The Responsibility of the Members of the Board of Chambers in Joint-stock Company for Public Debt

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Abstract: Joint-stock company is a trade company legal entity of which is present. Board of chambers is a must in joint-stock companies. According to Turkish Code of Commerce Act 312, members of the board of chambers should be real entities and they should be able to use their civil rights. According to Turkish Code of Commerce Act 317; board of chambers govern and represent the joint-stock company. Turkish Code of Commerce Act, together with accepting the legal responsibility of the members of the board of chambers in general, it bases this responsibility upon some peculiar features. According to Turkish Code of Commerce Act 338; in order to hold the members of the board of chambers responsible, imperfect manners should be attributed to them. However, public debt is the public incomes of government which start with public law and gained from administrative applications based on public power. The responsibility of the members of the board of chambers in joint-stock company in the case of public debt is covered by Tax Procedural Law (TPL) 213 and Public Claims Collecting Procedural Law (PCCPL) 6183.

Key words: Joint-stock company board of chambers, members of joint-stock company board of chambers, legal representative, public debt, responsibility, accountability of public debt

INTRODUCTION

It is easy to apply tax obligations to legal entities when they did not carry out their tax and other public debt duties. But applying tax obligations to legal entities when they did not carry out their tax and other public debts constitute problem. In Turkish Legal System, it is agreed to collect the public debt haven’t been carried out by legal entities from the legal representatives of legal entities based on specific terms.

Board of Chambers: Joint-stock company is a trade company legal entity of which is present. Board of chambers is one of the compulsory units in joint-stock company. According to Turkish Code of Commerce Act 435; board of chambers is a reason of dissolution[^11]. In essence, board of chambers is an organ of assembly. The term organ is abstract in meaning. Members who are real entities attribute liveliness to board of chambers[^12]. According to Turkish Code of Commerce Act 312; members. Board of chambers should be real entities and they should be able to use their civil rights. The numbers of the board of chambers should be at least 3 people. In our law, there is no statement related to the maximum number of members[^1]. Board of chambers as an organ is composed of the members who are chosen in accordance with the law and real contract measures. The features looked for in the member peculiarities shouldn’t be against 19 and 20th codes of Law of Obligations. According to Turkish Code of Commerce Act 317; board of chambers govern and represent joint-stock company. Board of chambers is both the organ of “decision making” and “will power exposing” in joint-stock company[^3].

Legal Status of the Members in Board of Chambers: According to Turkish Code of Commerce Act 336; members in board of chambers can not be kept responsible personally from contracts and applications made for the name of the company. Thus, the results occurred in the end of contracts and applications made are belong to the company. But, in the condition of board of chamber members not being carried out the duties attributed by law or real contract to hem; their responsibility appear towards the company, share holders and creditors[^4]. Board of chamber is an assembly organ. Organ is an indispensable part of legal entity. In accordance with this, the legal relationship between board of chambers and its members is not a relationship of contract but of organic tie[^1]. But the relationship between joint-stock
company and board of chambers is based on agreement. For this reason, one other feature of the responsibility of the members in joint-stock company is, it is being based of agreement[2-4]. As the relationship is based on agreement, in condition that members in the board of chambers did not carry out their duties attributed to them by law and the contract as they were supposed to do, violation of the contract between them and the joint-stock company comes to the fore[5]. In order to keep members in board of chambers responsible for not being carried out the duties attributed to them by law and the contract, the company that suffer loss, share holders, or creditors should sue a responsibility case against the members of the board of chambers in authorised court[5-8]. Besides, the general responsibility system designed in Turkish Commercial Law, in Tax Procedural Law, Public Claims Collecting Procedural Law and Social Insurance Law, specific responsibility states are designed concerning members of board of chambers.

Public Debt: Debt is the condition in which debtee is certified to ask for his stock from debtor and the debtor is to carry out this action[5]. Public debt is the public incomes of government which start with public law and gained from administrative applications based on public power[9].

Responsibility of Members in Board of Chambers Based of Public Debt: Tax due responsibilities of members in board of chambers is covered by TPL Act 10 which clarifies the responsibility of legal entity representatives. In paragraph 1 of this article, after keeping responsible the representatives of legal entities from non-performing debt, in paragraph 2; gives the decision as follows[4]

- “…for the ones mentioned above do not carry out their duties, partly or wholly non-performing tax or additional assets that couldn’t be collected from tax payer’s or tax creditor’s stocks will be collected from the stock of the ones who did not carry out their legal duties …”

According to this, the coverage, conditions and quality of representative’s legal responsibilities are changed and imperfection based on objective responsibility as mentioned in TTL is put into action[1]. Legal entity representative’s responsibility based on public debt is designed in PCCPL repeating article of 35. According to this article; it says

- “Together with legal entities…the public assets partly or wholly non-performed or of which is understood to be non-performed, will be collected from the personal stock of legal representative’s…personal stock according to the related article of this law.”

TPL and PCCPL represent a proper law in the collection of tax assets. For this reason, in finding out the responsibility of legal entities non-performed tax debts, TPL Act 10 should be applied in the first place. Repeating article 35 will have a usage if public responsibilities other than tax are necessary[1].

Conditions of Responsibility: Tax assets partly or wholly not collected from company stock, according to TPL 10 article 2, will be collected from the stock of “legal representatives”[10]. The legal representatives who do not carry out this duty will be subjected to pay this tax and related assets for they cause loss from their imperfect activities. This approach of the legislator in this case is analogous with the main principles of the law of responsibility. For this reason, the conditions of the responsibility cleared out by TPL Act 10 should be determined. According to this;

- In the date tax office has applied to the representative, there should be tax assets belonging to represented tax payers that could be collected by the tax office.
- Tax asset shouldn’t be collected partly or wholly from the stock of represented tax payer. Legal representative is the secondary responsible because of this debt towards the tax office[11].
- In order to keep the legal representative responsible from this debt, the payment of the debt belonging to the represented should be realised by the efforts of the representative.

Who Is Responsible from Public Debts?: In order to reveal the responsibility of board of chambers from the tax debts of the company, members in board of chambers should cause the debt of real debtor joint-stock company not to be paid themselves. The legislator attributes the responsibility to the role of representative. Even the board of chambers is the legal representative of the company as an organ, it is impossible keep all the members responsible unconditionally. Even though the responsibility put forth by TPL Act 10 has the authority to carry out the taxational responsibilities, it is belong to the members of the board of chambers who did not carry out this duty on time as how it is required.

The Quality of the Responsibility: Objective Responsibility: At TPL Act 10 and repeating 35 article of TCCPL, an objective responsibility state for
representatives is proposed. In order to get rid of responsibility, an opportunity of “declaration of deliverance” is given. For instance, the member of the board of chambers who proves that the tax to be paid on time is not paid due to his imperfection but of the lack of stock the company has will be freed from this responsibility[4].

Secondary Responsibility: The responsibility of representatives in public debts is secondarily important. Public administration, before applying to board of chambers, will pursue the legal entity of the company and without those legal proceedings end; it will not be possible for them to apply for the board of chambers in joint-stock company to fulfil this duty.

REFERENCES