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# Insights

2026

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***Dear Clients, Business Partners, and Colleagues;***

2025 was a year in which we worked diligently and had the opportunity to revisit many legal issues.

We have compiled some of our work into legal newsletters and shared them with you.

We have compiled the most-read and frequently asked-about topics from various bulletins published at different times and decided to share them with you this time in the form of a booklet titled "BSHK Insight."

We hope this compilation proves useful to you.

In the final section of our work, we have shared the corporate restructuring presentations and methodologies we developed based on client needs. We are also creating a separate booklet dedicated to corporate restructuring.

We will continue to share our newsletters, business solutions, and restructuring methods with you in 2026.

We would like to take this opportunity to once again thank all our clients, business partners, and team members with whom we have had the privilege of working.

*Best regards.*

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# Impossibility of Performance

**In our commercial lives or daily interactions, every promise we make creates an "obligation of performance" in legal terms. According to the Turkish Code of Obligations, these obligations must, as a rule, be fulfilled. However, the unexpected course of life sometimes renders these promises physically or legally impossible to keep. This situation is called impossibility of performance.**

**Impossibility of performance occurs when an obligation becomes impossible to fulfill due to reasons for which the debtor cannot be held responsible, thereby resulting in the automatic termination of the debt.**

According to the Turkish Code of Obligations, these obligations must, as a rule, be fulfilled. However, the unexpected course of life sometimes renders these promises physically or legally impossible to keep. This situation is called impossibility of performance.

## I. Conditions and Types of Impossibility of Performance

For an agreement to terminate based on this provision, certain conditions must coexist. These are, respectively: the initial validity of the contract, the subsequent emergence of the impossibility, the lack of fault on the part of the performing party, and the debt being of a nature that cannot be substituted.

### A. Conditions for Impossibility of Performance

***1. Validity at the Time of Execution:*** The task must be performable when the contract is signed. If the task is impossible from the outset (e.g., selling something that never existed), the contract is void ab initio (void from the start), and impossibility of performance cannot be claimed.

***2. Subsequent Emergence:*** The impossibility must occur after the contract has been validly established.

***3. Principle of Absence of Fault:*** The event causing the impossibility must occur without any fault, negligence, or intent on the part of the debtor. This usually happens due to Force Majeure (unforeseeable natural disasters such as floods, earthquakes, epidemics, or wars) or Unexpected Events (decisions by authorities preventing performance, e.g., expropriation).

***4. The Debt Must Be a "Specific Good" (Specific Debt):*** The performance that has become impossible must be a "specific debt" (e.g., a specific painting, a vehicle with a specific license plate) that cannot be replaced. For generic debts such as money or commodities (wheat, bricks), the rule "genus non perit" (the genus does not perish) applies; in this case, the debtor is obliged to provide a replacement. In other words, if the debtor can provide an identical item, impossibility of performance cannot be invoked.

## B. Types of Impossibility

Impossibility varies according to how it arises:

***1. Material and Legal Impossibility:*** Impossibility may arise from the physical destruction of the good (fire, flood), which is Material Impossibility; or it may arise from a government decision (expropriation, export ban), which is Legal Impossibility.

***2. Total and Partial Impossibility:*** If the entire performance becomes impossible, it is Total Impossibility; if only a part becomes impossible, it is Partial Impossibility. In partial impossibility, the rule is for the remaining part of the contract to remain in force. However, if the creditor is entitled to say, "I would not have entered this contract if it were not whole," or if the contract cannot survive partially, the contract terminates in its entirety.

***3. Permanent and Temporary Impossibility:*** If the chance to perform is completely eliminated, it is Permanent Impossibility; if performance is only delayed for a period, it is Temporary Impossibility. In the case of temporary impossibility, a reasonable waiting period is required per the principle of good faith. However, if the waiting period is uncertain or expected to last too long, it may be decided that the contract has terminated.

> When impossibility of performance arises, the contractual relationship terminates automatically, and the settlement process between the parties begins.

## II. Legal Consequences of Impossibility

When impossibility of performance arises, the contractual relationship terminates automatically, and the settlement process between the parties begins.

### A. Release from Mutual Obligations

In contracts involving mutual commitments (such as sale, lease, or construction contracts), the consequences are as follows:

***1. Release from Performance:*** By asserting impossibility of performance, the debtor is released from the obligation to perform.

***2. Loss of Right to Counter-Performance:*** Likewise, the debtor loses the right to demand the consideration for their own debt, such as the price of the good.

***3. Obligation of Restitution:*** The debtor must return all performances previously received from the creditor—such as down payments, earnest money, or advances—in accordance with the provisions of unjust enrichment.

### B. The Debtor's Obligation to Notify

Even if the debtor is not at fault, they have two important duties based on the principles of good faith and fair dealing:

***1. Notification Without Delay:*** As soon as the debtor learns of the impossibility, they must notify the creditor immediately and without wasting time.

***2. Measures to Mitigate Loss:*** The performing party must take all necessary measures to prevent the loss from increasing.

Breach of These Duties and Compensation: If the debtor fails to fulfill these notification and mitigation obligations, even if the impossibility did not originate from them, they shall be liable to compensate the creditor for additional damages arising from this negligence.

### C. Impossibility Caused by the Creditor's Fault

If the person who caused the impossibility is the creditor themselves (e.g., the creditor breaking the machine subject to the contract due to misuse), the debtor is released from their performance but retains the right to demand counter-performance. In this case, the debtor must deduct any savings gained from being released from performance from their claim.

## III. Legal Obligations and Points of Consideration in Impossibility of Performance

Impossibility of performance is not just the termination of a contract; it is also the redefining of the mutual rights and responsibilities of the parties. The most critical distinction in this process is whether the impossibility is fault-based or non-fault-based. The determination of fault directly dictates whether one of the parties will pay compensation.

During this period where the debt terminates due to impossibility:

1. Whether one of the parties is at fault,
2. The immediate notification upon the occurrence of impossibility, and
3. The restitution process according to unjust enrichment provisions are of great importance.

Proceeding in this manner reduces the risk of additional compensation liabilities in the future

# Exit and Expulsion Mechanisms
## from Partnership in Limited Companies

**The withdrawal and expulsion of partners in limited companies are regulated under Articles 638 to 640 of the Turkish Commercial Code No. 6102 (TTK). Withdrawal from partnership in limited companies is subject to strict regulations and formal requirements. Most importantly, the approval of the General Assembly is required to withdraw from a limited company.**

## 1. Withdrawal from Partnership (TTK 638)

The right of a partner to withdraw from a limited company is subject to two basic conditions: (a) exercising the right granted by the Articles of Association (Company Agreement) or (b) filing a lawsuit based on just causes.

### 1.1. Withdrawal Based on the Articles of Association

***Regulation:*** The right to withdraw from the partnership may be regulated in the Articles of Association. The exercise of this right may be subject to specific conditions or left free (e.g., "It may be exercised five years after establishment").

Since capital in limited companies serves as security for creditors and partners do not have personal liability, it is important for company security to provide conditions limiting this right in the partnership agreement. Unlike joint-stock companies, since limited companies impose more obligations on partners, withdrawing is not as easy as in joint-stock companies; the exit is ensured with the approval of other partners.

***Method of Exercise:*** The partner makes a unilateral declaration of withdrawal. This declaration is submitted for the approval of the General Assembly and must be accepted by it. If the General Assembly does not accept the declaration of withdrawal, the partner wishing to withdraw must file a lawsuit.

***Principle of Equality:*** It is possible to grant the right of withdrawal only to certain partners. However, while granting this right, the "principle of equal treatment" must be observed in all cases. Otherwise, the validity of the right may be called into question.

***Notary Requirement:*** In limited companies, share transfer agreements must be made through a notary. Following this agreement, the General Assembly must approve the share transfer. If these conditions are not met, the transfer is not considered realized.

### 1.2. Withdrawal Based on Just Cause

• ***Method of Exercise:*** Even if the right to withdraw is not regulated in the Articles of Association, every partner may file a lawsuit requesting the court to decide on their exit from the company if just causes exist.

***Just Cause:*** For a just cause to be mentioned, there must be situations that objectively make the continuation of the partnership relationship unbearable. These situations are not explicitly listed in the law and are evaluated according to the characteristics of each concrete case. However, according to Court of Appeals (Yargıtay) decisions, examples of situations that make the partnership relationship unbearable include:

- o A partner acting contrary to the duty of loyalty (betrayal of the company in management, misuse of the title for personal gain).
- o Failure to fulfill fundamental duties.
- o Becoming unable to perform company business due to permanent physical or mental illness.

***Significance of Fault:*** It is irrelevant whether the partner is at fault for the occurrence of the reasons for withdrawal (e.g., losing the capacity to work even if not at fault in an accident).

***Time Period:*** While there is no specific period stipulated in the law for the lawsuit, this right must be exercised within a reasonable time in accordance with the rule of honesty.

## 2. Participation in the Withdrawal (TTK M. 639)

Participation in withdrawal occurs when, upon one partner's request to withdraw, other partners who believe the same situation applies to them participate in this exit.

***Duty of Notification:*** When one of the partners wishes to withdraw based on the Articles of Association or files a lawsuit for just causes, the managers shall notify the other partners without delay.

***Condition and Period of Exercise:*** Each of the other partners has the right to participate in the withdrawal lawsuit if the just cause is also valid for them, or to notify the managers within one month of receiving the notice that they will participate in the withdrawal based on the right provided in the Articles of Association.

All withdrawing partners are subject to equal treatment in

proportion to their basic capital shares. In this regard, the same decisions apply to all partners who meet the same terms and conditions.

## 3. Expulsion from Partnership (TTK M. 640)

The expulsion of a partner from a limited company is possible through two basic mechanisms: (a) a General Assembly resolution for reasons stipulated in the Articles of Association and (b) a lawsuit filed based on just cause.

### 3.1. Expulsion for Reasons Stipulated in the Articles of Association (TTK M. 640/1, 640/2)

***Regulation in the Agreement:*** Situations in which one of the partners can be expelled by a General Assembly resolution may be regulated in the Articles of Association. These reasons must be objective, clear, and precise. For example, it may be regulated in the Articles of Association that partners can be expelled for matters such as violation of the prohibition of competition or loss of professional qualifications. On the other hand, expulsion conditions cannot be determined by regulations that violate the principle of equality, such as personal reasons, religious beliefs, or gender.

***Who Decides on the Expulsion of a Partner?***

o The only organ authorized to take the decision to expel a partner is the General Assembly. This authority cannot be delegated to the board of managers or individual managers.

o The decision to expel from partnership is among the "important decisions" specified in the TCC. Accordingly, at least two-thirds of the partners must be present at the General Assembly, and the absolute majority of all partners (50.01%) must cast a positive vote regarding the expulsion.

o It should be noted that the partner expelled from the company has the right to file a lawsuit.

***Period for Action for Annulment:*** The General Assembly's expulsion decision is notified to the partner intended to be expelled through a notary. The partner may file an action for annulment within three months from the date of notification. This period is a statute of limitations (preclusive term), and the expelled person only has the right to sue within 3 months.

***Even if the reasons for expulsion occur,*** if the General Assembly has not taken a decision, other partners cannot ensure the expulsion of the partner by filing an action for annulment.

### 3.2. Expulsion by Court Decision Based on Just Causes (TTK M. 640/3)

In limited companies, unlike joint-stock companies, the "partnership of persons" aspect is dominant, and company partners have as much responsibility as company managers. For this reason, the TCC has provided the possibility of expulsion by court decision if just causes exist.

***3.2.1. Conditions:*** The following conditions must be met for a partner to be expelled for just cause:

• Existence of just causes (these reasons must be concrete and objective).

• The General Assembly taking a decision regarding the expulsion of the partner.

• The request for expulsion being accepted by the court in the filed lawsuit.

***3.2.2. Examples of Just Cause:*** Matters such as violation of the prohibition of competition, behavior contrary to the obligations of commitment and loyalty, embezzlement, uttering insulting words, systematic obstruction of operations, and staying away from management for a long time (arrest, illness) can be counted as reasons for expulsion for just cause.

***3.2.3. Absence of Required Conditions:*** For the existence of a just cause, it is not required that the partner be at fault and/or that the company suffers a loss. For example, if the partner to be expelled violates the prohibition of competition, there is no need for the company or its partners to suffer a loss. Merely violating the prohibition of competition is sufficient for expulsion. Furthermore, it is not necessary to have a regulation regarding this matter in the Articles of Association.

***3.2.4. General Assembly Resolution and Quorum:*** For expulsion based on just cause, a General Assembly resolution must first be taken and submitted to the court. At least two-thirds of the votes represented must attend this General Assembly, and the absolute majority of the total basic capital entitled to vote must cast a positive vote. If this condition is not met, the expulsion will not occur, and a lawsuit based on it cannot be filed.

***3.2.5. Review by Courts in Expulsion Cases: If a lawsuit is filed, the court will examine:***

• Whether the General Assembly resolution was taken in accordance with the procedure.

• Whether the alleged reasons have occurred and whether they have made the continuation of the partnership relationship unbearable.

• Whether expulsion is the "last resort" (ultima ratio).

***Results:*** Expulsion from partnership produces results in the internal relationship on the date the court decision becomes final, and in the external relationship upon registration and announcement. The rights and responsibilities of the partner continue until the decision becomes final.

## 4. Conclusion

Cases of withdrawal and expulsion from partnership in limited companies are specifically regulated in the TTK.

• Withdrawal and expulsion are possible through the court only in the presence of just causes, and since this right stems from the law, it cannot be abolished.

• While it is possible to regulate the reasons for withdrawal and expulsion in the Articles of Association, a General Assembly resolution is required in all circumstances.

