

BULLETIN

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Share Transfer in Joint Stock Companies

The joint stock company is one of the most common capital companies in Turkey. Turkish Commercial Code No. 6102, taking into account the need for speed and efficiency in commercial life, has subjected the transfer of shares in joint stock companies to important rules and procedures. These rules differ according to the nature of the transferred share and whether it is linked to a certificate or not. It is of vital importance to know the procedures before the need of share transfer arise.

I. TRANSFER OF UNCERTIFICATED SHARES (NAKED SHARES)

Naked shares in a joint stock company that have not been fully paid are transferred according to the provisions on assignment of receivables. Accordingly, a written assignment of receivables agreement must be concluded (Art. 183 of the TOC)

In the transfer of a naked share for which the price has not been fully paid, the provisions on assignment of debt shall apply in addition to the provisions on assignment of receivables (Art. 195 of the TCO). In this case, the transferor of the share is also the debtor against the company. The most important consequence of the application of the provisions on assignment of debt is that the consent of the creditor company is required for the transfer to be valid.

After the aforementioned transfer transactions regarding the naked shares, the transferee must be registered in the share ledger in order for this transfer to be effective against the company. The shareholders who transfer the naked shares shall be registered in the share ledger together with their names, surnames, titles and addresses (Art. 499/I of the TCC). For registration in the share ledger, the board of directors must adopt a resolution to this effect. Unless it is proved that the shares have been duly transferred, it is not possible to register the transferee in the share ledger.

II. TRANSFER OF CERTIFICATED SHARES

A. TRANSFER OF BEARER SHARES

Transfer of bearer shares is regulated in art. 489 of Turkish Commercial Code No.

6102 ("TCC"). Accordingly, the transfer of bearer share certificates shall become effective on the company and third parties only by notification of transfer to Central Registry Agency (CRA) by the person who transferred the shares by way of acquiring possession of share certificate.

If such notification is not made to CRA, owners of bearer share certificates cannot exercise their shareholder rights until such notification made.

The date of notification to CRA is determinant in respect to asserting shareholder rights of bearer share certificate owners to the company and third persons.

B. TRANSFER OF REGISTERED SHARES AND SHARE CERTIFICATES

The basic rule on the transfer of registered shares and share certificates is regulated under Art. 490 of the TCC. Accordingly, unless otherwise provided by law or the articles of association, the company's registered shares may be transferred without being subject to any restriction.

Transfer by virtue of a legal transaction shall also take effect upon transferring the possession of the endorsed registered share certificates to the acquirer.

Just like the transfer of a naked share, in the transfer of registered share certificates, the transferee must be registered in the share ledger in order for the transfer to be effective against the company. This is because, only the person registered in share ledger shall be considered a shareholder with respect to the relationship with the company (Art. 499/IV of the TCC). As stated above, a resolution of the Board of Directors is required for registration in the share ledger.

III. RESTRICTION OF SHARE TRANSFER IN JOINT STOCK COMPANIES

Although registered share certificates may be transferred by endorsement and transfer of possession as a rule, the company may refrain from registering this transfer in the share ledger under certain circumstances. Some of these rules restricting the transfer of registered share certificates arise from the law and some from the articles of association (Art. 490/I of the TCC).

A. STATUTORY RESTRICTION

Registered shares, which have not yet been paid in full, may be transferred only with the consent of the company. However, the company may withhold consent only if the solvency of the acquirer is in doubt and the security requested by the company is not provided (Art. 491 of the TCC). Therefore, the company is obliged to approve the transfer in cases where the transferee has the ability to pay or sufficient collateral is provided for the balance capitalization obligation.

On the other hand, in some cases, even if the registered shares are not fully paid, the company's approval is not required for the transfer to take place. Indeed, if the transfer is realized by way of inheritance, division of estate, matrimonial property law or compulsory execution, the company's consent is not required (Art. 491/I of the TCC).

B. RESTRICTION BY THE ARTICLES OF ASSOCIATION

Pursuant to Art. 492 of the TCC, articles of association may require registered shares be transferred only with the consent of the company. Accordingly, the articles of association may restrict the transfer of registered share certificates, naked shares and interim registered shares. However, it is not possible to restrict the transfer of bearer share certificates with a provision to be included in the articles of association.

The reasons for withholding consent to the transfer and the provisions and consequences of withholding consent are subject to separate regulations depending on whether the shares are listed on the stock exchange or not (Art. 493-498 of the TCC).