

NEWSLETTER

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LEGAL VALIDITY AND REQUIREMENTS OF SHARE TRANSFER PROMISE AGREEMENTS



Transactions regarding the transfer of joint-stock company shares are often handled under a single agreement in practice; the distinction between the parties' agreement on the share transfer and the legal acquisition of share ownership is frequently overlooked. This situation leads to serious hesitations regarding the legal nature, binding effect, and the consequences for the company, particularly in share transfer promise agreements.

A share transfer promise agreement is in the nature of an agreement concluded prior to the final transaction regarding the transfer of the share, imposing an obligation on the parties to realize the share transfer in the future. In this article, the legal validity of the share transfer promise agreement, the conditions under which it is binding, and the circumstances in which it does not result in share ownership are discussed at the intersection of the law of obligations and corporate law.

Legal Nature of the Share Transfer Promise Agreement

In terms of its legal nature, a share transfer promise agreement is an obligatory transaction. With this agreement, one of the parties undertakes to transfer the share, and the other party undertakes to take over the share. However, this undertaking alone does not result in the transfer of the ownership of the share or the status of shareholder to the transferee.

In corporate law, share transfer presents a two-stage structure. The first stage is the obligatory transaction, which refers to the contractual relationship creating an obligation between the parties. The second stage is the disposition transaction, which enables the legal transfer of the share. A share transfer promise agreement corresponds only to the first of these two stages. Therefore, the existence of a valid share transfer promise agreement creates a binding obligatory relationship between the parties but does not mean that the status of shareholder has passed to the transferee.

This distinction is frequently missed in practice; claims are made to assert shareholding rights based on the transfer promise agreement or that the company is bound by this agreement. However, as a rule, a transfer promise only binds the parties to the agreement.

Validity Requirements: Freedom of Contract and the Issue of Form

The first fundamental basis for the validity of a share transfer promise agreement is the principle of freedom of contract accepted in the Turkish Code of Obligations. Parties may enter into an undertaking regarding the transfer of shares, provided that it is not contrary to mandatory provisions, public order, or morality.

In terms of form, there is generally no special formal requirement prescribed by law for a share transfer promise agreement. However, considering the type of share constituting the subject of the agreement and the legal transaction through which the transfer will be completed, the written form becomes de facto mandatory in practice. Especially since the transfer of shares not attached to a certificate is subject to the provisions of the assignment of claims, making the transfer promise in writing is important for the purposes of proof and validity.

The point to be underlined here is that the lack of form in a transfer promise agreement, in most cases, does not affect the share transfer itself, but only the validity of the obligatory relationship between the parties. Since the share transfer has not yet taken place, the discussion pertains to the binding nature of the transfer promised to be made in the future.

Relativity of Contracts and Effect on the Company

In accordance with the principle of the relativity of contracts, a share transfer promise agreement, as a rule, only produces effects between the parties to the agreement. Unless the company is a party to this agreement, it is not bound by the transfer promise. Therefore, based on a transfer promise agreement concluded among shareholders themselves, it is not possible to request registration in the share ledger, participation in the general assembly, or the exercise of voting rights from the company.

In practice, it is occasionally claimed that if all shareholders or persons authorized to represent the company sign the transfer promise agreement, the company is also bound by this agreement. However, even in such cases, unless there is an express undertaking made by an authorized corporate body decision on behalf of the company, it should not be accepted that the company has become a party to the agreement. A contrary approach would damage the principle of legal personality and lead to the direct attribution of the personal transactions of shareholders to the company.

In this framework, a share transfer promise agreement should be evaluated not as a "pre-transfer" transaction binding the company, but as a preliminary agreement creating an obligation of performance between the parties.

Impact of the Articles of Association and Statutory Restrictions on the Transfer Promise

The validity of a share transfer promise agreement does not mean that the share transfer is factually possible in every case. In cases where the share transfer is restricted by the articles of association or by law, the transfer promise remains valid, but its performance may become legally impossible or limited.

For example, in cases where the transfer of registered shares is subject to the approval of the board of directors in the articles of association, it is not possible to force the share transfer based on the transfer promise. In this case, the refusal of the board of directors to grant approval prevents the share transfer from occurring at the disposition stage. The share transfer promise agreement maintains its validity between the parties; however, to the extent that the performance of the obligation becomes impossible, liability arises within the framework of the law of obligations.

Similarly, temporary transfer prohibitions prescribed by law or mandatory restrictions regarding share transfer may also affect the performance of the transfer promise. In such cases, the share transfer promise agreement cannot be performed during the period the share transfer is prohibited; however, the obligatory relationship between the parties may result in consequences such as compensation or rescission of the contract.

Breach of the Transfer Promise and Legal Consequences

In the event of a breach of the share transfer promise agreement, provisions regarding the breach of obligation come to the fore for the breaching party. In this context, a request for specific performance, compensation, or, if provided for in the contract, a penalty clause may be in question. However, the request for specific performance is limited to cases where the share transfer is legally possible. In cases where there is a legal or contractual (articles of association) impediment, liability for compensation takes precedence over specific performance.

It should be noted with importance that the breach of the transfer promise, as a rule, does not result in the realization of the share transfer or the acquisition of the status of shareholder. If the share transfer has not been made despite the transfer promise, the transferee does not acquire the status of shareholder; they can only assert their rights arising from the contract.

Conclusion

Although the share transfer promise agreement serves an important function in the process regarding the transfer of joint-stock company shares, it is a type of agreement whose legal effect is frequently misevaluated. This agreement is not a disposition transaction that realizes the share transfer, but a preliminary agreement creating an obligation for the share transfer to be made in the future. Therefore, the existence of a valid transfer promise agreement does not mean that the status of shareholder has passed to the transferee or that the company is bound by this agreement.

In order to ensure legal certainty in practice, share transfer promise agreements must be structured by taking into account the transfer restrictions in the articles of association, legal prohibitions, and the company's approval mechanisms. Otherwise, even if a valid obligatory relationship is established between the parties, it will be inevitable that the share transfer cannot factually take place and disputes related thereto will arise.

