



Prohibition of Indebtedness in Joint Stock Companies and Limited Liability Partnerships

Legal framework with respect to prohibition of indebtedness of shareholders and board members in joint stock companies, and managers in limited liability partnerships was altered with the entry into force of the Turkish Commercial Code No 6102 (the “**Commercial Code**”) on 1 July 2012. Provisions of the Commercial Code aim to hinder draining a legal entity’s assets by its shareholders, partners, board members or their relatives. Below is the summary of the actual legal framework:

- **Legal basis of the prohibitions.** Articles 358, 395 and 644 of the Commercial Code set forth the legal framework on prohibition of indebtedness in joint stock companies and limited liability partnerships, whilst Article 562 provides applicable penalties to eventual breaches.
- **Prohibition to shareholders and partners.** As a matter of principle shareholders and partners are prohibited to be indebted to the legal entity.
 - **Exception.** If shareholders and partners fulfill their due debts arising from their capital subscription, and the profit generated by the respective legal entity including its reserve funds are sufficient to cover its previous year’s losses, then it is possible for shareholders and partners to be indebted to that entity.
 - **Applicable penalties.** Under the Commercial Code, *creditors* who give debt to shareholders and partners in contradiction with the indebtedness prohibition set forth above will be subject to a judicial fine not less than 300 days (not less than between EUR 2,600.- minimum and EUR 13,000.- maximum). Provisions of the Turkish Criminal Code No 5237 are reserved.
- **Prohibition to Board members and Managers.** Non-shareholder *Board members* and non-partner *Managers* and their non-shareholder/non-partner relatives up to a certain degree may not borrow cash from the legal entity. In addition, the legal entity may not issue guarantee, warranty and collateral for these persons, nor assume their liability and take over their debts.
 - **Exceptions.**
 - Entities in a group of companies may provide surety and guarantee for each other, provided that this will not lead to unlawful exercise of control, as defined by Article 202 of the Commercial Code.
 - Provisions of the Banking Law are reserved.
 - **Applicable penalties.**
 - Creditors of the legal entity may pursue these persons for company debts in the amounts for which the legal entity is liable.
 - Under the Commercial Code, *board members or managers or their relatives* who are in contradiction with the prohibition set forth above will be subject to a judicial fine not less than 300 days (not less than between EUR 2,600.- minimum and EUR 13,000.- maximum). Provisions of the Turkish Criminal Code No 5237 are reserved.