

## NON-EXECUTIVE BOARD MEMBERS MAY BE HELD PRIMARILY LIABLE FOR SOCIAL SECURITY DEBTS

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In its decision dated 30 May 2019 and numbered 2015/11192 (“**Decision**”)<sup>1</sup>, the Turkish Constitutional Court ruled that the Board of Directors members are primarily liable for the company’s unpaid social security premium debts and therefore the Social Security Institution may directly apply to Board of Directors members, including those who do not have the authority to represent the company, without firstly applying to the company for payment of the due amounts.

### Background:

Applicant was served a payment order regarding the company’s unpaid social security premium debts and the default interest accrued and remained unpaid during his term of office as a board member; and because he did not pay the due amount, his certain personal assets were seized. The applicant claimed that: (i) the company has its own assets, so the unpaid amounts should be requested from the company, (ii) he was a board member but he did not have representative authority, (iii) he should not be liable for unpaid amount because he was neither a senior manager nor the legal representative of the company, each of whom is authorized to represent and bind the company, and (iv) his right of property and right to fair trial were violated.

### Decision:

Although some judges of the Constitutional Court dissented from the majority opinion and voted against, the Constitutional Court held that the applicant is liable for the unpaid social security premium debts and default interest because he does not have to be a senior manager or legal representative of the company. The Decision sets out that Article 88 of the Social Security and General Health Insurance Law No. 5510<sup>2</sup> (“**Law No. 5510**”) holds the company itself, board members, senior managers and officials, and representatives, jointly and severally liable. The referred precedents, that are basis of the applicant’s claims, were based on the Article 80 of Social Security Law No. 506<sup>3</sup> (“**Law No. 506**”), which was abrogated by the Article 88 of the Law No. 5510. Based on the amended and aggravated liability set out in Article 88 of the Law No.5510, the board members, senior managers and officials, and representatives of the company are jointly and severally liable with the company, for the unpaid social security premium debts, which accrued starting from 1 July 2008 (i.e. the abrogation date of the Article 80 of the Law No. 506).

1 Published in the Official Gazette No. 30836 and dated 19 July 2019.

2 Published in the Official Gazette No. 26200 and dated 16 June 2006.

3 Published in the Official Gazette No. 11766 and dated 29 July 1964.

## Conclusion:

As per the Tax Procedures Law<sup>4</sup> and the Law No. 6183 on Collection of Public Debts<sup>5</sup>, the legal representatives of a joint stock company may be held personally liable in certain circumstances in the event that the public debts cannot be collected from the company itself. Yet, this is a secondary liability which arises when the outstanding public debt amount cannot be collected from the company.

However, in terms of the unpaid social security premiums, the Law No. 5510 created an exception for the secondary liability of the legal representatives, as confirmed with the Decision.

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4 Published in the Official Gazette No. 10703, dated 10 January 1969.

5 Published in Official Gazette No. 8469, dated 28 July 1953.