• In all processes, especially in determining the provisions of the agreement and taking decisions, the principle of equal treatment must be observed.

# Leasing of State Lands

Immovable properties belonging to the Treasury can be leased to natural and legal persons within the scope of the provisions of the State Tender Law No. 2886 and the Regulation on the Administration of Treasury Immovables, under certain conditions, with the aim of supporting agricultural production and bringing idle lands into the economy. This process is carried out by the General Directorate of National Property, which is affiliated with the Ministry of Environment, Urbanization and Climate Change.

## How to Apply?

In order to use the land for agricultural, commercial, sports, social, or other similar purposes, the applicant must apply to the Provincial Directorate of Environment and Urbanization (Real Estate Directorates, National Property Directorates, National Property Offices) in the location where the property is situated, with a petition stating the purpose of the lease.

## Which Tender Methods are Applied in Leasing State Lands?

According to Article 27 of the Regulation on the Administration of Treasury Immovables, there are 3 different methods for leasing Treasury-owned properties:

***1. Sealed Bid Method:*** Those who wish to lease state land submit their bids to the administration in a sealed envelope, and the bids are opened and evaluated by the tender commission. Confidentiality is essential here.

***2. Open Tender Method:*** In this method, bidders submit oral or written increasing bids during the tender, and the bidder offering the highest price wins. The key factor is who offers the highest bid.

***3. Negotiation Method:*** This method is applied when it is not possible to use the other bidding methods. The administration may receive bids by negotiating directly with qualified applicants.

As a rule: Article 67 of the Regulation states that properties not suitable for leasing via bidding methods can be leased through the negotiation method. Similarly, agricultural lands can also be leased via the negotiation method.

## Who Can Apply to Lease State Lands?

The general requirements to request a lease are:

- Providing a notification address in Turkey.
- Presenting an ID for natural persons and a tax identification number for legal persons.
- Submitting a certificate of registry for legal persons.

Private legal entities must submit a certificate of registry and a signature circular or power of attorney showing that the persons who will participate in the tender or submit a bid on behalf of the legal entity are fully authorized to represent it. For agricultural leases, a Farmer Registration Certificate (ÇKS) is also required from the natural person applicant.

What are the Conditions for Leasing Agricultural Land?

There are two different scenarios for leasing Treasury-owned agricultural lands:

***a. Leasing to Current Users***

This applies only to individuals who have been factually identified as using Treasury-owned agricultural lands for agricultural purposes within specific date ranges. The goal is to establish a legal basis for current usage. To qualify, the administration must have identified the actual use for at least three years, and no administrative action for "occupation" (ecrimisil) must have been taken against the user.

***b. Leasing to Landless or Land-Poor Farmers***

In this application aimed at new tenants to increase agricultural production, applications are evaluated based on specific criteria:

- The applicant must have a Farmer Registration System (ÇKS) certificate.
- The administration must determine that the applicant is landless or has insufficient land.
- The applicant must be registered in the population of the village/neighborhood where the property is located and reside there, OR have resided in that village/neighborhood for at least three years, OR be registered in the population of that village/neighborhood even if not residing there.

## Is There a Limit on Lease Amounts?

For Treasury lands leased for agricultural activities, the rent is determined by Rent Assessment Commissions based on the market value of the property or, in certain cases, the "ecrimisil" (occupation fee). Rents can be paid in advance or in installments to encourage activity.

## Is it Possible to Transfer the Lease Contract?

A lease contract for state lands cannot be transferred within the first 3 years from the start of the contract or within the last 6 months before the end of the contract. Additionally, lease contracts for agricultural lands leased to landless or land-poor farmers cannot be transferred under any circumstances.

> The process of leasing state-owned real estate for agricultural purposes is subject to technical conditions that vary by category.

## Under Which Conditions is the Lease Contract Terminated?

Pursuant to Article 74 of the Regulation, if the tenant fails to fulfill their obligations, fails to pay two consecutive installments on time, or uses the land for unintended purposes:

1. The Administration sends a notification with a minimum 10-day period requesting the tenant to rectify the breach.
2. If the situation continues despite the warning, the contract is terminated by the Administration without compensation or the need for a formal protest.
3. For non-agricultural lands, an additional penalty of 25% of the current year's rent is paid to the Administration.

## Lands That Cannot Be Leased

Areas allocated for public service, military forbidden zones, sites and protected areas deemed unsuitable by the Ministry, places of worship, and lands with disposal restrictions due to special laws cannot be leased.

## Conclusion

Leasing Treasury-owned properties for agricultural purposes is a significant regulation for both supporting production and providing opportunities for landless farmers. However, the process is subject to technical conditions that vary by category. Therefore, the scope of the property, the tender method, and application conditions should be carefully evaluated before applying.

# Between Companies and Individual Athletes or Sports Teams and Their Taxation

**A sponsorship agreement is an agreement for in-kind or cash (financial) support made by companies or real person merchants with sports clubs, sports facilities, or individual athletes. Through these agreements, product and service sponsorships (in-kind or financial) are provided.**

**In-Kind Sponsorship: Sponsorship where institutions provide their products or services to the sponsored person or institution.**

**Cash (Financial) Sponsorship: Support provided by giving money to the athlete or sports team in line with the value of the sponsorship, instead of offering products or services.**

## 1. What are the Types of Sponsorship Agreements?

Sponsorship types vary according to the benefit provided and the allocated budget:

• ***Naming Sponsorships:*** Occurs by adding the sponsor institution's name to the sports club, stadium, or facility.

• ***Main Sponsorship:*** A type of sponsorship aimed at "owning" the sponsored athlete or sports club (e.g., jersey chest sponsorships). There can be one or more main sponsors depending on the contract.

• ***Official Sponsorship:*** A type of sponsorship aimed at providing support with a lower budget than naming and main sponsorships (e.g., jersey back and short sponsorships).

• ***Product and Service Sponsorships (In-Kind):*** Sponsorships that participate not financially, but by providing products or rendering services to the athlete or club (e.g., equipment sponsorship).

## 2. Terms of the Sponsorship Contract

### *2.1. Limits on Contract Durations*

Sponsorship agreements must be made within a specific time frame. Accordingly, the fixed-term nature of the contract is a mandatory element.

• ***Prohibition of Perpetuity:*** The sponsorship relationship must have clearly defined start and end dates in the contract. While there is no maximum time limit, the end date must be determinable for the contract to be valid. Therefore, indefinite-term sponsorship contracts are not considered valid. This is important both to prevent legal uncertainties and to clarify which periods the tax deductions belong to.

## *2.2. Ethical and Legal Requirements*

### *2.2.1. Compliance with Sports Ethics*

Matters advertised through sponsorship must not be contrary to the understanding of sports, morality, or public decency. This requires the sponsorship content to comply with general sports values and social ethical rules.

- Advertising content must not damage honest competition, fair play, and the unifying spirit of sport. For example, sponsorship of a product that encourages violence or unfair gain is unacceptable.

- It is not possible to promote any content that is contrary to the general moral rules, customs, and traditions of society, or that is considered offensive or inappropriate through sponsorship activities.

### *2.2.2. Legally Prohibited Advertisements and Content*

It is not possible to use sponsor advertisements or make sponsorship contracts for products related to alcoholic beverages, tobacco products, gambling investments, and political, racial, or religious content.

Specifically, regulations determined by the General Directorate of Youth and Sports, the Laws on the Sale and Advertising of Tobacco Products and Alcoholic Beverages, and related regulations prohibit the promotion of these products through sports events and athletes.

| Prohibited Content Category | Description |
|---|---|
| **Alcoholic Beverages and Tobacco Products** | For the purpose of public health and the protection of youth, the promotion of such products in a sports environment via sponsorship is not possible. |
| **Gambling Investments** | It is not possible to advertise games of chance and gambling services by associating them with sports events. |
| **Political Content** | In order to keep sports out of political debates, advertising any political party, ideology, or candidate is prohibited. |
| **Racial or Religious Content** | Since the promotion of content that glorifies or humiliates a certain race/religion or promotes discrimination and hatred contradicts the universal principle of peace and equality in sports, such advertisements are prohibited. |

# 3. Tax Advantages in Sponsorship Contracts

## *3.1. Deduction Rates from the Tax Base*

Sponsorship expenditures made within the scope of Law No. 3289 and Law No. 3813 are considered deduction elements from the declared corporate income in the determination of the corporate tax base. Accordingly:

***For Amateur Sports Branches:*** The entire amount (100%) of the expenditure is subject to deduction.

For Professional Sports Branches: Half (50%) of the expenditure is subject to deduction.

***Amateur vs. Professional Distinction:*** It is determined by whether the athletes obtain a certain income individually or through their affiliated institution due to the organizations they participate in. Those who obtain income are considered professional, and those who do not are considered amateur.

## *3.2. Documentation and Certification Principles*

In accordance with Articles 4 and 13 of the Sponsorship Regulation, in-kind or cash supports must be based on documents issued pursuant to the Tax Procedure Law ("VUK"). These include: documents related to sponsorship and advertising services/transactions, monetary payments made by the sponsor (cash support), and expenditures related to the purchase of products and services by the sponsor (in-kind support).

### *3.2.1. Tax Deduction via Documentation of Cash Aid*

The receipt or debit note to be issued by banks for the amounts deposited to the sponsored party is accepted as the document proving the donation.

The bank receipt must clearly state that the money was deposited for sponsorship purposes.

If the money was given by hand, this transaction is provided with a "collected receipt".

However, donations and aids made without a receipt cannot be a deduction element for tax-paying sponsors.

#### *3.2.2. Documentation of In-Kind Aid*

This can be done with an invoice containing information such as the type and quantity of the aid, stating that the goods and services provided are within the scope of sponsorship.

This invoice is the certifying document for expenditures made for sponsorship purposes.

### *3.3. Deduction and Duration Conditions*

Expenditures made in-kind or in cash are considered as a reason for deduction for the year in which the expenditures were made by the taxpayers.

### *3.4. Administrative Obligations*

Sponsors must not have tax debts when making an agreement. Therefore, they must obtain a document from the tax office stating that they have no outstanding debts.

A copy of the sponsorship agreement must be submitted to the tax office to which they are affiliated.

Since taxpayers are obliged to keep their books and documents within the framework of VUK provisions, they are required to provide these documents properly if requested.

It should be noted that there is no need to obtain approval from the General Directorate of Youth and Sports for sponsorship (except for sports facility expenditures) by individual athletes and clubs. Expenditures are not subject to the permission and control of the General Directorate of Youth and Sports and the Ministry of Finance.

### *3.5. Stamp Duty Liability*

In sponsorship agreements, the contract price is subject to stamp duty. Therefore, a Stamp Duty Declaration must be submitted by the sponsor.

## 4. Differences Between Sponsorship and Advertising Expenditures

Although sponsorship and advertising expenditures are very similar concepts, there are important differences in terms of tax responsibility and objectives:

Sponsorship Expenditures: These are expenditures where the social purpose stands out, which are not directly related to obtaining commercial profit or whose relationship cannot be measured. These expenditures are expected to be unrequited (without a direct commercial return).

***Advertising Expenditures:*** These are made for the purpose of providing commercial benefit and interest on behalf of the company, directly related to obtaining commercial profit.

***Tax Impact:***
Sponsorship Expenditures: Taken into account as a deduction from the tax base at certain rates (100% for amateur sports or 50% for professional sports).

***Advertising Expenditures:*** Taken into account directly as an expense in the determination of commercial profit.
Therefore, it is possible to separate expenditures made due to transactions that include advertising and promotion purposes alongside sponsorship activities as “advertising” and “sponsorship” expenditures, provided they are specified in the agreement and comply with their peers.

***In summary:*** Sports sponsorships are not only a social contribution for companies but also a critical financial tool that offers serious tax advantages when applied correctly. To fully benefit from the advantages, the amateur/professional distinction must be made correctly, all in-kind and cash supports must be meticulously documented in accordance with the Tax Procedure Law, and contracts must comply with legal terms and ethical boundaries. A well-planned sponsorship contract both provides support to Turkish sports and offers an effective Corporate Tax deduction to sponsoring companies.

Sports sponsorships are not only a social contribution for companies but also a critical financial tool that offers serious tax advantages when applied correctly.

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# Prohibition of Transactions and Indebtedness with The Company for Board Members of Joint Stock Companies

In joint stock companies, the body responsible for the management and representation of the company is the Board of Directors. As a rule, unless a delegation of authority or restriction is made within the scope of Article 367 of the Turkish Commercial Code (TTK), all board members have the authority to represent the company. Within this scope, board members may conduct transactions and sign contracts on behalf of the company. In order to prevent the abuse of power by board members and to ensure the preservation of capital, transactions such as doing business with the company or becoming indebted to the company are restricted.

## Legal Basis of the Prohibition

One of the most significant obligations attributed to board members in joint stock companies is the duty of loyalty; furthermore, the preservation of capital is a fundamental principle. Board members are obliged to perform their duties with care and loyalty, always prioritizing the company's interests in the transactions they conduct as representatives.

In this context, while the restriction on board members' transactions with the company is a requirement of the duty of loyalty, the primary objective regarding the prohibition of indebtedness is the preservation of capital, as stated in the preamble of the relevant Article.

## Prohibition of Transactions with the Company

Pursuant to Article 395 of the Turkish Commercial Code, board members are required to obtain the permission of the General Assembly to conduct transactions with the company on behalf of themselves or others. Without such a resolution from the General Assembly, the transactions conducted by board members with the company shall be invalid.

This permission may be granted by the General Assembly in a general manner or specifically for a particular transaction. Additionally, board members may be permitted to conduct transactions with the company through a provision in the Articles of Association. However, such a provision would create a general liberty for all board members.

