

The Importance of Commencement and Closing Certifications of Commercial Books

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Abstract

Pursuant to the Turkish Commercial Code (TCC) article 64, every merchant is under the obligation of keeping books in a manner that will clearly reveal the economic and financial status of his/her commercial enterprise. In the same article, the obligation of certification for the commencement and closing of each of the commercial books is imposed. According to Turkish laws, serious sanctions are designated in case of failure to make commencement and closing certifications of commercial books. Therefore, in this study, the consequences of the commencement and closing certifications of commercial books are examined on the basis of different Turkish laws.

Key Words: Commercial books, certifications of commercial books, qualification of certifications

Jel Codes: K14, K19, K34, K35, K42, K49

Ticari Defterlerin Açılış ve Kapanış Onaylarının Önemi

Özet

Türk Ticaret Kanunu (TTK) madde 64 uyarınca her tacir, üçüncü kişi uzmanlarca makul bir süre içinde yapılacak araştırmada, ticari işletmesinin iktisadi ve mali durumunu, borç ve alacak ilişkilerini ve her hesap dönemi içinde elde edilen neticelerini açıkça anlaşılacak şekilde defter tutmak yükümlülüğü altındadır. Aynı maddede ticari defterlerin her birinin açılış ve kapanışlarına onay zorunluluğu getirilmiştir. Kanunlarımızda ticari defterlerin açılış ve kapanış onaylarının yapılmaması durumunda ciddi yaptırımlar belirlenmiştir. Bu nedenle çalışmamızda ticari defterlerin açılış ve kapanış onaylarının zamanında yapılmamasının neticeleri farklı kanunlar açısından incelenmiştir.

Anahtar Kelimeler: Ticari defterler, ticari defterlerin onayları, ticari defter onayının niteliği

Jel Kodu: K14, K19, K34, K35, K42, K49

¹ **ATIF ÖNERİSİ (APA):** Aydın , A (2024). *The Importance of Commencement and Closing Certifications of Commercial Books*, 5(1), 1-17. Doi: 10.56203/iyd.1408919

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1. INTRODUCTION

A real person or a legal entity such as a corporation, foundation or association can be a merchant (TCC article 12, 16). Pursuant to the TCC article 87 the obligation of the merchants for the keeping commercial books begins with the registration of their commercial enterprise in the trade registry. When this article evaluated with the TCC article 12, 18 and 64, merchants, merchant described at TCC as well as those acting as if merchant and kept responsible are required to keep commercial books. The obligation begins with the acquisition of those qualifications and ends with the loss of those qualifications (Taşdelen, 2012).

Every merchant shall store the commercial books. In these commercial books the economic and financial status of the entity and commercial transactions shall be pointed up comprehensively and the relations between the debts and credits and their consequences obtained in each accounting period shall be presented in a clearly understandable manner. Commercial books shall be kept in a way that the third party experts can have an idea during their examinations within a reasonable period of time (TCC article 64/1). Also every merchant is obliged to keep a copy of every document sent in connection with his/her entity. These written, visual copies or the ones kept in electronic environment can be photocopy, carbon copy, microfiche, computer record or any other similar form (TCC article 64/2).

If the merchant is a legal person, the managers/board of directors will be responsible for keeping commercial books. This responsibility does not require the managers/board of directors to perform this duty personally, but it indicates that their responsibilities will continue even if they are delegated to third parties. Keeping commercial books is not a personal duty or authority (Huysal, 2012).

As a result of globalization and technological developments brought about by the age, the e-book system has begun to be used. As a result of the rapid pace of commercial and technological life, taxpayers' obligations are also changing rapidly, and many taxpayers benefit from the benefits of e-book application brought by technology. Due to the nature of Commercial books kept in physical and electronic environments, different certification processes have been created. E-book innovations also differ greatly from the Commercial books kept in physical environment application methods in some points (Aksoy, 2018; Dursun, 2015).

2. CONCEPTUAL FRAMEWORK

In this section, first of all, the differences in the certification processes of commercial books kept physical and electronic environment are examined. Then, the consequences of non-certification of commercial books are discussed.

2.1. Certification Process of Commercial Books:

2.1.1. Certification of Commercial books kept in physical environment:

2.1.1.1. Commercial books that must be kept in accordance with the Turkish Tax Procedure Law (TTPL):

According to TTPL Article 182, the books that taxpayers who are taxed on the balance sheet basis must keep the journal, general ledger and inventory book. Taxpayers who are taxed on a balance sheet basis must have their journal and inventory books certified in accordance with the TTPL provisions. (TTPL art. 220) In addition, it is mandatory to keep a stamp duty book in accordance to TTPL article 213 and second 257 and the Stamp Duty General Communiqué *numbered* 20. This obligation only concerns joint stock companies that pay stamp duty against receipt and by means of allowance deduction.

Although the general ledger is among the books that must be kept according to TTPL, it

is not among the books subject to certification. Therefore, the general ledger without certified is not subject to penalty according to the TTPL. In TTPL, it is stated that not having any of the books that are required to be certified requires the penalty of first degree irregularity (TTPL article 352-I/8). Therefore, it is not possible to apply this penalty to a book that does not have to be certified by this law.

