the capital commitments of the persons who do not have the ability to pay.

### 3. Corruption in valuation:

Board members involved in corruption in the valuation of the capital in kind or the valuation of the company and the goods to be taken over are liable for the damages arising from such corruption.

### 4. Crowdfunding:

It is prohibited for the board members to collect money from public by any means, for the purpose of establishing a company or increasing the capital of the company.

## C. The scope and nature of the liability:

In the event that more than one member of board of directors are liable to compensate for the same damage, each of them, according to his/her fault and the requirements of the situation, shall be jointly and severally liable with others for such damage to the extent that the damage can be imposed on him/her personally. The right to claim compensation against the board members becomes time-barred after two years from the date when the plaintiff learns about the damage and the responsible person, and in any case five years from the day the act that caused the damage occurred. However, if this act requires a penalty and is subject to a longer statute of limitations according to the Turkish criminal Code, this statute of limitations is also applied to the compensation case. The competent court for the liability cases against board members is the commercial court of the place where the company's headquarter is located.