It should be noted that, regardless of whether the board member is a party to the transaction, if the personal interest of the board member—or their descendants, ascendants, spouse, or relatives by blood or marriage up to the third degree (inclusive)—conflicts with the interests of the company, the relevant board member cannot participate in the negotiations or vote in the board meeting.

### Invalidity of Transactions Violating the Prohibition and Deprivation of Voting Rights

Should board members engage in a transaction in violation of this prohibition, the transaction shall be per se null and void (subject to subsequent ratification). In other words, the General Assembly may validate the transaction by approving it ex post facto.

In the General Assembly meeting regarding the granting of permission for a board member to transact with the company, the relevant board member, their spouse, descendants, ascendants, or any personal companies they are partners in, or capital companies under their control, cannot cast an affirmative vote.

### Who Can Assert Invalidity?

The only party that can assert the invalidity of the transaction is the company. The board member who is the counterparty to the transaction or the third party acting on behalf of the board member cannot claim that the transaction is invalid.

### Liability of Board Members for Prohibited Transactions

If a board member conducts a transaction in violation of this prohibition, they are legally liable for any damages caused to the company pursuant to Article 553 of the TCC.

### Prohibition of Indebtedness to the Company

Pursuant to paragraph 2 of Article 395 of the Law, non-shareholder board members, as well as their descendants, ascendants, spouses, or relatives by blood or marriage up to the third degree (inclusive), are prohibited from becoming indebted in cash to the company.

The company cannot provide suretyship, guarantee, or security, assume liability, or take over the debts of these individuals. In case of violation of this prohibition, company creditors may directly initiate enforcement proceedings against these individuals for the amount they owe to the company.

### Does the Prohibition of Indebtedness Only Cover Non-Shareholder Board Members?

The relevant article only covers non-shareholder board members. Shareholder board members, like all other shareholders, may become indebted to the company provided that the conditions in Article 358 of the Law are met.

For shareholders to be able to borrow from the company, they must have paid their due capital commitments in full, and the total profit of the company, including free reserves, must exceed the losses of previous years.

### Consequences of Violating the Prohibition of Indebtedness

In any event, the legal liability of board members for damages incurred by the company continues under Article 553; furthermore, criminal liability will also arise in case of violation of the prohibition of indebtedness.

Article 562 of the TCC stipulates a judicial fine of up to 300 days for persons who violate the prohibition of indebtedness.

## Conclusion

Board members of joint stock companies must always act in accordance with the duty of care and loyalty while exercising their representation and management powers. Seeking to prevent the abuse of representative authority, the Legislator has prohibited board members from participating in decision-making processes where their interests conflict with the company. Furthermore, it has mandated the permission of the General Assembly for transactions they conduct with the company.

Additionally, within the scope of the principle of preservation of capital, non-shareholder board members and their relatives are prohibited from borrowing from the company or putting the company under obligation for their own debts. Specifically, criminal liability is foreseen for the violation of the prohibition of indebtedness, and board members must ensure they do not act in violation of these prohibitions during company operations.

# Family Businesses and The Importance of a Family Constitution

Family businesses, which form the backbone of commercial life, account for approximately 95% of all enterprises in Türkiye and around 60% worldwide. Despite this significant share, only about 10% of family businesses successfully reach the third generation. In this context, the ability of companies to survive across generations, achieve institutionalization, avoid becoming a source of family disputes, and transfer the company's vision between generations has made the Family Constitution a critical instrument for ensuring the stability and sustainability of family businesses.

## What Is a Family Business?

A family business refers to an enterprise managed by members of a family, where the majority of the shareholders belong to the same family. Within the scope of the Turkish Civil Code, shareholding may have a broad impact through family ties due to rights arising in favor of spouses, children, and heirs.

## Strengths and Weaknesses of Family Businesses

The primary reasons why family businesses fail to achieve sustainability include internal conflicts, lack of an institutional structure, unwillingness of future generations to continue the business, or conversely, situations where multiple members of the next generation wish to manage the company simultaneously. A significant portion of these issues is foreseeable and manageable. In this respect, the greatest risk faced by family businesses is uncertainty. Through a family constitution, such uncertainties can be eliminated and a solid institutional structure can be established.

## Advantages of a Family Constitution

A Family Constitution contributes to transparent, predictable, and sustainable internal decision-making processes. By clearly defining the roles, responsibilities, and principles of participation in management for family members, it both reduces internal conflicts and facilitates the adoption of a professional management model. As a result, companies gain a more reliable and auditable structure in the eyes of investors, significantly increasing their attractiveness for external financing and investment.

At the same time, a family constitution serves as a strategic tool that supports the company's long-term competitiveness. By establishing a healthy succession mechanism for the third generation and beyond, and by minimizing disputes that may arise during inheritance and management transfer processes, it safeguards the continuity of the business. With a structure aligned with corporate governance principles, family businesses can strengthen both internal harmony and market competitiveness, thereby creating a sustainable growth model.

## Scope and Strategic Importance of the Family Constitution

One of the critical issues for family businesses is the separation of family assets from company assets and the determination of policies governing the management of these assets. The protection of family assets, principles for the use and distribution of income derived from such assets, and rules regarding how assets will be utilized in new investment decisions or to meet the needs of family members can be clearly and predictably regulated within the family constitution. In this way, both the company's and the family's finances can be managed in a sustainable and balanced manner.

Family constitutions typically begin with principles defining the family's vision, mission, values, objectives, and culture; subsequently, they identify who constitutes the family and specify the scope of the companies in which the family group holds shares. Taking into account the provisions of the Turkish Commercial Code, the constitution may also include regulations setting limits on indebtedness of family members to the company, establishing rules for the education and career development of younger generations, and creating mechanisms such as a family bank or family fund. This approach ensures both financial discipline within the family and the preparation of future generations in alignment with the company's culture.

Furthermore, the working conditions of family members and individuals who later join the family, internship and recruitment processes, performance evaluation criteria, and the requirements for assuming managerial roles or board memberships can be regulated in a clear and detailed manner. Addressing critical governance matters such as shareholding rules, restrictions, and succession planning within the constitution becomes a fundamental element in strengthening long-term stability, fair management, and institutionalization in family businesses. This comprehensive framework supports both family harmony and the company's professional management standards.

## Institutionalization and the Family Constitution

Since business operations in family companies are closely intertwined with family relationships, the institutionalization process is more complex compared to non-family companies. The Family Constitution is the fundamental document that regulates this complexity by defining the company's values, objectives, management principles, and decision-making mechanisms. It establishes communication channels within the family, clarifies roles, and facilitates the transition to professional management.

## Strengthening the Binding Effect of the Family Constitution

Under the Turkish Code of Obligations, a Family Constitution qualifies as an atypical contract and is binding upon all family members who sign it. However, in order to also regulate the company's relations with third parties, the appropriate provisions should be incorporated into the articles of association and, where applicable, into a shareholders' agreement.

In this context, the following methods may be used to strengthen the binding effect of the family constitution:

• Determining specific qualifications for board membership,

• Restricting the transfer of registered shares,

• Creating privileged shares,

• Regulating representation authority through internal directives,

• Making the company itself a party to the Family Constitution.

These strategies ensure that the constitution remains applicable across generations and becomes fully integrated with the corporate structure.

## The main objectives of a Family Constitution include:

• Transferring the family's values, mission, and long-term vision to future generations,

• Informing family members about the company's status and strategic decisions,

• Defining the rules governing family members' rights regarding employment, profit distribution, and similar matters,

• Establishing regular communication and meeting mechanisms within the family,

• Ensuring that critical company decisions are made collectively.

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# Pledge of Shares in Joint Stock Companies

The legal nature of joint stock company shares enables the transfer of shares or the use of company shares as collateral.

In joint stock companies, the concept of a "share" refers to portions of the company's capital divided into certain ratios. Each company share grants its holder both financial rights over the company and the authority to participate in management.

A share comes into existence upon the registration of the company's incorporation or capital increase; the share certificate, on the other hand, serves merely as a means of proof and circulation of this right. Therefore, the share is a right independent of the certificate and may be issued as registered or bearer, provided that it is stipulated in the articles of association.

The legal nature of joint stock company shares enables the transfer of shares or the use of company shares as collateral. In practice, shares are frequently subject to the establishment of a pledge right, in addition to being used in investment and partnership relations.

Whether a company share is represented by a certificate, tracked as a book-entry value, or subject to transferability conditions directly affects the method of establishing the pledge.

For this reason, the pledge over joint stock company shares constitutes a complex legal transaction located at the intersection of the Turkish Commercial Code, the Turkish Civil Code, and Capital Markets Law.

## Types of Share Certificates

Under the Turkish Commercial Code No. 6102, there are two types of share certificates for joint stock company shares. These are:

***Registered Share Certificates:*** These are documents issued in the name of a specific person, not containing an order clause and not accepted as order instruments by law. As a rule, transferability applies to registered share certificates. However, Articles 491 et seq. of the Turkish Commercial Code ("TCC") provide that the transfer of such shares may be restricted by the articles of association and that the transfer of shares may be subject to the approval of the company.

***Bearer Share Certificates:***

These are negotiable instruments where the holder (the person in possession) is deemed to be the rightful owner based on the text of the instrument. The transfer of these share certificates is effected through the transfer of possession.

## What Is the Mechanism of Establishing a Pledge Right over Company Shares?

The increase in the number and importance of joint stock companies in commercial life has led to their shares being more frequently subject to legal transactions (sale, usufruct, pledge, etc.). Due to their material value and transferability, joint stock company shares are often used in security transactions; in particular, a pledge right is established over them.

A pledge right is a limited real right that provides security to the creditor in the event that the claim cannot be satisfied and grants the creditor the right to primarily satisfy its claim by converting the pledged asset into money.

The establishment of a pledge right varies depending on whether the claim or the right subject to the pledge is represented by a certificate.

In order to establish a pledge right over a share, both an obligational transaction and a dispositive transaction must be carried out. The obligational transaction is effected through a pledge agreement. The pledge agreement is the legal transaction whereby a person undertakes the obligation to establish a pledge in favor of the creditor over the joint stock company share owned by that person, and it is not subject to any formal requirements.

The dispositive transaction is the final stage for the establishment of the pledge right. Accordingly, the establishment of a pledge right over shares is classified under the following headings: pledge of uncertificated (bare) shares, pledge of dematerialized shares, pledge of bearer share certificates, and pledge of registered share certificates.

### *1. Establishment of a Pledge Right over Uncertificated Claims*

As in the assignment of claims, it is stipulated that a written pledge agreement (constitutive in nature) is mandatory. The pledge agreement replaces the real agreement in possessory movable pledges. For the establishment of this agreement, there is no requirement to notify the debtor that a pledge right has been established over the claim. However, such notification is important in order to prevent the pledge right from being extinguished due to the debtor paying the debt in good faith.

### *2. Establishment of a Pledge Right over Certificated Claims*

For the establishment of a pledge right over certificated claims that do not qualify as negotiable instruments, pursuant to Article 955 of the Turkish Civil Code ("TCCivC"), a written pledge agreement must be executed and possession of the certificate must be transferred. Unlike uncertificated claims, in the case of certificated claims, the pledge agreement does not constitute the dispositive stage but rather an element of the undertaking stage.

### *3. Pledge Right over Joint Stock Company Shares*

Joint stock company shares may be subject to legal transactions even if they have not been printed as share certificates. These legal transactions include the establishment of a pledge right over shares. As reiterated, share certificates qualify as negotiable instruments under the TCC and as capital market instruments under the Capital Markets Law ("CML").

### *4. Establishment of a Pledge Right over Bare Shares*

Since bare shares are rights not embodied in negotiable instruments, Article 955 of the Turkish Civil Code applies. The parties to the written pledge agreement are the creditor and the shareholder. It is not required that the shareholder be the debtor in the underlying debt relationship; a third party may establish a pledge right over the shares owned in favor of the debtor's obligation. The presence of the pledgor's signature in the pledge agreement is sufficient; the absence of the pledgee's signature does not affect the validity of the agreement. The establishment of a pledge over a bare share must be recorded in the share ledger.

### *5. Establishment of a Pledge Right over Certificated Shares*

While the documentation of a debt by a certificate does not always indicate that such certificate is a negotiable instrument, a negotiable instrument is always a debt instrument. Depending on the manner in which the right holder is determined, the establishment of a pledge right over negotiable instruments varies. However, pursuant to Article 954 of the Turkish Civil Code, since the provisions governing possessory movable pledges apply to the establishment of a pledge right over claims and rights, the transfer of possession is required.

### *6. Pledge of Bearer Share Certificates*

For the establishment of a pledge right between the parties through the transfer of possession, the existence of a real agreement is required. Pursuant to Article 956 of the Turkish Civil Code, no written pledge agreement is required for the establishment of a pledge right over bearer share certificates. Additionally, as in order and registered negotiable instruments, a pledge right may also be established

over bearer instruments through endorsement or a declaration of transfer.

### *7. Pledge of Registered Share Certificates*

For the establishment of a pledge right, the transfer of possession is required along with a written declaration of transfer or endorsement for pledge purposes. The functions of a pledge endorsement are identification and security.

Open pledge endorsement: An endorsement explicitly stating that the certificate has been pledged.

***Hidden pledge endorsement:*** The use of an assignment endorsement for security purposes based on the agreement between the parties.

***Blank endorsement:*** An endorsement made without specifying the endorsee. Endorsement of a certificate by blank endorsement results in the holder being deemed the rightful owner of the certificate.