2.1.1.2. Commercial Books that must be kept according to Turkish Commercial Code:

Commercial books that must be kept according to the Turkish Commercial Code are specified in Article 64. These are journal, general ledger, inventory book, share ledger, resolution book and general assembly meeting and discussion book. Some of those books are related to accounting system of the entity and the others are not related to the accounting system.

Journal, general ledger and inventory books are required to be kept by all corporate persons and real person merchants (Commercial Books Communiqué -C.B.C. - article 5).

Share ledger must be kept by limited partnership with capital divided into shares, joint stock companies and limited companies (C.B.C. article 5/3, 9).

Board resolutions book must be kept by limited partnership with capital divided into shares, joint stock companies and limited companies (C.B.C. article 5/3, 10).

General assembly meeting and discussions books must be kept by general partnership, limited partnership, limited partnership with capital divided into shares, joint stock companies and limited companies (C.B.C. article 5/2, 3).

Board of directors' decision book can be kept by limited companies. According to article 11 of the C.B.C., in limited companies, the decisions taken by the manager or the board of managers regarding company management

can be recorded in the general assembly meeting and discussion book, or in a separate board of directors' decision book. If the board of directors' decision book is kept, the provisions regarding the board resolution book, including opening and closing certifications, apply. If the decisions are recorded in the general assembly meeting and discussion book, the matters specified in the second paragraph of article 10 of the Communiqué must be written. If a separate board of directors' decision book is kept, the decisions of the manager or the board of managers cannot be recorded in the general assembly meeting and negotiation book (C.B.C. article 11).

Enterprises which have been set up by the state, municipalities, villages and other public legal persons to carry on commercial enterprises on private law rule and do not have legal personality and public interest associations and commercial enterprises established by foundations that spend more than half of their income on works of public duty and other similar commercial entities that do not have legal personality are obliged to keep a journal, general ledger, inventory book (C.B.C article 5/4).

2.1.1.3. Certification Date of Commercial Books:

There are three types of certifications of commercial books: commencement certification, interim certification renewal and closing certification. There are two types of certifications in TTPL: opening certification and interim certification renewal. On the other hand, it is seen that the terms commencement and closing certification are used in TTC.

2.1.1.3.1. Commencement Certification:

During the establishment of the entity and before coming into use, all of the commercial books shall be notarized by a Turkish Notary Public. The commencement certifications of these commercial books in the following activity period shall be have certified by a Turkish Public Notary until the end of the

month before the first month of the activity period in which the commercial books will be used (TCC article 64/3; C.B.C. article 13/1; TPPL article 221/1, 3). In case the commencement certification is carried out by a notary, the certificate of trade registry is required by a notary. However, during the registration of joint stock and limited companies in the trade registry, the commencement certification of the books is carried out by the registry of commerce (TCC article 64/3; C.B.C. article 13/1-3).

In the event that these commercial books are kept in electronic environment, the commencement certification of a notary or the registry of commerce is not required (TCC article 64/3).

The share ledger, resolution book and general assembly meeting and discussion book may be used in the following activity period without having the commencement certification of a notary, provided that there are sufficient blank pages (TCC article 64/3; C.B.C. article 13/1-4). In cases the share ledger and the board of directors' resolution book need to be renewed, the new book to be certified should be submitted to the notary together with the unused book or, if it is lost, the notice of loss. While the commencement certification of the new book is carried out, the notary annotates the old book or the notice of loss, stating the date and number of the commencement certification of the new book. The notary who sees the mentioned annotation in the old book or in the notice of loss does not have to the commencement certification of the new book (C.B.C. article 13/6).

Those who have to use new books during the year due to the fact that their books are fully used or for other reasons, must carry out commencement certifications of their books before the 10, 45 and 1 day periods during which the transactions must be recorded (TPPL article 219 and 221; C.B.C. article 13/5).

Apart from the issues mentioned above, the following provisions are included in the article 221 of TPPL:

- Those whose accounting periods are determined by the Ministry of Treasury and Finance must certify their books within the last month before the accounting period in which they will be used;
- Those who are removed from the tax exemption must have their commercial books certified within ten days starting from the date of termination of exemption.

2.1.1.3.2. Interim certification renewal:

The concept of renewal of certification is regulated in both the Commercial Books Communiqué and T.P.P.L. This concept can be described as interim certification renewal.

According to T.P.P.L. article 222: Those who want to use their books the following year are obliged to have the certification renewed in January. Those whose accounting periods are determined by the Ministry of Finance are obliged to renew their certification within the first month of this period. This issue is also stated in article 16 of C.B.C.

In the journals and board of directors' decision books subject to closing certification, renewal of certification is recorded next to the phrase "Approved" under the last record (C.B.C. article 17). In the general ledger and inventory books that are not subject to closing certification, renewal of certification is recorded on the page following the page containing the last record (C.B.C. article 18).

2.1.1.3.3. Closing certification:

The closing notarization of the journal shall be done until the end of the sixth month of following the activity period. The closing certification of the resolution book shall be done until the end of first month of the following activity period (C.B.C. article 15/1-a, b). Closing certification of the journal or resolution book is not required when they are kept in the electronic environment. The form and the principals of how to keep the commercial books in physical and electronic environment are determined with a communiqué by the Turkish Ministry of

Customs and Trade and the Turkish Finance Ministry (TCC article 64/3).

