

Duties, Authorities and Responsibilities of An LLC Director

Introduction

A Limited Liability Company (“LLC”) is a private company whose owners are legally responsible for its debts only to the extent of the amount of capital they subscribed. This means that the responsibility of the shareholders and owners is limited with the amount of investment that they made and they are responsible only towards the company. Due to its separate legal personality, company itself is liable for company’s debts with its assets. This “limited liability” principle is one of the main advantages of the LLC.

Directors come forward as the “management body” of the company. Director of an LLC is responsible for “directing” the business on behalf of the shareholders. This general term includes taking care of finances, accounting, selling and buying goods and services. Directors can be chosen either by the General Assembly (“GA”) or with the Articles of Association (“AoA”) of the company.

Duties of the Directors

Regarding their position in the company, directors have significant duties that they carry on daily. Some duties are non-transferable and inalienable duties under the Turkish Commercial Code. Consequently, these kinds of duties cannot be passed on to someone else to fulfill.

Non-transferable and inalienable duties of the directors are as follows;

- Senior management of the company and giving instructions,
- Determination of the company's management organization in the scope of the main contract and the Code,
- Creating accounting and financial planning or financial supervising when it's compulsory for the management of the company,
- Organizing company's annual financial reports and financial statements. Also coordinating annual activity reports when needed,
- Preparing GA meetings and proceeding GA resolutions,
- Giving bankruptcy notice when the company is deep in debt.

There are other duties assigned to directors too. These duties are more general and day-to-day tasks such as duties related to liquidation, electronic notices, restructuring, capital loss, and withdrawal from the partnership.

Directors should carry out their duties cautiously and should put the company's benefits above everything by following the rule of good faith. So, within the scope of the code, directors also can not engage in activities that compete with the company. Yet this provision is not mandatory. Such permit can be given with the AoA of the company.

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Authorities of the Directors

As well as having duties, directors also have authorities granted to them. Authorities of the directors can be specified by dividing into two main categories: Managing Authorities and Representative Authorities.

“Managing” is an internal affairs concept which indicates transactions and duties carried on inside the company. Directors have authority for every matter that falls outside the scope of the GA's authority. In other words, directors can make decisions or carry out transactions on every matter that is not under GA's exclusive authority. Furthermore, the director's authorities can be expanded if the matter is not a non-transferable authority of the GA.

“Representative” is an external affairs concept, meaning conducting legal transactions with third persons on behalf of company. In this

regard, directors are the representative organ of the company. They can perform legal transactions on behalf of the company as long as they comply with the company's objectives and fields of operation. Also, directors can use the company's name while doing so.

Responsibilities of the Directors

If a director violates his liabilities arising from the Code or the AoA and if a damage occurs as a result, then the director is liable to accommodate the damage to the company, to the shareholders and company's creditors. Responsibility can only be directed to the director in the existence of four main elements; (i) a wrongful act, (ii) a damage, (iii) a fault and, (iv) a causal link. Four of them should exist in the main event at the same time. Causal link is very crucial in this equation because if there is no link between the damage and the wrongful act, directors cannot be held accountable for the damage.

Exclusion of Responsibility

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Responsibility of directors may not be existent under certain circumstances. Examples for such circumstances are discharge, statute of limitation and compromise agreement.

1-) Discharge

Discharge, which means releasing company directors from their liability, is one of the main reasons. Director can only be absolved by the GA and this is a non-transferable authority of the Assembly. When absolved, no responsibility for the managing organ of the company exists anymore.

2-) Statute of Limitation

The right to claim compensation only exists for two years after the plaintiff finds out about the damage and the person who is responsible for it and howsoever for four years. With the statute of limitation, an obligation transfers into natural obligation. Directors can use the statute of limitations as a plea.

3-) Compromise Agreement

Compromise agreement is an agreement that parties make at the court to resolve any dispute partially or as a whole. Thus, the director cannot be held responsible because of the existing agreement. As set out in the Civil Procedure Code, this agreement can only be made at the court in presence of the judge but if parties can dispose freely on the subject, this agreement can be made outside a lawsuit.

Conclusion

To conclude, directors are the managing organ of the LLC so they are granted with several duties, authorities and responsibilities. Due to their role in the company, they have some non-transferable duties, wide range of authorities and serious responsibilities.

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