If a good-faith third party acquires a registered share certificate from the creditor by relying on a pledge endorsement that appears as an assignment endorsement, such acquisition is protected. Pursuant to Article 487/2 of the Turkish Commercial Code, it is stipulated that the holders of registered share certificates shall be recorded in the share ledger. However, there is no requirement to record the pledge right in the share ledger.

### *8. Establishment of a Pledge Right over Dematerialized Values*

In Turkish law, it is accepted that the shares of joint stock companies traded on the stock exchange are tracked on a book-entry basis in accounts held with the Central Securities Depository ("CSD"). According to the prevailing view in doctrine, since dematerialized shares are not considered to have the nature of goods and CSD records are deemed declaratory rather than constitutive, the requirement of transfer of possession cannot be discussed in the context of establishing a pledge right over dematerialized shares. Consequently, the pledge right is established through a written pledge agreement. Nevertheless, it is required that the execution of the pledge agreement be notified in writing to the CSD.

Pursuant to Article 47 of the Capital Markets Law No. 6362, a pledge right constitutes an in rem security. In order to ensure that the provisions of the Turkish Civil Code, which are unable to adapt to the rapid functioning of capital markets, align with international regulations, Article 47 of the Capital Markets Law regulates the subjecting of capital market instruments to security agreements. Accordingly, joint stock company shares may be included in security agreements within a contractual relationship, differing from the pledge provisions of the Turkish Civil Code.

The pledge of shares in joint stock companies is not specifically regulated under the Turkish Commercial Code. Accordingly, the provisions of the Turkish Civil Code regulating the general rules on pledges apply to the pledging of shares in joint stock companies. Pursuant to Article 954 of the Turkish Civil Code, it is possible to establish a pledge right over transferable claims and other rights, and a pledge to be established over shares in joint stock companies qualifies as a "pledge right established over a right." In this context, joint stock company share certificates are divided into bearer and registered types, and there are separate legal regulations for the establishment of a pledge over each type of share certificate.

What should be understood by a "real agreement" is not a written agreement, but rather the complete concurrence of the contracting parties' wills regarding the subject of the agreement and the legal consequences arising therefrom.

## Conclusion

The establishment of a pledge over joint stock company shares is subject to a multi-layered legal regime, both in terms of the nature of the right and the type of certificate. Whether the share is bare, registered, bearer, or a dematerialized value directly determines the method of establishing the pledge, the procedure for transfer, and the enforceability of the creditor's rights against third parties. Therefore, share pledges constitute a complex transaction that goes beyond classical movable pledge rules and requires the joint interpretation of the provisions of the Turkish Commercial Code, the Turkish Civil Code, and the Capital Markets Law.

A significant portion of errors encountered in practice arise from the establishment of the pledge through an incorrect procedure, incomplete notifications and transfers, or the failure to accurately determine the legal nature of the share. However, a properly established pledge provides the creditor with strong security while also enhancing legal certainty for the debtor and the company.

For this reason, when establishing a pledge over joint stock company shares, the type of share, transferability, the form of the certificate, book-entry system records, and special regulations must be evaluated together; both the contractual stage and the dispositive stage must be conducted meticulously. A correctly structured pledge relationship will ensure legal predictability for the creditor, the shareholder, and the company, and will largely prevent potential future disputes.

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# Confidentiality Agreements

**In the global economy, the rapid exchange of information has made the protection of trade secrets, know-how, and strategic data—the most valuable assets of companies—an absolute necessity. Traditional trade secret protection methods are becoming insufficient, especially with the rise of digitalization and artificial intelligence (AI) technologies.**

**In this context, Confidentiality Agreements (NDAs) have evolved beyond simple undertakings; they have become multi-layered risk management tools that manage next-generation risks and legislative obligations, particularly regarding KVKK (Personal Data Protection Law), and must be drafted with meticulous care. Within this framework, critical legal and technical areas, as well as the methods and duration of protection, must be strictly regulated.**

**Confidentiality agreements are no longer just tools for protecting trade secrets but are also an integral part of compliance with data protection legislation. To remain competitive in the market, it is vital to sign confidentiality agreements with business partners, customers, suppliers, and employees to protect trade secrets, inventions, and business processes.**

Confidentiality Agreements (NDAs) have evolved beyond simple undertakings; they have become multi-layered risk management tools that manage next-generation risks and legislative obligations, particularly regarding KVKK (Personal Data Protection Law).

## 1. Cybersecurity and Technical Measure Standards

Confidentiality agreements should define the responsibilities of the Recipient in the event of theft or unauthorized access. Where possible, the conditions under which the confidential information will be stored, as well as how and when it will be destroyed, should be specified in the contract.

The Recipient must exercise the same degree of care in protecting the confidential information as they do for their own trade secrets and must implement specific technical and administrative measures such as encryption, access control, and secure storage as specified in the agreement.

The agreement should stipulate that in the event of a data breach, the Recipient shall notify the Disclosing Party as soon as possible. At this point, the contract should clearly state the notification timeline, who will notify legal authorities, and the extent of penal clauses or compensation for damages resulting from such disclosure.

## 2. Use of Artificial Intelligence (AI) and Big Data

In modern business collaborations, the greatest commercial risk is that shared data becomes part of the AI systems trained by the Recipient.

***2.1. Prohibition of Use Outside of Purpose***

Confidentiality agreements must explicitly state that shared confidential information shall strictly not be used for any analysis, algorithmic development, or the training of AI/Machine Learning models outside the specified purpose of the contract. This strengthens the protection of know-how.

Protection of Know-How: This provision prevents the Recipient from unfairly increasing their competitive advantage by using the Disclosing Party's data and ensures such data does not become part of the Recipient's own trade secret.

#### *2.2. Data Destruction*

Upon termination of the contractual relationship, the Recipient is obligated to destroy not only physical documents but also digital data. Permanent and irreversible deletion of data from all environments including servers, backup systems, and AI/ML training datasets must be ensured. If possible, a requirement to provide a written destruction certificate or minutes should be added to the contract.

### 3. Intellectual Property Rights

Confidentiality agreements do not constitute a transfer of intellectual property (IP) rights. If the agreement is made for a potential collaboration, the ownership of any IP rights that may arise must be separately determined.

#### *3.1. Commitment to Continuity of Ownership*

It must be clearly stated that the ownership of all patents, trade secrets, copyrights, and know-how shared remains with the Disclosing Party at all times, and no license, title, or interest is transferred to the Recipient.

#### *3.2. Status of Derivative Products*

A common problem in commercial life is when the Recipient develops a new invention or method based on the shared confidential information. In such cases, the ownership of the newly emerging IP can become a matter of dispute. Therefore, the ownership of derivative intellectual property rights must be predetermined. This clause is of vital importance, especially in R&D and software development projects.

AI threats, and international dispute risks, the legal diligence shown during the drafting process acts as the primary guarantor in preventing future commercial and legal losses.

### 4. Penal Clauses and Ease of Proving Damages

A penal clause is the most important deterrent and preventive mechanism of confidentiality agreements.

#### *4.1. Nature and Scope of the Penal Clause*

It should be specified that the penal clause can be claimed independently of the actual damages suffered by the Disclosing Party due to the disclosure. In this way, the penalty is paid regardless of whether a quantifiable loss has occurred.

#### *4.2. Right to Injunctive Relief*

In addition to the penal clause, including a provision that grants the Disclosing Party the right to seek an injunctive relief (e.g., stopping the publication, destruction of information) immediately without security or with minimum security in case of a breach or threat of breach, provides a significant advantage. This allows for rapid action to prevent the damage from escalating.

### 5. Personnel and Subcontractor Scope

Controlling access to confidential information both inside and outside the company is critical for managing disclosure risks.

#### *5.1. Limited Access (Need-to-Know Principle)*

Limiting the disclosure of confidential information is essential for protection. The agreement should state that the Recipient may only disclose information to a limited number of employees, managers, and consultants who strictly need to know the information to achieve the business objective.

#### *5.2. Responsibility of Subcontractors*

The Recipient should undertake that any subcontractors, consultants, or affiliates must be bound by confidentiality obligations at least equivalent to those in the agreement. Furthermore, the Recipient's liability in the event these third parties breach confidentiality should be explicitly defined.

### 6. Relationship with Non-Compete Clauses

Confidentiality agreements should be linked with non-compete provisions to prevent trade secrets from being used as tools for unfair competition. This prevents the direct or indirect establishment of a competing business or the provision of consultancy to an existing competitor using confidential information.

### CONCLUSION:

Confidentiality Agreements are not merely standard documents; they are critical legal defense mechanisms that protect the intellectual and commercial capital of companies. Given the data protection obligations of the digital age, AI threats, and international dispute risks, the legal diligence shown during the drafting process acts as the primary guarantor in preventing future commercial and legal losses. The legal durability of an NDA is the most significant factor directly affecting the market value of a trade secret.

# Shareholders' Agreement: The Private Constitution of Your Partnership

In accordance with the Turkish Commercial Code No. 6102; although there is a legally mandatory Articles of Association for company formations, the agreement that regulates the primary relations between partners, determines dynamics, and can be characterized as a private and confidential roadmap between partners is the **Shareholders' Agreement.**

## Difference Between the Articles of Association and the Shareholders' Agreement

While the Articles of Association is a legally mandatory and public document regulated by the Turkish Commercial Code and serves as the founding element for a company to gain legal validity, the Shareholders' Agreement is a private arrangement that is confidential, detailed, and binding only between the partners. For this reason, while strategic provisions such as share transfer, veto rights, exit mechanisms, and penal clauses can only be regulated in the Articles of Association to the extent permitted by law, it is possible to include each of these regulations through a Shareholders' Agreement and ensure their validity among the company partners.

## Most Important Features of the Shareholders' Agreement

**1. Confidentiality:** Since the registration of a Shareholders' Agreement with the Trade Registry is not mandatory, and it is not submitted to the Trade Registry unless the partners decide to register it, financial and administrative arrangements—which can be considered confidential information between partners—can be kept secret from third parties.

**2. Flexibility:** The Shareholders' Agreement allows for the determination of special rules according to the needs of the partners within the limits set by law.

**3. Function:** The Shareholders' Agreement is like the "prenuptial agreement" of the partnership; every step, from management to share transfer, and from moments of crisis to growth strategies, can be planned in advance.

**4. Management Tool:** Critical management issues such as the formation of the board of directors, voting ratios for key decisions, and veto rights can be regulated in detail.

In this framework, the most important matters that can be regulated in line with the will of the partners in a Shareholders' Agreement are listed below.

## 1. Company Management and Decision-Making Mechanisms

**1. Formation of the Board of Directors:** The number of members each partner will appoint to the board of directors is regulated within the scope of the shareholders' agreement. It enables the appointment of the company's board of directors according to the management standards and policies of the shareholders.

**2. Key Decisions:** It ensures the determination of required voting ratios (e.g., a 75% majority) for the company to make vital decisions, such as major investments, company sales, mergers, acquisitions, taking out loans, and incurring debt.

**3. Veto Right:** For the purpose of protecting minority shareholders of the company, the right to unilaterally block (veto) certain strategic decisions can be granted to specific partners through the agreement.

## 2. Share Transfer Rights: Control of the Partnership Structure

Another important element of the Shareholders' Agreement is the principles for protecting the partnership structure. In this context, the primary goal of the partners is to protect the partnership structure against unwanted changes and not to lose control.

In a Shareholders' Agreement, share transfer rights can be regulated in line with the partners' will through the following mechanisms:

**1. Right of First Refusal (Pre-emption Right):** With the Right of First Refusal, when a partner holding shares in the company wishes to sell their shares, the other partners are granted the priority right to purchase them under the same terms. By regulating this right in the Shareholders' Agreement, the primary goal of the partners is to prevent third parties from entering the company as partners by acting as priority shareholders.

**2. Tag-Along Right:** With the Tag-Along Right, if a majority shareholder sells their shares to a buyer, the minority shareholder is granted the right to sell their shares to the same buyer under the same terms and conditions as the majority partner. This primarily allows for the protection of minority shareholders against potential sales.

**3. Drag-Along Right:** When the majority partner finds a buyer who wants to purchase the entire company, they can force the minority partners to sell their own shares. In this case, selling the company as a whole to a potential buyer becomes easier, regardless of the number of partners.

## 3. Determination of Privileged Shares

Privileged shares are one of the most important tools that ensure the shaping of management control and decision-making balances in line with the partners' will. The Shareholders' Agreement makes the management architecture more flexible and strategic by determining which shares will be granted which superior rights.

**1. Dividend Privilege:** Certain shares may be granted the right to receive a priority or higher rate of share from the profits compared to others. This is particularly attractive for investors who do not actively participate in management but expect financial returns.

**2. Voting Privilege:** By granting more than one voting right to a single share (e.g., 5 voting rights for 1 share), founding partners can maintain management control even after new investors enter the company and their share ratios decrease.

**3. Liquidation Preference:** In the event of the company's liquidation, certain shareholders may have the right to receive their share of the remaining assets (liquidation balance) as a priority after debts are paid. This offers a guarantee to a partner who has made a risky investment that they can recover their invested money if things go wrong.

**4. Representation Privilege on the Board of Directors:** Partners holding a specific group of shares can be granted the right to appoint or nominate a certain number of members to the board of directors.

## 4. Crisis Management: Deadlock in the Partnership's Decision Mechanism

The most critical risk in partnership relations is the partners' inability to agree on strategic and operational issues, leading to the company becoming unable to make decisions. This deadlock situation, which arises especially in equal partnership structures, can lead to the total cessation of company activities and various damages.

In the Shareholders' Agreement, applicable solution mechanisms agreed upon in advance among the partners for the possibility of a deadlock in the company's decision-making mechanism can be explicitly regulated. Namely:

**1. Identification of Disputes Between Partners:** Potential subjects of dispute between partners can be determined in advance, and the circumstances under which the company's management bodies (and thus the company) are considered "locked" (unable to take decisions) can be clearly defined in the Shareholders' Agreement.