In places where force majeure is declared by the Ministry of Finance in accordance with Articles 13 and 15 of the T.T.P.L., closing certifications of the books can be carried out until the end of the second month following the date on which the force majeure ends (C.B.C. article 15/2).

2.1.2. Certification of commercial books kept in electronic environment:

As a result of globalization, changes in information technologies, e-commerce and its requirements, the need to keep commercial books electronically has emerged. In order to meet these needs, E-Book and the Book Declaration Systems have started to be used with the changes made in the legislation. (Dursun; 2015; p 98, 99; Sarıcalar, 2020, p. 232).

According to the second article 242 of T.P.P.L., the Ministry of Finance is authorized to determine the rules and procedures regarding the creation, recording, transmission, preservation and submission of electronic books, documents and records, and the practice of keeping and preparations of books and documents in electronic form.

T.C.C. article 64/3 ensures that how the commercial books kept in physical or electronic environment will be kept, the time of recording in the books, the form and principles of commencement renewal and opening and closing commencements will be determined by the communiqué issued jointly by the Ministry of Customs and Trade and the Ministry of Finance. Afterwards, it was regulated by the authorized institutions through communiqués. "Electronic Book General Communiqué No. 1" (E.B.G.C. No:1) entered into force on 13.12.2011. Additionally, regulations regarding this issue were made with the Commercial Books Communiqué published on 19.12.2012. In 2013 and 2019, the Electronic Book General Communiqué was amended. Following the active use of the

electronic book application, the Ministry of Finance put the "Book-Declaration System" into effect in 2018 with the General Communiqué of Tax Procedure Law No. 486.

2.1.2.1. Certification period of e-books:

Those included in the e-book application are stated in paragraph 3.2.1 of the E.B.G.C. No: 1:

- Taxpayers who are obliged to comply with E-Invoice regulations.
- Companies subject to external audit in accordance with the fourth paragraph of Article 397 of the Turkish Commercial Code.

Those included in the e-book application can start keeping e-book within the accounting period or calendar year. However, those who start keeping e-books during the accounting period or calendar year have to get for their previous books closing certification within one month following the date they started (E.B.G.C. No: 1 paragraph 4.3.9).

Natural and legal person taxpayers who want to create, record, keep and submit their books electronically must have e-book software that has received "compatibility" certificate with e-signature and/or financial seal (E.B.G.C. No: 1 paragraph 4.1.1.). According to same paragraph, real persons sign their e-books with e-signature or financial seal. Legal persons sign their e-books with financial seal.

The concept of "e-book license" (e-defter beratı) has placed into our law with e-book regulations. "E-book license" refers to the electronic file containing information in accordance with the standards determined by the Turkish Revenue Administration and certified with the Administration Financial Seal, regarding the books created in the electronic environment (E.B.G.C. No: 1 paragraph 2).

The e-book license received for the first month of the accounting period represents the opening certification and the e-book license received for the last month of the accounting period represents the closing certification. E-book licenses for other months replace the notary public approval of the books for the

relevant months (E.B.G.C. No: 1 paragraph 4.3.3).

According to the regulations in the E.B.G.C. No: 1, the date for obtaining of the e-book licenses is determined as follows (paragraph 4.3.4.):

- E-book and e-book license files of each month shall be obtained until the last day of the third month following the month, to which they are relevant,
- E-books and license files for the last month of accounting periods shall be obtained until the last day of the month in which income or corporate tax declaration are due.
- Those who choose to upload their e-books based on advance tax periods must obtain the e-book and license files of the months of each advance tax period, separately for each month, by the end of the month in which the provisional tax declaration for the relevant advance tax period will be submitted.

Table 1: The Table of the Date for Obtaining the E-Book Licenses (E.B.G.C. No: 1)

Period	Monthly Upload Preference	Advance Tax Period Loading Preference	
January	End of April	January	End of May
February	End of May	February	
March	End of June	March	
April	End of July	April	End of August
May	End of August	May	
June	End of September	June	
July	End of October	July	End of November
August	End of November	August	
September	End of December	September	
October	End of January	October	until the end of the month in which income or corporate tax returns will be submitted
November	End of February	November	
December	until the end of the month in which income or corporate tax returns will be submitted	December	

After the e-book records created by the taxpayers are signed /sealed and the "license file" is created, this license file is uploaded to the Turkish Revenue Administration System via the "e-book application" and sealed with the financial seal of the Administration. Accordingly, the last step of the e-book creation process is to seal the license with the Administration Financial Seal (E.B.G.C. No: 1 paragraph 4.3.4).

E-books are not sent to the Revenue Administration for certification. These are e-book licenses that are sent to the Revenue Administration and certified through the e-book application. E-book licenses do not contain any information about journal records; these are electronic files that ensure the immutability of e-books. We can think of this electronic file as an annotation of ratification in the journals. Therefore, no information or accounting records regarding the content of the e-book are sent to the Revenue Administration.

