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BULLETIN

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How to Transfer Shares in Joint Stock or L.L. Companies? What are the Possibilities If the Share Transfer Agreement is not Approved?

A. What is a share?

According to the dictionary, a share is defined as "a portion of a whole divided between more than one person."

In commercial law, a share refers to "the small units of companies' capital that are transferable and subject to legal transactions". Being a shareholder of a company means owning shares/stocks of that company. Share has economic value. It can be subject to legal transactions and can be transferred.

1. What are the rights and obligations of shareholders of joint stock companies and limited liability companies?

The financial rights provided to the shareholder are rights that can be measured in money; such as pre-emptive rights, the right to receive liquidation shares, the right to acquire bonus...

On the other hand, the most important administrative rights are the right to participate in the general assembly and the right to vote, which enables shareholders to participate in the management of the company. In addition to these, rights such as the right to obtain and review information, the right to file a lawsuit for the annulment of the general assembly resolution, and the right to file a lawsuit for termination for just cause are also administrative rights.

In joint stock companies, the only obligation arising from shares is to fulfill the obligation to contribute capital. On the other hand, in limited liability companies, additional payment obligations and ancillary obligations may be imposed on the shareholder in addition to the capital contribution obligation.

2. Can a joint stock company and a limited liability company have certificated shares? Does the certificated shares have any effect on the transfer of shares?

In a joint stock company, share certificates can be issued in bearer or registered form, but bearer share certificates can only be issued for fully paid shares.

Shares in a joint stock company that are not subject to a share certificate are called "Naked Shares".

On the other hand, in limited liability companies, as in the old Commercial Code, non-circulable share certificates may be issued as a means of proof. Or registered share certificates may be issued.

The form and provisions of share transfer also vary according to the type of these share certificates.

B. How can I transfer my joint stock company shares? Can my right of transfer be limited?

Although the principle is that the shares of a joint stock company are freely transferable, depending on the type of share certificate, there may be limitations by law or by the articles of association.

i. Transfer of Registered Share Certificates:

Registered share certificates may be transferred by endorsement and transfer of possession.

There are statutory limitations and limitations imposed by the articles of association for the transfer of registered share certificates.

Pursuant to the legal restriction stipulated in Article 491 of the Turkish Commercial Code ("TCC"), the approval of the company is mandatory for the transfer of registered share certificates that have not been fully paid. The company's disapproval is only possible if the transferee's solvency is doubtful or if the transferee fails to provide the required collateral. However, the approval of the company is not required in the event that the transfer is made pursuant to the provisions of inheritance, division of inheritance, provisions of the property regime between spouses or forced execution.

Article 492 of the TCC stipulates that the transfer of registered shares may be subject to the approval of the company by the articles of association. Different restrictions may be stipulated in the articles of association depending on whether the registered shares are listed on the stock exchange or not.

In the case of unlisted shares, the transaction shall not be valid until the company approves the transfer, and no rights shall pass to the transferee. However, the right of the company to reject the transfer is limited when the transfer of these shares is made pursuant to the provisions of inheritance, compulsory execution or spousal property regimes. (See also TCC 493/4)

In terms of the transfer of registered shares traded on the stock market, different situations will be in question depending on whether the transfer takes place on or off the stock exchange. (See TCC 495 et seq., CML for detailed research)

ii. Transfer of Bearer Share Certificates:

The transfer of bearer share certificates in joint stock companies is realized by transfer of possession. In addition, the transferee must notify the central registry system in order to exercise the rights arising from the share. There is no restriction on the transfer of bearer share certificates.

iii. Transfer of Naked Shares:

Although there is no legal regulation on the transfer of shares of joint stock companies that are not registered, i.e. naked shares, the Court of Cassation has ruled that the transfer of naked shares is possible with an ordinary written agreement. In other words, the transfer of naked shares is realized through the execution of a share transfer agreement.

What can I do if the company does not approve the transfer of registered joint stock company shares?

First of all, it should be noted that the transfer of shares is a three party transaction; the transferor, the transferee and the company.

For this reason, it is accepted that both the transferor and the transferee have the right to file a lawsuit if the share transfer is rejected by the company and not recorded in the share ledger.

If the company's decision not to approve the share transfer is unlawful (for example, if the reasons for rejection set forth in the articles of association are not available), a lawsuit may be filed in accordance with the general provisions for the recognition of the transferee as a shareholder and its registration in the share ledger. This lawsuit may be filed at any time, provided that it complies with the rule of good faith.

C. How do I transfer my limited liability company shares? Can my right of transfer be limited?

The transfer of shares in a limited liability company is made by notarizing a written share transfer agreement. Unless otherwise stipulated in the articles of association of the company, the approval of the general assembly of shareholders is mandatory for share transfer.

After the share transfer agreement is notarized, it must be notified to the general assembly.

The general assembly must respond to this notification within 3 months and notify that it approves or rejects the transfer. If the general assembly does not respond within 3 months, it is deemed to have approved the transfer.

Until the approval, all rights and obligations belonging to the share are on the transferor.

The rights and obligations pass to the transferee only after the approval of the general assembly.

After the approval of the general assembly, the company manager enters the transfer in the share ledger.

What happens if the general assembly does not approve the share transfer?

Unless otherwise agreed in the articles of association, the general assembly may not approve the transfer of shares without giving a reason. The General Assembly has discretion on this matter.

If the general assembly does not approve the transfer, the ownership of the shares remains with the transferor. The transfer agreement is terminated due to "impossibility of subsequent performance" and the parties may request the return of mutual claims.

The general assembly may not approve the share transfer without giving a reason.

TCC 595/5 reserves the shareholder's right to exit the company for just cause with the provision "If the company agreement prohibits the transfer or if the general assembly refuses to approve the transfer, the shareholder reserves the right to exit the company for just cause".

In other words, the shareholder whose share transfer is not approved has the right to exit the company. However, pursuant to TCC 638/1, the right to exit may be subject to certain conditions in the articles of association.

If there is a provision in the articles of association regarding the right to exit if the share transfer is not approved, the shareholder may directly exercise the right to exit.

If there is no such provision in the articles of association, the shareholder must apply to the court and the court must decide that the right to exit is exercised for just cause.

Summary;

For both joint stock companies and limited liability companies, the provisions applicable to the transfer will vary depending on whether the shares are attached to a share certificate or not, and also depending on the type of share certificates.

In joint stock companies, share transfers can be made in ordinary written form, while in limited liability companies, it is necessary to notarize share transfer agreements.

Joint stock companies are companies with fixed capital and shareholders do not have the right to exit the company. The only way for shareholders to terminate their relationship with the company is to transfer their shares. For this reason, if the company does not approve the share transfer, the shareholders may file a lawsuit.

In terms of limited liability companies, the shareholder whose share transfer is not approved "may exercise the right to leave the company for just cause."

Levent Mah. Manolyalı Sok. No: 12
Beşiktaş / İSTANBUL

+90 212 282 65 66

cagri.hatip@bshkhatip.com