The Shareholders' Agreement makes the management architecture more flexible and strategic by determining which shares will be granted which superior rights.

**2. Solution Mechanisms:** In cases where the dispute between partners cannot be resolved and management bodies cannot take decisions, fair exit scenarios can be determined to allow one of the partners to leave the company.

**2.1. Call Option:** Granting one partner the right to purchase the other partner's shares at a pre-determined price.

**2.2. Put Option:** Granting one partner the right to sell their own shares to the other partner at a pre-determined price.

These mechanisms allow for the creation of a fair and functional partnership architecture beyond a standard share structure, proportional to each partner's contribution, expectation, and the risk they take.

## 5. Growth Capital: Planning Resource Needs

In cases where the company needs to increase capital, conditions such as the terms under which capital will be increased, which principles will apply in case of participation or non-participation, and the delegation of authority to increase capital up to a pre-determined ceiling can be established in the shareholders' agreement. Determining the method of capital increase is important for partners to protect their capital in the company.

**Pre-emptive Right (Right of First Refusal on New Shares):** This is the priority purchase right of partners; when the company performs a capital increase, it gives each partner the priority right to purchase new shares equal to their current share ratio. This prevents a partner's share ratio from being decreased (diluted) against their will through capital increases.

**"Pay or Dilute" Principle:** It ensures that partners who participate in the capital increase maintain their share ratios in the company. The share ratio of a partner who does not participate in the capital increase is diluted (i.e., their ratio decreases) against the newly entered capital. This principle is essentially a fair system that rewards those who continue to invest in the company.

**Authorized Capital System (For Joint Stock Companies - A.Ş.):** By giving the board of directors the authority to increase capital quickly up to a certain ceiling without convening a general assembly, it provides agility to growth-oriented companies.

## 6. Breach of Shareholders' Agreement and Sanctions

The Shareholders' Agreement reflects the common will of the partners. In the event that one of the partners breaches the agreement provisions in a way that disrupts the will of the other partners, contractual sanctions that can be applied against the breaching partner can be regulated.

These sanctions are not limited, and the most preferred types of sanctions within the scope of a Shareholders' Agreement are as follows:

**Penal Clause:** A penal clause is a pre-determined compensation amount that the partner who breaches the agreement (e.g., someone who shares confidential company information with third parties or competitors in violation of confidentiality provisions) must pay to the other party. It allows for the rapid application of the sanction without the necessity of proving damages. The penalty can be a specific amount of money or in the form of depriving the breaching partner of certain rights, such as appointing a member to the board of directors.

**Violation of Share Transfer:** If a partner violates the transfer restrictions in the agreement (e.g., the right of first refusal) and sells their shares to an outsider, this sale may be legally valid. However, in this case, the partners who did not breach the agreement acquire the right to apply a penal clause or file a lawsuit for damages against the breaching partner.

**The Strongest Protection:** The most effective method is to create a double shield by both regulating share transfer rules in detail with a Shareholders' Agreement and adding an article to the company's registered Articles of Association stating that "share transfers are subject to the approval of the board of directors."

## 7. Regulation of Non-Compete Clauses in the Shareholders' Agreement

A non-compete clause covers situations such as a company

> The Shareholders' Agreement is a framework contract that clearly and transparently defines the mutual expectations, rights, and obligations of the parties; it secures the sustainability of the partnership by reducing uncertainties.

partner, manager, or employee working in other companies operating in the same field, serving in a managerial position, or becoming a partner in such a company.

For company managers and partners, the non-compete clause is a fundamental rule that prevents managers or partners, who have access to a company's most valuable assets, from using this information against the company in its field of operation.

The non-compete clause is a reflection of the duty of loyalty and care, and it can be regulated in the Shareholders' Agreement, which establishes a contractual relationship between the parties. If regulated in the Shareholders' Agreement, it becomes valid between the parties.

**1. Non-Compete in Limited and Joint Stock Companies:** According to the law, a manager cannot engage in competing activities without obtaining permission from the company.

***In Limited Companies,*** since at least one partner must be a manager, the legal prohibition naturally covers at least one partner.

***In Joint Stock Companies,*** there is no requirement for partners to be managers. This can be interpreted as there being no legal obstacle preventing a company partner who does not take part in management from engaging in competing activities.

**2. Regulating Non-Compete via Shareholders' Agreement:** In joint stock companies, preventing a partner who does not take part in management from engaging in competing activities can be achieved by regulating a non-compete clause in the Shareholders' Agreement. Within the scope of the Shareholders' Agreement, a non-compete provision can be drafted to be valid for all partners, regardless of whether they hold a management role. In this context, a fair and proportional prohibition clause can be regulated in the Shareholders' Agreement that prevents a partner or manager from engaging in competing activities after leaving (e.g., for a period of 2 years and within a specific geographical area). The most important elements of a non-compete clause are that it is limited to a specific duration, location, and subject (the company's field of activity).

**3. What Happens if the Non-Compete Clause is Violated?** The company may demand compensation for the damages suffered or the transfer of profits obtained from the competing business from the party who violates the non-compete clause regulated in the Shareholders' Agreement. However, the damages arising from the violation of the non-compete clause must be proven by the company. An effective method is to add a pre-determined and deterrent "penal clause" (e.g., a specific amount of monetary fine) to the Shareholders' Agreement, which the violator must pay without the need to prove damages.

## Conclusion

While the Articles of Association regulated in the Turkish Commercial Code No. 6102 forms the basis of the partnership, a comprehensively designed Shareholders' Agreement offers a complementary architecture that protects the management structure, shareholder balance, and partnership relationship in the long term.

Partners addressing challenging questions at the very beginning—such as "How will the company be managed if a dispute arises?", "How will the process work in case of a separation?", or "How will our rights be protected in an extraordinary situation?"—is not a sign of mistrust. On the contrary, it is a reflection of the seriousness of the partnership relationship, a long-term perspective, and a professional management approach.

The Shareholders' Agreement is a framework contract that clearly and transparently defines the mutual expectations, rights, and obligations of the parties; it secures the sustainability of the partnership by reducing uncertainties. Prepared meticulously and at the right time, this agreement is one of the most effective corporate mechanisms, ensuring not only the reduction of legal risks but also the prevention of high-cost disputes, loss of time, and relational damage that may arise in the future.

# Shareholders' Right of First Refusal (Pre-Emption Right)

The Right of First Refusal (Pre-emption/Shufa) is defined as the right of a holder to request that company shares be transferred to them first in the event of a sale to a third party.

The Right of First Refusal (Pre-emption/Shufa) is defined as the right of a holder to request that company shares be transferred to them first in the event of a sale to a third party. By exercising this right, the shares subject to sale can be transferred to existing shareholders, thereby preventing the transfer of company shares to third parties and ensuring they remain within the current circle of partners.

The recognition of the right of first refusal in the transfer of company shares is handled in two distinct ways:

### Right of First Refusal via Shareholders' Agreement

It is possible to grant shareholders the right of first refusal through a Shareholders' Agreement executed among shareholders to keep the shareholder circle under control and protect the interests of the partners.

> **Binding Nature:** This agreement binds only the parties to the agreement.
>
> **Breach of Agreement:** If a shareholder transfers their shares to a third party in violation of the right of first refusal stipulated in the agreement, the transfer remains valid.
>
> **Consequences of Breach:** In such a case, the shareholder who transferred their shares cannot demand the return of the shares from the third party; the breaching shareholder only incurs liability for compensation (damages) arising from the contract.

### 2.2. Right of First Refusal via Articles of Association (Single Debt Principle)

It is considered that a right of first refusal stipulated in the articles of association of a capital company is invalid due to the "Single Debt Principle". This principle states that the only obligation of partners to the partnership is to provide capital, and granting a right of first refusal imposes an additional legal burden.

**Legal Conflict:** Requiring a shareholder to transfer shares to a specific holder rather than a third party—and creating compensation debt if they fail to do so—violates the single debt principle.

**Validity:** Consequently, such a provision cannot be regulated in the articles of association in a way that binds all shareholders and is accepted as an "unreal" provision.

**Doctrinal Solution (Invitation to Offer):** Legal doctrine suggests that the goal of a right of first refusal can be achieved without violating the single debt principle by defining it in the articles of association as an "invitation to offer" (icaba davet). Under this model, it is stipulated that a shareholder wishing to sell must first offer the shares to other partners.

## 3. Exception to the Single Debt Principle

The exception to this principle is provided under Article 493 of the Turkish Commercial Code, which allows for the restriction of share transfers in limited and joint-stock companies.

"The company may refuse approval by citing an important reason specified in the articles of association, or by offering to acquire the shares from the transferor at their actual value at the time of application, on its own account, on account of other shareholders, or on account of third parties."

Under this article, if an important reason exists, the company may reject the share transfer and acquire the shares on its own behalf. Examples of "important reasons" include:

- Maintaining professional competence.
- Preventing share transfers to competitors.
- Preventing a change in the control of the company.

## Conclusion

The Right of First Refusal is a mechanism designed to keep property within an existing group, whether for real estate or company partnerships.

**Real Estate:** The legal right of first refusal is regulated by the Turkish Civil Code.

**Company Shares:** In capital companies, a right of first refusal in the articles of association is generally unenforceable due to the single debt principle, unless the company invokes Article 493 of the TCC based on an "important reason".

**Contractual Practice:** In practice, this right is primarily exercised through a Shareholders' Agreement, which binds only the signatories. While a breach of this agreement does not invalidate the sale to a third party, it does result in a liability for damages for the breaching shareholder.

# Completion Criteria in Employment Contracts and Their Importance

Employment contracts, which form the basis of the employment relationship between employer and employee, are the most fundamental legal documents defining the mutual rights and obligations of the parties. Therefore, it is of great importance that employment contracts signed between employees and employers go beyond being mere formal documents and provide a decisive, guiding, and measurable structure for the execution of work.

The foundation of establishing a successful business relationship lies in clearly setting expectations. In this context, completion criteria included in employment contracts do not merely define job descriptions and responsibilities; they also ensure that performance evaluations are based on an objective and measurable ground.

Completion criteria included in employment contracts do not merely define job descriptions and responsibilities; they also ensure that performance evaluations are based on an objective and measurable ground.

Today, many employment contracts are limited to generic job descriptions, which creates uncertainty for both the employee and the employer. This uncertainty can lead to legal disputes, especially during critical moments such as the termination of the employment relationship. In contrast, completion criteria describe not only "what needs to be done" but also "how and in what manner the task will be considered completed".

Completion criteria directly impact the effectiveness and efficiency of this structure and are critical for the auditability of task performance. They should be viewed not just as an extension of job descriptions, but as concrete benchmarks determining the quality, timing, and manner in which tasks are deemed finished.

## 1. Definition and Function of Completion Criteria

Completion criteria are objective standards that outline not only the scope of the tasks the employee is expected to perform but also the benchmarks by which these tasks will be considered successfully fulfilled. Relying solely on abstract job descriptions to evaluate whether an employee has met their duties is often insufficient for employers regarding the burden of proof in labor law.

In addition to the job description, the contract must include criteria showing how the task will be performed concretely.

**Example: Sales Representative**

***Generic Job Description:*** "Developing the customer portfolio and making sales."

***With Completion Criteria:*** Performing a minimum of 50 customer visits per month, reporting after every visit, and meeting at least 90% of monthly sales targets.

By writing such concrete criteria, it becomes much clearer to prove whether the employee is doing their job and according to what standards. In court, whether the employee performed their duties properly ceases to be a matter of debate, and instances of incomplete work or failure to fulfill duties can be identified more clearly. These criteria make the employee's performance measurable and allow for a clear determination of whether obligations have been met.

## 2. Advantages in Reducing Dispute Risks

One of the most important elements of the right to manage granted to employers in labor law is the authority to monitor and evaluate whether the employee is fulfilling their duties. The effective use of this right depends on the employee's obligations being defined in a clear, understandable, and measurable way.

Completion criteria play a vital role for the employer by providing ease of proof.

***Legal Security:*** When terminating a contract for just or valid cause, relying on specific completion criteria increases the employer's legal security compared to relying solely on a job description.

***Objective Data:*** These criteria provide objective data that can satisfy the burden of proof requirements in lawsuits.

***Balance and Fairness:*** For the employee, defined criteria serve as a protective element against arbitrary evaluations by the employer, creating a balance and ensuring the employee knows the basis of their performance evaluation.

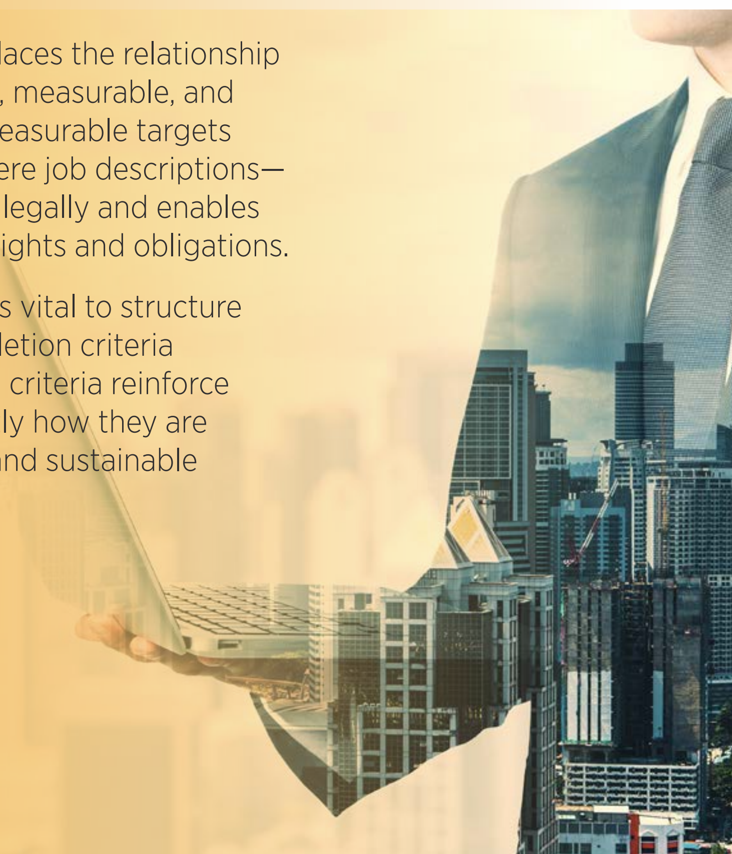
***Strategic Management:*** Completion criteria must include mechanisms for how work will be monitored and controlled. Without auditability, even the clearest task definition creates implementation difficulties for management.