The Book-Declaration System has some differences compared to the Electronic Book Application System and is a mandatory application for certain groups of taxpayers. Those who keep books based on operation account method, those who have income from self-employment, and those whose earnings are determined in small business taxation to the Income Tax Law are obliged to use the Book Declaration System. Through the Book-Declaration System, operating ledger, farmer operating ledger, self-employment earnings book, depreciation book, inventory book, stamp duty book, warehouse book and completing works book can be kept electronically. (Tax Procedure Law General Notification NO: 486)

2.1.2.2. Time stamp:

The record verified by the electronic certificate service provider to determine the time when an electronic data was produced, modified, sent or recorded is called Timestamp. In case the e-book licenses cannot be certified by the Revenue Administration due to any power outage or system failure, it is used to prove that the e-book was created and signed/sealed on time. Following the elimination of power outage or system failure, the relevant licenses will be submitted again for the approval of the Administration. The time stamps to be used in this context are obtained from TÜBİTAK-UEKAE (E.B.G.C. No: 1 paragraph 2, 4.3.4, 4.3.12.).

2.1.2.3. Preservation period of e-books:

E-book licenses containing the Administration Financial Seal are kept together with the electronic book to which they relate for submission upon request (E.B.G.C. No: 1 paragraph 4.4.1/a). Secondary copies of e-book files and their related license files must be kept in the information processing systems of private integrators who are technically competent in terms of e-book storage service and have permission from the Administration in this regard, in order to ensure confidentiality and security, or in the information processing systems of the Administration, for a period of 10 years (E.B.G.C. No: 1 paragraph 4.4.1/e).

2.2. The consequences of non-certification of commercial books:

The obligation of keeping commercial books is important for the merchants, their creditors and the government. They give creditors an idea of the merchant's ability to pay. Since the financial status of the enterprise can be monitored from the records in the books, it is possible to state that these books are also a guide in making decisions about the enterprise, making decisions about whether to make investments, obtaining loans and making decisions about employees in the enterprise. They also provide convenience to the state in determining and collecting tax receivables (Taşdelen, 2012). As the commercial books are very important for many interest groups, they shall be kept, stored and certified according to strict regulations. Therefore, they must fulfill the certain requirements. One of these requirements is related to the certifications. If the commercial books have not certified on time, merchants may encounter with serious sanctions. These sanctions are grouped and analyzed under five titles in this part of the study.

2.2.1. Acceptance of commercial books as evidence:

Commercial books can be evidence either in favor of the owner or against the owner. The favorable evidentiary quality of commercial books depends on the commercial books'

conformity with a number of norms (Karahana, 2012). If the commercial books do not have the characteristics mentioned below, they cannot be accepted as evidence in favor of the owner. In such a case, the acceptance of unfavorable evidentiary quality of commercial books comes into question.

2.2.1.1. The favorable evidentiary quality of commercial books:

In the paragraph 110 of general preamble of TCC it is stated that commercial books had been removed from being conclusive evidence and accepted as discretionary evidence (Taşdelen, 2012) and contrary to the former TCC, acceptance of commercial books as an evidence is regulated in the Turkish Civil Procedure Code (TCPC), not in the TCC (TCPC article 222).

The conformity with norms that commercial books should have in order to be evidence in favor of the owner can be listed as follows:

2.2.1.1.1. The matter of dispute must be a commercial affair for both parties:

This affair should be related with commercial enterprises of the both parties. For disputes that have commercial affair qualities for only one of the parties, even if there is a contract between the parties, commercial books cannot be used as favorable evidence. Therefore, the presumption of law in TCC article 19 / II do not apply to these conditions (Karahana, 2012).

2.2.1.1.2. Both parties of the dispute must be merchants:

If one or both parties are not merchants, commercial books cannot be used as favorable evidence. This qualification does not have to be preserved until the court case. It is sufficient to have this qualification at the time of the dispute (Karahana, 2012).

2.2.1.1.3. All of the commercial books of the merchant can be evidence in favor of him/her:

According to TCC article 64/5 those accepted as commercial book may or may not be related

to the accounting system of the enterprise. All commercial books, such as resolution book and general assembly meeting and discussion book can be evidence in favor of a merchant (Karahan, 2012).

2.2.1.1.4. All of commercial books must confirm each other:

The records of commercial books that do not confirm each other may be evidence against the merchant but not in favor of the merchant (Karahan, 2012).

2.2.1.1.5. All of the commercial books must be kept in accordance with law:

In order to talk about the existence of lawfulness, three conditions must be fulfilled together: completeness, propriety according to the laws and regulation, formal certification of commencement and closing. If the commercial books do not have commencement or closing certifications, or if there is inconsistency between records, then such situations are evaluated as supportive of the other party's assertion or defense. In other words commercial book can only be used as evidence against the merchant (Tepe, 2014; Karahan, 2012).

Additionally, according to TCPC article 222/3, the records of the opposing party of the dispute should not be contrary to those records or those commercial books should not contain any record about the relevant matter or the commercial books have not been proven incorrect with a deed or any other conclusive evidence. The commercial books in these terms may be evidence "for or against" the owner and cannot be separated from each other.

