

BULLETIN

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Share Transfer in Limited Liability Company

Share transfer in limited liability company is subject to detailed regulations in the Turkish Commercial Code No. 6102. Although both are capital companies, the share transfer in limited liability company is subject to stricter conditions compared to joint stock company. While shares of joint stock companies can be freely transferred except for legal and contractual restrictions, certain conditions must be fulfilled in the share transfer in limited liability company.

I. SHARE TRANSFER IN LIMITED LIABILITY COMPANY

1. TRANSFER CONTRACT

Transfer of registered capital shares is made in writing and the signatures

of the parties thereto are notarised. This is a condition of validity, and in case of a dispute, the court shall ex officio take into account whether this requirement has been complied with or not.

Also, the transfer contract (share purchase agreement) indicates; additional payment and supplemental performance obligations, prohibition of competition clause (if it aggravated or expanded to bind all the partners), first option, pre-emption, repurchase and purchase rights and contractual penalties, if any.

2. NOTIFICATION OF SHARE TRANSFER TO THE COMPANY

The mere execution of a transfer agreement in accordance with the law is not sufficient for the transfer of shares. In addition, the general assembly of the limited liability company must approve this transfer. In order to obtain this approval, the transfer of shares must first be notified to the company by the transferor or transferee. This notification should be made through a notary public for ease of proof.

3. APPROVAL OF THE GENERAL ASSEMBLY

Unless otherwise provided in the company contract, approval of the general assembly is required for transfer of registered capital shares.

The general assembly shall take the approval decision with the ordinary quorums as per Art. 620 of the TCC. With the approval decision, the transferee becomes a shareholder of the company.

Approval is deemed given, unless general assembly rejects the transfer within three months following the notification.

4. REGISTRATION OF THE TRANSFEEE IN THE SHARE LEDGER

If the general assembly approves the share transfer, the transferee is immediately registered in the share ledger by the managers. This registration is of an explanatory nature, since the transferee has acquired the title of shareholder by the decision of the general assembly.

5. REGISTRATION AND ANNOUNCEMENT

Managers apply to the trade register for registration of the transfer of the registered capital shares. The transfer of shares is announced in the Turkish Trade Registry Gazette after registration.

II. WHAT HAPPENS IF THE SHARE TRANSFER IS NOT APPROVED BY THE GENERAL ASSEMBLY?

The general assembly may not approve the transfer of shares. Unless otherwise stipulated in the articles of association, the general assembly may refuse to give approval the transfer of shares without any reason.

In the event that the general assembly does not approve the share transfer, the share transfer does not take place and the ownership of the share remains with the transferor. In this case, the transferee cannot claim any rights against the company. In this case, the shareholder has the right to leave the company for just cause.

III. SPECIAL CIRCUMSTANCES

The rule in limited liability companies is that the transfer of shares must be approved by the general assembly. However, different regulations may be included in the company contract.

1. ABOLITION OF THE CONDITION OF APPROVAL OF THE GENERAL ASSEMBLY FOR SHARE TRANSFER

It is possible to abolish the requirement for the approval of the general assembly for the transfer of shares with a regulation to be introduced to the company contract. In this case, the transfer of shares in a limited liability company becomes easier and the transfer agreement becomes sufficient for the share transfer.

2. PROVISION OF REASONS FOR THE GENERAL ASSEMBLY TO REFRAIN FROM APPROVAL

The company contract may stipulate the reasons for the general assembly to refrain from approving the transfer of shares. There is a wide room for maneuver as to what these reasons will be. For example, the company contract may stipulate that the person who will take over the shares must be a family member or have certain characteristics.

3. PROHIBITION OF SHARE TRANSFER

Transfer of registered capital shares may be prohibited by the company contract.

Just as in the case where the general assembly does not approve the transfer of shares, the shareholder has the right to leave the company for just cause in the event that the transfer of shares is completely prohibited by the company contract. It is not possible to take this right away from the shareholder by a regulation to be introduced to the company contract.

However, it should be noted that the prohibition of share transfer or the rejection of the share transfer by the general assembly are not absolute just causes in terms of the right to exit. It should be evaluated whether these situations make the continuation of the partnership relationship unbearable for the shareholder.

IV. SPECIAL CASES OF ACQUISITION OF SHARES IN LIMITED LIABILITY COMPANY

In the cases where the registered capital shares are acquired through inheritance, division of estate, matrimonial property law or compulsory execution, all the attendant rights and obligations shall be transferred to the acquirer of the registered capital shares without the approval of the general assembly.

However, the person who acquires the share in this way may not be suitable for the company. For this reason, the legislator has granted the company the right to prevent the transfer of the share to this person. Accordingly, the company may refuse to approve the person to whom the capital share is transferred within three months after the acquisition is learned.

The company must exercise its right of refusal explicitly and in writing. In addition, the company must propose to the transferee to acquire the shares for its own account or for the account of its shareholder or a third party nominated by the transferee, at their real value.

If the Company has not exercised its right of refusal within three months after learning of the acquisition, it is deemed to have authorized the transfer of the share.

If the company exercises its right of refusal, the refusal shall have retroactive effect as of the day of the transfer.

The rejection does not affect the validity of the general assembly resolutions passed during the period until the decision on this matter is made. These resolutions shall remain valid.