Including these criteria is not just a legal safeguard but a strategic management tool necessary for managing qualified human resources based on sustainable performance.

## 3. Conclusion

Including completion criteria in employment contracts places the relationship between employer and employee on a more transparent, measurable, and sustainable foundation. Structuring these criteria with measurable targets and audit mechanisms—rather than reducing them to mere job descriptions—allows the employer to ground their management rights legally and enables the employee to act with a clear understanding of their rights and obligations.

Especially in sectors employing a qualified workforce, it is vital to structure employment contracts with strategic and detailed completion criteria rather than general expressions. In summary, completion criteria reinforce managerial power while ensuring employees know exactly how they are being evaluated, leading to stronger, more transparent, and sustainable employment relationships in the long run.



# Construction Agreement in Return for Land Share within The Scope of Urban Transformation

Today, the development of the construction sector, urban transformation discussions, and zoning issues bring along many legal problems that need to be resolved. The entry into force of Law No. 6306 on the "Transformation of Areas Under Disaster Risk" has increased the concerns of many landowners.

## What is Urban Transformation?

Within the scope of Law No. 6306 on the Transformation of Areas Under Disaster Risk, urban transformation is the process of renewing the existing building stock in areas identified as risky structures or risky areas, under the coordination of the Ministry of Environment, Urbanization, and Climate Change and local governments. The aim is to ensure the safety of life and property and to safely rebuild structures that carry earthquake risks.

The urban transformation process can begin upon the application of the owners themselves or following ex-officio determinations by the Ministry or municipalities. Regardless of how the process starts, a Construction Agreement in Return for Land Share must be signed between the property owners and the contractor/developer for the implementation of the project. Although there is a general perception in practice that landowners are the weaker party of the contract, the backbone of land share construction agreements is actually the landowners. Considering the disputes that reach the judiciary, it is observed that contracts are mostly violated by contractors and that landowners suffer as a result. For the parties to protect their mutual rights, it is of great importance that they have sufficient information regarding the possible problems they may encounter in construction agreements in return for land share and their solutions.

## What is a Construction Agreement in Return for Land Share (Land Share for Construction Agreement)?

Construction Agreements in Return for Land Share are contracts that impose obligations on both parties, where the developer undertakes to build the structure using their own materials and means in exchange for the land share to be transferred by the landowner, and promises to transfer the agreed-upon independent units to the landowners at the end. Although it is thought to be a simple contract based on the definition, these are agreements that impose heavy burdens on the parties and are the only guarantee of the property rights of landowners. As mentioned above, since the entry into force of Law No. 6306 has mobilized contractors, owners whose land is within the scope of urban transformation are presented with promises by different contractors almost every day. This situation intimidates landowners and leads owners who do not know the technical and legal dimensions into different adventures.

For this reason, landowners whose real estate is within the scope of urban transformation should conduct the necessary research or seek legal assistance from a lawyer to protect their rights before signing the construction agreements prepared and presented to them by the contractor. This is because the fate of the real estate owned by the landowners depends on the construction agreements they will sign.

## Points Where Construction Agreements Signed Within the Scope of Urban Transformation Differ from Other Land Share Construction Agreements

Construction agreements in return for land share established within the framework of urban transformation contain significant differences compared to classic land share agreements in terms of both scope and the legislation they are subject to. First, in these contracts, the subject is usually not a vacant lot, but the demolition and reconstruction of an existing structure. Therefore, the land shares of the floor owners in a real estate with a building on it are taken as a basis; the contractor obtains their share of the new project through proportional deductions made from these land shares. Another difference is the legal ground to which these contracts are subject. While classic land share construction agreements are in the nature of a private law relationship based entirely on the general provisions of the Code of Obligations; contracts within the scope of urban transformation are subject to both the Code of Obligations and Law No. 6306 and its related regulations. Therefore, the process ceases to be a simple private law relationship and acquires a multi-faceted and complex legal character containing elements of public order. Finally, in traditional land share construction agreements, the only performance is often the transfer of the land share. However, in urban transformation applications, providing a monetary contribution to the contractor in addition to the land share transfer is a common situation. That is, a hybrid model emerges where owners both transfer their land shares and provide financial contributions.

## Main Considerations in Construction Agreements in Return for Land Share

**The Agreement Must Be Made at a Notary Public or Land Registry Office to Be Valid:** In accordance with our legislation, construction agreements in return for land share gain validity only if they are made in an official form through the land registry office or a notary public. Otherwise, the contract does not express any legal value. If the parties make the construction agreement only in the form of a signature certification or as an ordinary written contract, the contract will be invalid and will not bind the parties. Many landowners who are unaware of this legal regulation are victimized. Namely; in cases where the contractor is held responsible for acting contrary to the contract, the contractor can escape responsibility by claiming that the contract is invalid because it was not made at the land registry or a notary. Therefore, the first point that landowners who will sign a construction agreement should pay attention to is whether the contract is made in an official form through the land registry office or a notary. It should not be forgotten that construction agreements drawn up in an ordinary manner will not have any effect before the judiciary.

Inquiry into the Zoning Status of the Subject Land: Before signing the contract, the zoning status of the land should be inquired from the municipality. Thus, it will be clear whether independent units can be built on the land in the dimensions agreed upon by both parties, and potential disputes that may arise in the future will be prevented.

***Collateral (Guarantee)***

Since landowners who sign a construction agreement in return for land share transfer their real estate to the contractor along with the right of ownership, the guarantees of the landowners must be ensured from the start of the work until delivery. This can only be possible with a guarantee to be received from the contractor. Although the parties determine the terms by signing a contract before starting the work, a guarantee must be taken to ensure that the contractor fulfills their promises in the contract. The parties can freely determine the amount and form of the guarantee. The guarantee received from the contractor is returned to the contractor after the work is delivered to the

In accordance with our legislation, construction agreements in return for land share gain validity only if they are made in an official form through the land registry office or a notary public.

landowners in accordance with the contract. In practice, this return is made at certain intervals and upon fulfillment of certain conditions. For example; the contractor delivers a certain amount of guarantee to the landowners after the signing of the contract. This amount is proportional to the current market value of the land. Subsequently, at each stage during the construction, a portion of the guarantee is returned to the contractor. For instance; the parties can freely decide on the guarantee and return conditions, such as 1/4 upon completion of the rough construction and 1/4 when the occupancy permit is obtained. However, in any case, taking a guarantee will both be a safeguard for the landowners and will have a great effect on the completion of the work in accordance with the contract.

***Rental Assistance, Moving Expenses, and Delay Compensation***

Many landowners who entrust their houses to the contractor within the scope of urban transformation reside in other places until the delivery date and pay rent. However, since it takes a long time for the contractor to complete the work and deliver it to the landowners in accordance with the legislation and the contract, rent payments should be made to the landowners during this period. These rental amounts can again be freely determined between the parties according to the current market values of the subject land. However, in practice, many contractors refrain from paying rent, and landowners who do not know their legal rights yield to this situation. Stipulating in the contract that rental compensation and moving-relocation expenses will be covered by the contractor will provide a guarantee for the landowners until the work is delivered. Even if the contractor delays the delivery contrary to the contract, the rent of the landowners residing elsewhere will be paid by the contractor until delivery.

***Delivery Conditions***

In the contract, it is necessary to link the realization of the delivery to conditions such as turnkey delivery, obtaining the occupancy permit (yapı kullanma izni), and cutting ties with all public institutions. On the other hand, in construction agreements, the start time of the work, the delivery date, and how the delivery will take place should be clearly stated. The delivery of the work to the landowners should be agreed upon as "TURNKEY". If these delivery conditions are not specified in the contract, it will not be clear for what period the landowners have transferred their land to the contractors or when they will receive it back in accordance with the contract, and this situation will cause the work to be prolonged and the landowners to be victimized. For this reason, the construction period, the power to terminate the contract in case of delay, and penal clauses should be regulated in a way that leaves no room for doubt, in line with the agreements of the parties. Thus, the legal and criminal liability of the contractor who does not fulfill these conditions will continue as per the contract.

***Penal Clause***

A construction agreement in return for land share must definitely include penal clauses. Namely; the parties sign a valid construction agreement and make many declarations and undertake many obligations in this contract. However, since no penal sanction is decided for the

The guarantee received from the contractor is returned to the contractor after the work is delivered to the landowners in accordance with the contract. In practice, this return is made at certain intervals and upon fulfillment of certain conditions.

It should be clearly stated in the contract that the construction project will be drawn by the contractor and that the license fees and expenses will belong to the contractor.

obligations undertaken by the contractors in the contract, or the penal sanctions decided are in very small amounts, the contract has no effect on the obligations undertaken by the contractor. For this reason, contractors can easily violate contract obligations. The penal clause is one of the most important elements of a construction agreement. This is because these penal clauses will ensure that contractors remain bound by the contract and that the rights of the landowners are protected.

**_Building Permit Period and Mortgage_**

A maximum period should be stipulated in the contract for the purpose of obtaining the building permit. The construction period starts with the acquisition of the permit. Setting a period for obtaining the permit will increase the contractor's commitment to the contract. However, it should be noted that along with obtaining the permit, the way for establishing construction servitude (kat irtifakı) on the land before construction starts will also be opened, and the contractor will have the opportunity to sell the independent units belonging to them as agreed in the contract before construction starts. This situation poses a risk for landowners. For this reason, it should be agreed that a mortgage be placed on the independent units belonging to the contractor, and the mortgages be removed gradually according to certain stages of the construction.

**_In addition to the above, other points that landowners should pay attention to:_**

- It should be clearly stated in the contract that the construction project will be drawn by the contractor and that the license fees and expenses will belong to the contractor.
- Especially the materials to be used regarding the quality of the construction should be agreed upon between the parties, and the technical specification to be prepared, by benefiting from experts if necessary, should be signed along with the contract. This situation will be a guide in disputes that may arise in the future regarding the quality of the construction.
- It should be included in the contract that taxes and SGK premiums will be paid by the contractor during the construction, and that liability insurance will be taken out by the contractor to cover all damages and losses that the personnel and 3rd parties may suffer. In this context, the responsibilities within the scope of occupational safety of all personnel working during the construction should belong to the contractor and this situation should be clearly stated in the contract. Since the "Business Owners" in construction agreements are the landowners, the absence of such a provision in the contract will trigger the liability of the landowners in case of possible damages. Therefore, it should be explicitly stated that all matters related to occupational safety and liabilities arising from damages and losses are undertaken by the contractor.
- Finally, it should be clearly stated in the contract who will cover the costs for the occupancy permit (iskan), electricity, water, and natural gas branch fees after the completion of the construction. If it is not shown that the delivery will be made after these permits are obtained and the expenses related to obtaining them will belong to the contractor, the occupancy permit, electricity, water, and natural gas subscription fees are covered by each apartment owner. The contractor cannot be held responsible for obtaining these for the apartments falling to the landowner.

## Conclusion;

As part of the construction process that landowners start by having their existing structures demolished within the scope of urban transformation, the construction agreement in return for land share is of great importance in terms of the fulfillment of the parties' performances and timing. For this reason, detailed regulations should be made in the provisions of the contract and the construction schedule should be arranged in a way that leaves no room for doubt. In particular, it will be beneficial to link the contractor's failure to comply with the construction schedule, failure to do work appropriate to the necessary materials, and failure to fulfill legal obligations after construction to serious penal clauses and financial obligations. We have tried to explain the points to be considered when making a construction agreement without going into too much detail. Landowners receiving help from expert lawyers at the contract stage, conducting a meticulous investigation when choosing the contractor firm, and researching which projects the firm has been involved in before and its references will eliminate the possibilities of damages they may suffer in the future.

# Does The Lease Agreement Terminate If The Property You Rent is Sold Through Execution

In today's economic conditions, disputes arising from tenancy relationships are increasing day by day, causing constant conflict and a clash of interests between the parties to a lease agreement.

## What is the Sale of Real Estate Through Execution?

In execution proceedings initiated by a creditor within the scope of execution and bankruptcy law, there are different stages for the collection of debt, and the seizure (attachment) of the debtor's assets is one of these stages. In this context, if the payment order sent upon the creditor's request is not fulfilled, an attachment may be placed on the debtor's movable or immovable property.

However, placing an attachment on the property does not mean that the creditor directly gains a value against the debt. In this case, the creditor will only have the right to request the sale of the debtor's seized property and the right to collect the debt through the sale process (conversion of property into cash) carried out by the execution office within the scope of the relevant Law.