2.2.1.2. The unfavorable evidentiary qualities of commercial books:

When the plaintiff is trying to prove his/her own assertion or defense by his/her own records, the records of the commercial books may be against him/her. Maybe the realization of this possibility is unlike to occur but it is not impossible (Karahan, 2012).

One of the parties may use the opposing party's commercial books to prove his/her own assertion. This may occur in two different ways: i) One party may submit other party's commercial books to the court, together with other evidences. In this case, the other party may use other evidences, too. ii) One party may want to use only the opposing party's commercial books to prove his/her assertion and that party may indicate that the records will be accepted. In this situation if the other party avoid submitting his/her commercial books, the opposite party is assumed to prove his/her assertion. In case of submission, the court shall rule according to the records in these books and the claimant can no longer rely on other evidences to prove its assertion (Karahan, 2012; Aksoy, 2016).

Within the possibilities mentioned above, the conditions for the commercial books to be evidence against their owner are as follows:

2.2.1.2.1. Both parties do not have to be merchants in order to be accepted commercial books against the owner:

It is sufficient that only the party whose commercial books are required to be submitted should be a merchant. The party that relies on the commercial books of the opposing party does not need to be a merchant (Karahan, 2012).

2.2.1.2.2. The matter of dispute needn't to be a commercial affair for both of the parties:

It can only be a commercial affair for the only one party to be used commercial book as unfavorable evidence (Karahan, 2012).

2.2.1.2.3. Commercial books needn't be kept in accordance with law:

If they are kept in accordance with law, they may be used "for and against" their owner. But if there is no propriety according to the law and regulations they may only be used against the owner of them. If the commercial books do not have appropriate commencement and closing certifications or there are records that

do not confirm each other, commercial books can only be evidence against their owners (Karahana, 2012).

In conclusion, if the commercial books do not have appropriate commencement and closing certifications, they may be evidence only against their owner. On the other hand, if the owner can prove his/her assertion with the conclusive evidences, and then the commercial books can no longer be evidence against their owner (Karahana, 2012; Aksoy, 2016).

2.2.2. Commencement and closing certifications are required for obtaining the notice of loss:

According to the TCC article 82 commercial books and the documents must be kept for ten years. The compulsory documentation period of ten years begins after the end of the calendar year to which the documentation relates (TCC article 82/ 5, 6). Also Turkish Tax Procedural Law (TTPL) article 253 and 254 has the similar regulation. Due to those articles, those who are obliged to keep commercial books have to store those books for five years. The period starts from the beginning of the year that follows related year. As it is seen, TTPL decreases the compulsory storage period of the books and the documents from 10 years to 5 years.

Those who fail to fulfill this obligation shall be fined according to TCC and TTPL. According to both the TCC and the TTPL, commercial books and documents must be kept for certain periods and submitted upon request by the authorities. In the event that the obligation to submit is not fulfilled, whoever is responsible will be fined according to both codes.

According to the TCC article 562/4 those who do not submit commercial books although they are requested by the authorized persons or those who submit incomplete or prevent those who are authorized to investigate from performing their duties are fined with a judicial fine not less than three hundred days unless their acts constitute another crime requiring more severe punishment. This

means they may be fined by a judicial fine from 6000 to 73000 Turkish liras if those whom are responsible for keeping commercial books do not submit or provide those commercial books to authorized persons (TPC article 52).

Tax audit staff can make a tax audit in the presence of the taxpayer to investigate, determine and ensure the correctness of the taxes to be paid (TTPL article 134). It is not mandatory to notify when the tax audit will be made (TTPL article 138). Tax inspectors will demand the taxpayer to submit their legal books and documents. In this case, it is obligatory for the taxpayer to submit his/her books and documents for the audit (TTPL article 256). Periods in tax treatments are determined by tax laws. In cases where it is not explicitly written in the law, the period is assigned not less than 15 days (TTPL article 14). According to TTPL article 359/2 not submitting books and documents to authorized persons for tax audit during the inspection, although their existence is determined through notarization records or other means is defined as concealment of felony. Due to this article the necessary qualifications for an act to be considered a concealment of felony can be listed as follows (Ağar, 2016):

Having the obligation of keeping, arranging and storing books, records and documents and submission of them,

- The ascertainment of the existence of books, records and documents,
- Demanding the submission of the books, records and documents within the scope and purpose of tax audit,
- For tax audit purposes, the books, records and documents must be demanded by authorized persons for tax auditing,
- The submission must be demanded within the preservation period,
- Assigning a period for submission,
- Failure to submit books, documents and records must not arise from just cause

All of the above qualifications must be existed at the same time for the constitution of concealment of felony (Ağar, 2016). If all or some of the books that are compulsory to be kept according to this law are not kept or certified, or those books are not submitted to the ones who are authorized to conduct tax audit for any reason, the tax assessment is made *ex officio* (TTPL article 30). Tax loss and special irregularity penalties are imposed pursuant to TTPL articles 344 and 355. In addition default interest is applied and it is reported to the public prosecutor's office (TTPL article 112/3; 367).

However, in day to day businesses, these commercial books may be lost or become unusable because of disasters like fire, flood, and earthquake or theft. In such cases, those responsible for keeping and storing commercial books may request a notice of loss within fifteen days (TCC article 82/7). This statute is very important. Because accounting books, commercial books and documents are important for the interest groups who monetize from the business organization as well as for the commercial disputes as evidences. In the event of obtaining a notice of loss, the merchants get rid of the obligation to submit their commercial books and documents (Şener, 2004).

The norms for the notice of loss are the following:

2.2.2.1. Claimants of notice of loss should be responsible for keeping and/or storing commercial books:

Merchants, merchant described at TCC as well as those acting as if merchant and kept responsible are required to keep commercial books.

2.2.2.2. Notification can only be demanded for commercial books which were in used and required to be stored:

The documents that the merchant is obliged to store are specified in article 82/1 of TCC. Any merchant may demand a notice of loss only for documents written in TCC article 82. For

example a merchant cannot demand a notice of loss for the "Income Tax Book" and the receipts of the tax payments that have been lost. Moreover, the merchant cannot demand a document for the loss of the checks due to the Turkish Commercial Code 82/7. The loss and cancellation of securities are demanded according to TCC article 651 and beyond. According to the decisions of Turkish Supreme Court, a notice of loss may be demanded for "the used" commercial books. The books and documents that have not been used yet are not considered within the scope of this article (Şener, 2004).

2.2.2.3. Force majeure should cause the loss of commercial books:

TTPL article 13 indicates the force majeure:

1. Severe accident, serious illness and detention that would prevent any of the tax duties from being fulfilled;
2. Disasters such as fire, ground shaking and flooding that will prevent the tax payers to fulfill their duties;
3. The compulsory absences that occur outside of the will of the tax payer;
4. If the commercial books and documents have been removed from the owner for reasons other than the will of the owner; and so on.

According to TTPL article 373 if any of the force majeure written in the TTPL is known to occur or any of them is proved and certified, tax payers are not subject to tax penalties. As a result, taxpayers must prove and certify with a notice of loss that the failure to submit their books and documents is based on force majeure.

According to TCC article 82/7 if the commercial books and documents that a merchant is obliged to keep are lost due to a disaster such as a fire, flood or ground shake or theft, and if they get lost or become unusable within the statutory preservation period, the merchant may request that a certificate be given to him/her from the court

of jurisdiction within fifteen days from the date he/she learned the loss.

The destruction of commercial books and documents or becoming unusable for reasons other than the will of taxpayers and the theft of commercial books and documents are different from the case of losing the commercial books. In other words, theft and force measure are different from losing commercial books. Although the merchant takes all precautions as a prudent merchant, commercial books can be lost or stolen. However, the situation that can be expressed as the loss of the commercial books due to the carelessness of a merchant differs. In case of these kinds of loss, it is not known where the books and documents are. To fall into such a situation is not expected from a prudent merchant and does not ensure legal protection. However, in case of these kinds of loss, it is necessary to carry out the minutes and procedures in order to determine the true nature of the event. For example, if the volume of the invoice is lost by the delivery person, issues such as whether the necessary research has been carried out about the lost invoice, whether the declarations of the relevant person have been recorded, whether the application and announcements have been made to the relevant authorities are important. These well-intentioned attempts based on real situation can prevent penalties restricting liberty, at least for bona fide taxpayers (Aykın, 2017).

Also there should be no functional relation between the event and the business organization where the event occurred. If the faucets in the enterprise are left open and the business is flooded and if the commercial books are also lost, the notice of loss cannot be demanded (Şener, 2004).

2.2.2.4. Commercial books and documents must be lost in the statutory preservation period:

If the commercial books are lost after ten years of preservation period, in this case, it is no longer possible to demand for a notice of loss,

because the merchant does not have a legal interest in obtaining a notice of loss in these kinds of situations (Şener, 2004).

2.2.2.5. Commercial books should be duly kept:

The notice of loss is not a reward for the merchants who do not fulfill their obligations. The court determines which commercial books have been lost, which years they belong to, whether the commercial books have been certified or not and whether declarations of them are submitted (Şener, 2004). According to the Turkish Supreme Court if the commercial books have not been notarized, a notice of loss cannot be demanded for these kinds of commercial books (Eriş, 2010)

2.2.2.6. Claimants should apply to a court within 15 days:

Turkish regulator requires that the merchant must apply to the court to obtain a notice of loss within fifteen days from the date he/she learned the loss. This fifteen-day period is a foreclosure, and must ipso facto be taken into account by the judge.

As a result, commencement and closing notarization of commercial books must be duly done; otherwise those responsible for keeping and storing commercial books may face severe penalties because they will not be able to obtain a notice of loss in case of the loss caused by theft and force measures.

2.2.3. Certifications of commercial books should be made, in order not to be faced with the irregularity penalties, ex officio tax assessments and the rejection of Value Added Tax (VAT) deductions:

If a merchant does not record his/her invoices and similar documents in duly certified commercial books, he/she will be encountered with first degree irregularity fine and the fined taxation assessment. Also his / her demand for VAT deduction will be overruled.