## Can the New Owner Who Purchases the Real Estate Through Execution Request Eviction?

If the real estate sold through execution is especially a residence or a workplace, it is a likely possibility that it is being used by someone else due to tenancy or another reason. For this reason, the Execution and Bankruptcy Law determines the path to be followed in the event that the real estate sold through execution is used by the debtor or another person.

***This issue is provided for in Article 135 of the Execution and Bankruptcy Law No. 2004 ("EBL"):***

"If the immovable is occupied by the debtor or by others without relying on a contract documented with an official document made at a date prior to the attachment, an eviction order is notified to the debtor or the occupier for eviction within fifteen days. If it is not evacuated within this period, they are forcibly removed and the immovable is delivered to the buyer."

With this article, the Law regulates the new owner's right to request eviction if the real estate sold through execution is used by the debtor or without an officially documented contract made before the attachment. In this scope, if the person using the property does not use it based on a contract officially drawn up before the date of attachment, it may be possible for them to evacuate the property upon the request of the new owner. If the right arising from the Law is exercised by the new owner, an eviction order can be sent to the person using the property within a 15-day period.

## In Which Situations Does the Threat of Eviction Arise?

In the event of the sale of real estate through execution, the new owner will request eviction if the conditions specified in the Law are met, and the person using the property will be given a 15-day period for eviction. If the property is not evacuated within this period, forced eviction through execution may occur.

However, when going to the real estate for eviction with execution office officers, it is possible to encounter a third party using the property. If the person using the property does not present an official document supporting their use, they may be evicted from the property.

It is important to note that the Law states that eviction will be carried out if there is no official document. However, the legislator has also provided exceptions to this issue. Within the scope of the provision of EBL 276/2, the person using the property is given the opportunity to show that their use is justified. In this context, even if the person does not show an official document, if they declare to the execution office that they used this place before the submission of the contract or documents subject to eviction, and if this issue is confirmed in the on-site examination by the execution officer, the eviction will be postponed.

If the eviction is postponed, this matter will be reported to the execution civil court by the execution officer within 3 days. The execution civil court may order eviction after listening to the parties or give one of the parties the opportunity to file a lawsuit within 7 days. However, it should be noted that merely filing this lawsuit will not stop the eviction; a decision for the "suspension of execution" (icranın geri bırakılması) must be obtained.

## What Should Be Understood by the "Official Document" to Be Submitted?

When the new owner, who purchased a property where a tenant resides through execution, requests eviction, the officially drawn up lease agreement must be submitted by the tenant.

Contrary to general practice, for lease agreements to be valid, it is not mandatory for them to be drawn up at a notary or in writing. For a valid lease agreement, it is considered sufficient for the parties to have agreed on the leasing of a property, the payment of the rent, and the delivery of the property to the tenant.

However, the legislator wants to prevent the debtor's effort to benefit from the property by acting in bad faith regarding the sale of the real estate through execution. In this context, even if the real estate is used within a legal relationship, the law does not protect the tenant against the new owner within the scope of eviction unless there is a contract officially drawn up or approved before the attachment.

Regarding the interpretation of the Law, in court precedents:

- Tax records, SGK documents, invoices of subscription contracts, and rent payment receipts are NOT accepted by the high courts as official documents documenting the status of tenancy.
- Nevertheless, in some precedents, documents such as a notice sent through a notary dated before the attachment have been accepted as sufficient for the cancellation of the eviction.

## Conclusion

As a result, in order to avoid the threat of eviction in the event that the real estate used as a tenant is sold through execution, we would like to emphasize the importance of concluding lease agreements in ordinary written form or official form. Otherwise, due to the rapid progress of the process, the threat of being evicted from the leased property during the lease term is dominantly observed. To eliminate this threat, lease agreements must be concluded in writing (and preferably with a date-certainty or notary certification).

When the new owner, who purchased a property where a tenant resides through execution, requests eviction, the officially drawn up lease agreement must be submitted by the tenant.

# Shareholders' Right To Information And Inspection

**One of the most fundamental principles of corporate governance is transparency and accountability.** The Turkish Commercial Code ("TCC") has guaranteed the oversight and audit rights of shareholders over company management by granting them the right to information and inspection. This right is of great importance both in terms of ensuring discipline in the management of the company and enabling shareholders to protect their investments.

## The Importance of the Right to Information

The right to information allows company shareholders to audit the decisions made by the company's board of directors and the financial status of the company. Obstruction of the shareholders' right to information may lead to mismanagement of the company, conflicts of interest between the board of directors and shareholders, and the concealment of irregularities in company management. Within this scope, the right to information fundamentally:

a. Ensures the protection of the shareholders' investments,

b. Increases the accountability of management,

c. Protects minority shareholders against arbitrary majority decisions,

d. Creates a solid foundation for corporate reputation and trust in capital markets.

## 2. Shareholders' Right to Information According to Company Types in the Turkish Commercial Code

According to the TCC, the right to information of shareholders is regulated separately for both joint-stock companies and limited liability companies. This point alone demonstrates the importance the legislator attaches to the shareholders' right to information.

In the specific case of joint-stock companies, the right to information is regulated in Article 437 of the TCC, and according to this article, it is regulated that shareholders may request information from management at the general assembly and outside of general assembly meetings, and that requests cannot be rejected by the board of directors unless they constitute a company secret or a risk of concrete harm to the company. As can be clearly seen within the scope of this article, the legislator has limited the boundary of the right to information only to cases where the company may suffer direct harm. Otherwise, the board of directors has no possibility to limit the shareholders' right to information.

In the specific case of limited liability companies, the shareholders' right to information is separately regulated in Article 614 of the TCC, and it is regulated within the scope of the article that shareholders have the right to request information from company managers regarding the company's business, financial status, and activities, and the right to inspect the company's books and accounting documents. Specifically in this article, the legislator has limited the managers' possibility to reject the shareholders' request for information only to cases of "just cause" (cases where there is a trade secret of the company or an obvious risk of harm to the company). The "just cause" regulated in this article does not refer to reasons where company managers can put forward arbitrary excuses, but as in joint-stock companies, it is limited only to cases where the company may suffer a concrete loss (for example, the disclosure of the company's trade secrets).

## Limits of the Right to Information for Shareholders

Although the legislator has recognized the right to information for company shareholders within a broad framework, this right is not unlimited. The limits of the shareholders' right to information are:

1. Operations such as mergers and acquisitions that the company has not yet disclosed to the outside world, or strategic plans,

2. The company's patent applications and secret R&D details, inventions, and ideas,

3. Information and documents that could damage competition in the market in which it operates, such as the company portfolio (customer lists) and the company's pricing strategies.

However, it should be noted with importance that the inability to request information and documents due to a "trade secret" to be asserted by management against the shareholders is not a reason that can be asserted without basis and arbitrarily. The board of directors must support and prove the trade secret reason it asserts against the shareholders with concrete evidence. Otherwise, the shareholders' right to information will be considered obstructed by the board of directors. In this case, the shareholders have the right to file a lawsuit pursuant to Article 437 of the TCC.

## Use of the Right to Information Within the Company

The roadmap provided below regarding the exercise of the shareholders' right to information is a legal path that is frequently followed in practice for the exercise of the right, is effective, and minimizes legal risks.

1. Identification of the need: It should be determined which information regarding the company is needed and why (financial status, a specific transaction, the reasons for managers' decisions, etc.).

2. Preparation of a written request: The reason for the request, the requested documents, and the inspection procedure must be clearly written.

3. Use of official channels: In joint-stock companies, an oral/oral+written request during the general assembly; also, a written request should be made outside the general assembly. In limited liability companies, a written request should be made directly to the manager.

4. Determination of period and procedure: Request a reasonable period for inspection or response (e.g., 7–15 business days). Specify how the inspection will be conducted (document inspection at the company headquarters, request for sample copies, etc.).

5. If a trade secret claim arises: If the company's rejection provides a concrete justification, request the justification in writing; request the details of the claim.

6. Applying for judicial remedy in case of rejection: An application can be made to the court to be granted permission for information; in practice, courts mostly decide in favor of the shareholder, but the court requires the trade secret claim to be substantiated.

7. Attention during inspection: The right to inspection must not be used in bad faith or in a way that obstructs the operation of the company. Take into account that there may be limitations when documents need to be copied/reproduced; request expansion through a court decision when necessary.

8. Recording and follow-up: Document all requests, responses, and inspections with dates; they are used as evidence when necessary.

## Practice of the Court of Cassation

As regulated by the legislator in the law and as included in the precedents of the Court of Cassation, the shareholders' right to information is regulated as a fundamental right arising from shareholding. For this reason, a defense regarding the rejection of the relevant information request to a company shareholder who requests information because the information or document is in the nature of a "trade secret" of the company is only accepted when supported by concrete evidence; otherwise, courts decide in favor of the shareholders' right to information. This approach increases the effectiveness of internal company auditing.

## Abuse of the Right to Information and Legal Consequences

In the event that it is ruled by the court that the shareholders' request for the right to information is a request in bad faith or used for the purpose of obstructing company activities, the shareholders will face the rejection of their right to information. However, if the company management rejects the shareholders' right to information without a just cause, the company shareholder can exercise the right to information through a lawsuit. In this case, the shareholder will apply to the Commercial Courts of First Instance and request from the court to be permitted to use the right to information and inspection. In this case, if there is an obstruction of the right to information without a just cause, the liability of the company management may also come to the fore.

## 8. Conclusion

The shareholders' right to information and inspection is indispensable for the healthy management of companies and the protection of the shareholders' rights arising from shareholding. This is because the shareholders' right to information is regulated by the legislator among the indispensable rights of shareholders, and the transfer of the right or waiver of the right is not possible. The active and proportionate use of the right to information and inspection by the shareholders against the company, as well as the adoption of an explicit transparency policy by the company managements, ensures the establishment of a sustainable management system by increasing the trust of the shareholders in the company, the relationship of trust between the company management and the shareholders, and the operational performance of the company in the long term.

# Should My Invention Be Protected As a Utility Model or As a Patent?

## What is a Patent?

As regulated in the Industrial Property Code No. 6769; a Patent is a protection document in the nature of a monopoly granted for technical solutions developed in any field of technology that are (i) new, (ii) involve an inventive step, and (iii) are applicable to industry. A patent protection document is granted only to inventions that are not obvious to a person skilled in the relevant technical field according to the state of the art, meaning they contain a truly creative technical contribution.

## 2. What is a Utility Model?

A utility model is a type of protection granted to technical solutions that are new and have industrial applicability but for which an inventive step is not required. For this reason, the utility model is designed as a registration mechanism that is more flexible, faster, and lower in cost than a patent. Unlike patents, the inventive step criterion is not applied in utility model applications. In other words, solutions whose level of technical development is not as high as a patent but still contain innovation can be protected by a utility model. In this respect, the utility model system is a powerful tool especially for small and medium-sized enterprises to protect their technical improvements.

## 3. What is an Inventive Step?

Invention means that it is realized as a result of an activity that is significantly different from the normally applied state of the art by an expert in the technical field to which it relates. The concept of invention is a broad definition and is defined as the solution to all kinds of specific problems that can be produced and/or used in any branch of industry. In short, a new discovery created for the first time is called an invention.

### Inventions That Cannot Be the Subject of a Utility Model

In the Industrial Property Code No. 6769, inventions that cannot be protected under the name of utility model are regulated. In addition to those listed for patents (inventions contrary to public order or general morality, biological processes, all treatment methods, the mere discovery of one of the elements of the human body, human cloning activities, and genetic modification processes that may cause suffering to animals without providing medical benefit to humans or animals and the animals obtained as a result of these), these are specified as:

a. Inventions obtained through chemical and biological means,

b. Inventions related to pharmacy, biotechnological inventions, and

c. Inventions regarding methods or products obtained as a result of these methods.

According to the legislation, medical methods and human/plant/animal cloning activities can in no way be the subject of a utility model.

## 5. Differences Between Patents and Utility Models

In the light of this information, if it is necessary to mention the similarities and differences between patents and utility models:

- While both must meet the elements of novelty and industrial applicability to satisfy the application requirements, an inventive step is also sought in patents, whereas it is not sought in utility models.
- Methods and products obtained as a result of methods, pharmaceutical substances, biotechnological inventions, chemical and biological inventions can be patented but cannot benefit from utility model protection.

While the duration of patent protection is 20 years, utility model protection lasts for 10 years. Additionally, while the protection period of a patent can be extended with supplementary certificates for some products, utility model protection cannot be extended.

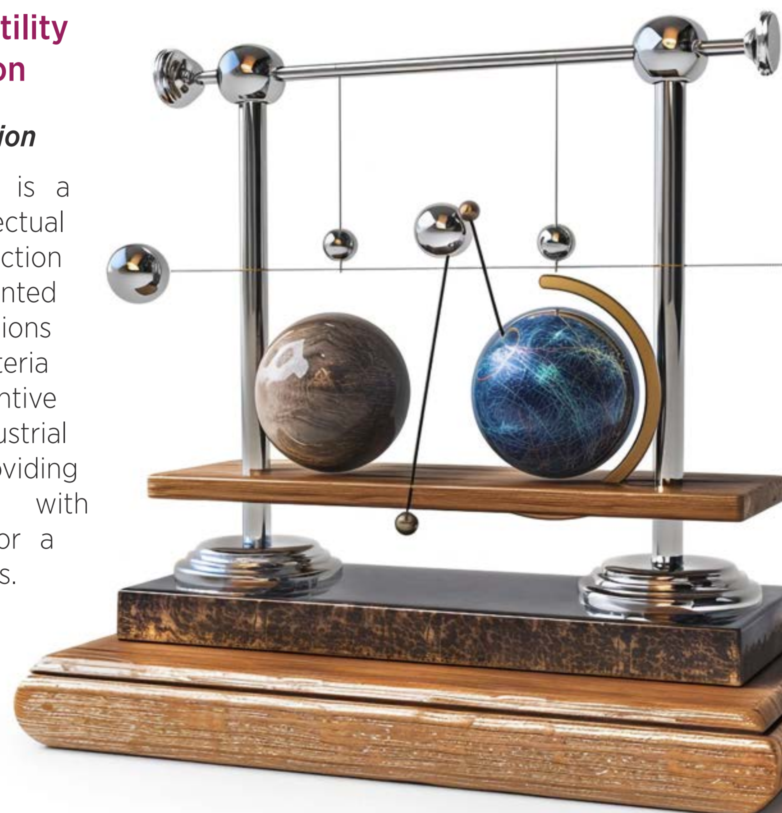
- While a search report and an examination report are prepared during the patent application phase, the presence of only a search report is sufficient for a utility model.
- While the duration of patent protection is 20 years, utility model protection lasts for 10 years. Additionally, while the protection period of a patent can be extended with supplementary certificates for some products, utility model protection cannot be extended.
- In providing utility model protection, opposition procedures cannot be operated as in patents, but invalidity can be requested from the court.