According to TTPL article 182 the commercial books kept on the balance sheet basis are: journal, general ledger and inventory book. It

is stated in TTPL article 221 that those who use the books written in this law are obliged to certify them at the times written in this article. According to TTPL article 352/1-8 the fact that one of the books that are required to be certified is not certified in a prescribed term is deemed not certified. Those who do not have notarization of commercial books are subject to first and second degree irregularity fines in accordance with TTPL article 352. And also those who fail to fulfill the obligation of notarization of commercial books shall be punished with an administrative fine of four thousand Turkish Liras. (TCC article 562/1-c)

According to the TTPL article 219, the transactions shall be recorded within a period of time that will not distort the order and explicitness of the accounting. The records of journal shall be registered day to day. The records for other books can be registered within 10 days from the date of transaction or document issued. In establishments that record their transaction on the basis of registered documents bearing the signature and abbreviated signature of the authorized supervisors such as accounting receipts, payroll, and the transactions shall be registered in 45 days. The daily cashbook, daily retail and revenue books and the self-employment earnings book shall be recorded on the day of transactions. On the other hand, due to the Value Added Tax Code (VATC) article 41 Taxpayers and those charged with tax deductions are required to submit their Value Added Tax declarations to the relevant tax office until the evening of the twenty-fourth day of the month following the taxation period. According to the Tax Procedure Law Circular/149, Value Added Declarations that must be submitted as of December 1, 2022 can be submitted until the end of the 28th day of the month following the relevant taxation period.

VATC article 29 indicates that this deduction should be documented legally in order to be able to deduct the VAT. Also article 29/3 emphasizes that the right of deduction can be

used in the taxation period, in which the relevant documents are recorded in the legal books, provided that the calendar year following the calendar year in which the taxable event occurs is not exceeded. VATC article 34 states that to obtain VAT deduction the transactions should be registered to the commercial books. According to TTPL article 30 the fact that the books which are obligatory to be kept are not certified is determined as the reason of ex officio tax assessment.

When those articles are evaluated together, it is concluded that invoices and similar documents will be recorded in commercial books within 10 days and the commercial books should be notarized on time. The right of VAT deduction can be used in the taxation period in which they are registered in commercial books. With the processing of the journal, all the requirements in VATC article 54 should have been fulfilled. In case of violating these articles, first degree irregularity fine will be encountered (TTPL article 352/I). Also demand of VAT deduction will be overruled and in terms of corporate tax, since revenue, cost and expense records will not be submitted; they are referred to the appraisal commission (TTPL article 30/3). The tax payer will be encounter with the fined taxation assessment.

Apart from these penalties, in accordance with Article 102 of the Social Insurance And General Health Insurance Law No. 5510, if it is determined that the books of the business enterprise have been used without certification, an administrative fine of twelve times the monthly subsistence wage is imposed against those who are obliged to keep books on the balance sheet basis.

2.2.4. Notarization of the commercial books is required for the concordat:

Concordat is regulated in EBL and can be identified as a softened version of bankruptcy. According to EBL article 285 and the rest:

Concordat is a legal institution that provides the debtor to get rid of all of his/her debts. The

debtor and his/her certain majority of the creditors make an agreement with the approval of commercial court. With this agreement, creditors waive part of their receivables and /or give the debtor a certain period of time to pay the debt. The debtor gets rid of all of his debts by paying the accepted portion of his/her debt (Uyar, 2019).

The debtor shall provide the following for the concordat: a preliminary concordat project, all documents presenting the status of the debtor, list showing creditors, amounts receivable and concession status of creditors, a comparative statement showing the amount that the creditors are expected to receive according to the concordat preliminary project and the possible amount that the creditors may receive in case of bankruptcy and independent audit report providing reasonable assurance that the proposal of the concordat preliminary project materialized as required (EBL article 286).

According to the article 286/b debtor is required to provide all documents presenting the status of the debtor. Hereunder those documents should include final balance sheet, income statement, cash flow statement, interim balance sheets prepared both on the basis of the continuity of the enterprise and the probable sales prices of the assets, the commencement and closing certifications of the commercial books and the e-ledger information regarding the books created in electronic environment, other information explaining the financial situation of the debtor and documents, lists of tangible and intangible assets and their carrying values, lists and documents showing all receivables and payables with their maturities.

EBL article 286 clearly states that debtor should provide the commencement and closing certifications of the commercial books. Due to EBL the article 286 and 287/2 if the debtor does not provide the required documents in full, the concordat demand will be rejected by the court.

2.2.5. Commercial books shall have appropriate commencement and closing certifications for not to be considered as a negligent bankrupt:

TPC article 161 regulates the crime of fraudulent bankruptcy and article 162 regulates the crime of negligent bankruptcy. With these articles, it is aimed to protect the trust relationship in commercial life (Özen, 2016). Generally in economic crises and fluctuations people may aim to keep their capital in their hands instead of distributing it to their creditors. Fundamentally these articles protect the receivables of creditors who desire to collect their receivables as soon as possible. But when the creditors cannot collect their receivables, credit reliability is undermined and goodwill relationships in a society are disrupted. For these reasons, the entire economic system is damaged (Demirel, 2018; Işıka, 2013; Sarıtaş et.al., 2019). TPC articles 161 and 162 prevent the occurrence of these conditions.

The crime of negligent bankruptcy is regulated in both EBL and TPC. As it is indicated in TPC article 162, when any person goes to bankrupt as a result of his/her failure to take proper attention and care as expected from a prudent merchant, this causes the negligent bankruptcy. In article 161, it is stated that the crime of fraudulent bankruptcy consists of intentional and willful actions. On the other hand, in article 162 it is indicated that a person causes a bankruptcy because of failing to fulfill his/her obligations of a proper attention and care.

The perpetrator of negligent bankruptcy can be a merchant because TPC article 162 emphasizes “a person who goes bankrupt as a result of his/her failure to discharge proper care and attention to be expected from a merchant”. Therefore only a merchant can commit the crime of negligent bankruptcy. On the other hand corporate persons cannot commit this crime because these penalties shall not be imposed on legal entities due to the TPC article 20/2. However, the sanctions in

the form of security precautions stipulated in the law for the offenses are reserved (Özen, 2016).

The victim of the negligent bankruptcy can be any person who is unable to collect their receivables or meets with the risk of not being able to collect his/her receivables due to negligent bankruptcy (Özen, 2016).

TCC article 18/2 accepts "prudent man rule". This rule expects every merchant to behave as a prudent man in all of his/her commercial transactions and requires a merchant to be more cautious, careful and intelligent than an ordinary person (Turanlı, 2016). Prudent man rule is based on the "average or proper course of behavior of a merchant for a specific business segment." (Gümüş, 2016) TPC article 162 punishes the behavior of violating prudent man rule and EBL article 310 gives examples of behaviors for a negligent bankrupt. According to EBL article 310, any person is punished in accordance with the Turkish Penal Code, when one of the cases stated in this article exist and one of these cases is not keeping the commercial books in accordance with TCC.

According to TPC article 168: if the offender, accomplice or aider of an offence shows repentance, after the commission of offenses of theft damage to property, breach of trust, swindling, fraudulent bankruptcy, negligent bankruptcy..., but before the commencement of prosecution and compensates the damages of the aggrieved party or return of the unlawfully acquired property to the owner upon sincere repentance, the punishment will be reduced to two thirds.

In the cases of partial return of property or compensation of damages, the consent of the aggrieved party is sought in order to adopt the provisions relating to sincere repentance.

As a result, the merchant should keep and store their commercial books according to the TCC. One of the obligations for book keeping is commencement and closing certifications of commercial books. If the merchant do not

certify his/her commercial books according to the law and at the same time could not collect his/her receivables and goes to bankruptcy, the merchant can be considered as a negligent bankrupt and is punished due to TPC article 162 and EBL article 310.

3. CONCLUSION

Every merchant shall keep and store the commercial books in physical or electronic environment. The commercial books that are identified in the law and regulations must have some significant characteristics. One of those characteristics is the commencement, interim and closing certifications of commercial books. Also certification of commercial books kept in physical and electronic environment have different forms and certification periods. If the commercial books do not have the conformity with law the owner may face with severe sanctions.

Commercial books can be evidence either in favor of the owner or against the owner. If the commercial books do not have appropriate commencement and closing certifications, they may be evidence only against their owner. On the other hand, if the owner can prove his/her assertion with the conclusive evidences, commercial books can no longer be evidence against their owner.

In day to day businesses, these commercial books may be lost or become unusable because of disasters like fire, flood, and earthquake or theft. In such cases, those responsible for keeping and storing commercial books may request a notice of loss within fifteen days (TCC article 82/7). But if commencement and closing certification of commercial books are not be duly done; those responsible for keeping and storing commercial books may face severe penalties because they will not able to obtain a notice of loss in case of the loss caused by theft and force measures. For example according to TTPL article 359/2 not submitting books and documents to authorized persons for tax audit during the inspection, although their existence is determined through notarization records or

other means is defined as concealment of felony. A merchant may be punished with imprisonment from three to five years because of this article. The presence of a notice of loss will be evidence for the existence of force majeure; it prevents the taxpayer merchant from being tried in the criminal court for this reason.

TTPL article 221 states that those who use the books written in this law are obliged to certify them at the times written in this article. According to TTPL article 352/1-8 the fact that one of the books that are required to be certified is not certified in a prescribed term is deemed not certified. VATC article 34 states that to obtain VAT deduction the transactions should be registered to the commercial books. According to TTPL article 30 the fact that the books which are obligatory to be kept are not certified is determined as the reason of ex officio tax assessment. In case of violating related articles in TTPL, first degree irregularity fine will be encountered (TTPL article 352/I-6). Also demand of VAT

deduction will be overruled and in terms of corporate tax, since revenue, cost and expense records will not be submitted; they are referred to the appraisal commission. (VUK article 30/3) The tax payer will be encounter with the fined taxation assessment.

EBL article 286 clearly states that debtor should provide the commencement and closing certifications of the commercial books. Due to EBL the article 286 and 287/2 if the debtor does not provide the required documents in full, the concordat demand will be rejected by the court.

One of the obligations for book keeping is commencement and closing certifications of commercial books. If the merchant do not certify his/her commercial books according to the law and at the same time could not collect his/her receivables and goes to bankruptcy, the merchant can be considered as a negligent bankrupt and is punished due to TPC article 162 and EBL article 310.

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