## 6. Patent and Utility Model Protection

### *6.1. Patent Protection*

Patent protection is a powerful intellectual property protection mechanism granted to technical solutions that meet the criteria of novelty, inventive step, and industrial applicability, providing the applicant with exclusive rights for a period of 20 years. A patent does not only ensure the legal protection of the invention; it empowers the inventor to prevent others from producing, using, importing, or selling the invention. Therefore, a patent is a tool that directly increases competitiveness and commercial value. The purpose of patent protection is to encourage the disclosure of advanced technical developments for the benefit of society and to provide the inventor with a competitive advantage for a certain period. The granting of protection in the patent system depends on a detailed examination process, which generally consists of the following stages:

- With the search report, the position of the invention in the state of the art is determined.
- With the examination report, it is



> Whether an invention is new, i.e., whether it is in the nature of an invention that exists for the first time, can be performed through the Turkish Patent and Trademark Office.

evaluated whether the invention meets the patentability criteria.

- When necessary, the specification, claims, or descriptions are narrowed down or corrected.
- If all criteria are met, a registration decision is made.

One of the most important functions of patent protection is that it provides the inventor with the opportunity to create economic value. Patents make it possible to:

- obtain income through licensing agreements,
- increase company value,
- provide intellectual property assurance in investment processes,
- create a competitive advantage.
  For this reason, a patent is accepted not only as a legal document but also as a strategic commercial asset.

### *6.2. Utility Model Protection*

Another type of protection that inventors who have new and industrially applicable inventions can benefit from, differently from patent protection, is utility model protection. While the subject of a utility model is an invention as in a patent, an inventive step is not sought for protection to be provided in a utility model. The existence of an inventive step is determined according to whether it is obvious to an expert in the relevant technical field, taking into account the state of the art. Therefore, the inventive step is a criterion that prevents technical solutions that are new but not very different from the original invention in the face of the state of the art from being included in the scope of patent protection and is only sought in patent registration; it is not sought in utility models.

The purpose of providing utility model protection as an alternative to patent protection is:

- to be subject to simpler procedures compared to the patent process,
- lower cost,
- and a faster conclusion of the registration process. In this respect, the utility model system serves to prevent technical innovations developed especially by small and medium-sized enterprises from being easily imitated by competitors and to enable these enterprises to maintain their economic existence. Industrial applicability means that the invention has a quality that is applicable and producible in practice, beyond being a theoretical idea.

## How to Search Whether an Invention is New?

Whether an invention is new, i.e., whether it is in the nature of an invention that exists for the first time, can be performed through the Turkish Patent and Trademark Office. Whether the invention has any existing protection both in Turkey and worldwide can be seen through public databases such as Espacenet, WIPO PatentScope, Google Patents, and TÜRKPATENT's online database. The EPOQUE system is a professional system accessible only by expert researchers and is not used directly by applicants (inventors); therefore, public search tools should be taken as the primary basis for querying the existence of an invention.

## How to Apply for a Patent?

In order for the application to be processed, the application fees determined by TÜRKPATENT must be paid and the following documents must be submitted:

***8.1. Patent Application Form:*** Information regarding the applicant and basic information regarding the technical field of the invention are included in this form.

***8.2. Abstract:*** A descriptive text not exceeding 150 words briefly explaining the technical content and purpose of the invention.

***8.3. Specification:*** It is the most important document of the application. In the specification:

- the technical field of the invention,
- the state of the art,
- the problem solved by the invention,
- all details of the invention,
- application examples and its operation must be explained clearly, completely, and in a way that an expert in the field can re-apply the invention.

***8.4 Claims:*** It is the most critical document because it determines which elements of the invention are requested to be protected and draws the scope of legal protection. The scope of protection is directly determined by the claims. 8.5. Technical Drawings: Black-and-white technical drawings showing the parts related to the invention, the operation, or the system as a whole. 8.6. Power of Attorney: If the application is made by a patent attorney, it is the document showing the authorization of the applicant. When these documents are submitted in full, the application is processed and the application date becomes final.

The main purpose of the utility model, which is referred to as the "Small Patent", is to protect the modest inventions of the significant number of small and medium-sized enterprises in our country

## Can the Protection of the Invention be Provided in More Than One Country? (Right of Priority)

It is possible for the invention to be protected in more than one country at the same time. However, in this context, the first patent application must be made in any country that is a party to the Paris Convention or the Agreement Establishing the World Trade Organization. If an application is made from a country that is a party to the Paris Convention or the World Intellectual Property Organization ("WIPO") / World Trade Organization, to which many countries in the world are parties, a right of priority will be held specifically for said application right within 12 months from the application date.

By having the Right of Priority, it is possible to make a prioritized application. If another patent application similar to the subject invention is made between the dates of the country where the application was first performed and the application performed by asserting the right of priority, this application will not be evaluated negatively.

## Conclusion

In light of all our explanations above; it can be said that the protection types of utility models and patents are similar. The fundamental differences arise in the criteria sought for registration, the duration of protection, the subjects to be protected, and the procedure applied before registration. Utility model protection has become an alternative protection method to patents with its short registration processing time and low cost. The main purpose of the utility model, which is referred to as the "Small Patent", is to protect the modest inventions of the significant number of small and medium-sized enterprises in our country and to ensure that they maintain their own economic existence. While inventions belonging to high-level technological fields can be protected by patents, small inventions that increase and simplify production, raise its quality, and change production methods and applications are also given the opportunity to contribute to technical development with utility models.

# Liability of Company Representatives for Tax Penalties

> Tax authorities may pursue company representatives personally for unpaid tax debts and tax penalties. In joint stock companies, this liability may extend to members of the board of directors, while in limited liability companies it may extend to company managers—briefly, to individuals who have the authority to represent and manage the company.

## Liability of Limited Liability Company Managers and Shareholders for Tax Penalty Notices

Pursuant to Article 35 of Law No. 6183 on the Procedure for the Collection of Public Receivables, shareholders of limited liability companies are directly liable, in proportion to their capital shares, for public receivables that cannot be collected from the company or are understood to be uncollectible. Direct enforcement proceedings may therefore be initiated against such shareholders.

Company managers, on the other hand, bear liability in their capacity as legal representatives under the repeated Article 35 of the same Law.

With respect to tax penalties, the principle of strict (no-fault) liability is adopted for both company representatives and limited liability company shareholders. Accordingly, in enforcement proceedings, it is irrelevant who failed to fulfill the tax obligations or to what extent such obligations were fulfilled. The decisive factor is whether the tax debts have been paid by the company or its shareholders.

In practice, it is frequently observed that payment orders are issued in the names of both company managers and shareholders for unpaid tax debts of limited liability companies, and that collection is pursued by placing liens on their personal assets.

However, both the Law and the case law of the Council of State (Danıştay) prescribe certain mandatory conditions that must be met before direct collection proceedings may be initiated against company representatives or shareholders. Payment orders issued without fulfilling these conditions are frequently annulled by judicial authorities.

In this context, the primary debtor is the legal entity itself, namely the company. For a shareholder to be held liable, the tax debt must first be duly notified to the company, become final either by lapse of the objection period or upon completion of judicial proceedings, remain unpaid within the prescribed period, and enforcement proceedings must have been initiated against the company pursuant to Articles 54 et seq. of Law No. 6183. In addition, the company's

assets must be investigated, and it must be concretely established that the receivable cannot be collected in whole or in part as a result of such investigation.

Although there is no statutory order of priority between company managers and shareholders in enforcement proceedings, managers are liable for the entire debt, whereas shareholders' liability is limited to their respective capital shares.

Where these conditions are not met, payment orders served on managers or shareholders may be challenged before the competent tax court, and their annulment may be sought.

## Liability of Joint Stock Company Board Members and Shareholders for Tax Debts

Under the Turkish Commercial Code, the liability of joint stock company shareholders is limited solely to the capital they have undertaken to contribute to the company. Since neither Law No. 6183 nor any other legislation contains a provision allowing shareholders of joint stock companies to be held liable for unpaid tax debts of the company, it is not possible to impose liens on or initiate enforcement proceedings against their personal assets for such debts. In other words, shareholders of joint stock companies cannot be held personally liable for the company's tax debts.

By contrast, members of the board of directors of joint stock companies may be held liable for tax debts that cannot be collected in whole or in part from the company's legal entity, pursuant to Article 35 of Law No. 6183.

For the personal liability of board members to arise, all enforcement measures against the company must have been exhausted and it must be clearly established that the public receivable cannot be collected from the company. Once these conditions are met, a board member may be held liable for debts arising during the period in which they served on the board.

For the personal liability of board members to arise, all enforcement measures against the company must have been exhausted and it must be clearly established that the public receivable cannot be collected from the company.

## Conclusion

In summary, under Law No. 6183, public receivables that cannot be collected from, or are understood to be uncollectible from, a legal entity may be collected from the personal assets of legal representatives and, in limited liability companies, from shareholders in proportion to their capital shares. For such liability to arise, it must be concretely demonstrated that collection from the company is not possible and that all statutory enforcement procedures against the company have been duly pursued. Tax penalty notices and payment orders issued against legal representatives or shareholders without satisfying these conditions may be challenged before the competent tax court and annulled. On the other hand, shareholders of joint stock companies who are not members of the board of directors bear no personal liability for the company's tax debts.

# Non-Liability Agreements in Contracts

In case of a breach of contract, the party causing the breach is obliged to compensate for the loss of the other party.

Individuals have the right to regulate their relations with other persons in the field of private law as they wish, to the extent permitted by the legal order. This right finds its reflection as "freedom of contract" in Article 26 of the Turkish Code of Obligations. Within this scope, parties have the right to freely determine the content of a contract and the person or institution that will be a party to the contract, within the limits prescribed by law.

Within the scope of freedom of contract, parties are not limited only to the typical contracts prescribed by law (sale, lease, service, etc.); if they wish, they can conclude hybrid or completely unique contracts and freely determine their conditions. Provided that these dispositions do not exceed the fundamental boundaries of law, such as mandatory provisions, opposition to morality and public decency, and public order.

The content of the contract covers everything agreed upon by the parties. The freedom to determine the content of the contract is a right belonging to all parties, and the acceptance of all parties is required for a matter to enter the content of the contract. Unilateral requests do not become valid as contract content unless they are accepted by the other party. Therefore, the meeting of mutual wills is essential in contracts. Otherwise, a disagreement of will between the parties will be in question. In case of a disagreement of will, the existence of a legally validly established contract between the parties cannot be mentioned.

## What is Liability in Contracts?

In case of a breach of contract, the party causing the breach is obliged to compensate for the loss of the other party. This obligation is called "liability". For example, in a delivery contract, if the product is not delivered on time, the responsibility to compensate for the damages caused by the delay arises.

3. What are Non-Liability Agreements and What is Their Purpose?

Non-liability agreements are a type of contract concluded for the purpose of preventing liabilities that may arise against the party violating a contract as a result of the violation of a contract established between the parties. Non-liability agreements are a legal transaction that completely or partially prevents the occurrence of a compensation claim likely to arise in favor of the creditor in the future.

Non-liability agreements can be made explicitly or implicitly between the parties. Non-liability agreements are made to reduce or completely eliminate the liability arising from the contract. Such agreements can be regulated as a separate

> Agreements made by the parties to remove liability after the behavior contrary to the debt has occurred and the damage has arisen are no longer non-liability agreements but are in the nature of a settlement (sulh) or release (ibra) agreement.

contract or as a special clause within the existing contract. With non-liability agreements:

1. The amount of compensation that the parties may be obliged to pay due to the breach of contract can be limited (for example, it can be tied to a certain limit).

2. The burden of proof of the parties can be reversed.

3. The statute of limitations regarding the obligations of the parties arising from the contract can be shortened.

## Characteristics of Non-Liability Agreements

### *1. It Must Be Made Before the Damage Occurs*

One of the basic characteristics of a non-liability agreement is that it is established before the damage occurs, in relation to a damage that may arise in the future. In other words, agreements made by the parties to remove liability after the behavior contrary to the debt has occurred and the damage has arisen are no longer non-liability agreements but are in the nature of a settlement (sulh) or release (ibra) agreement. For this reason, non-liability agreements must be established before the relationship between the parties reaches a stage that creates liability.

### *2. It Must Be Established by Mutual Will*

Non-liability agreements are deemed to be established if the wills of both parties are compatible with each other. Here, the element of mutual consent, which is one of the basic principles of contract law, is sought. The will of the parties can be expressed explicitly, or it can be put forward implicitly. In explicit declarations of will, it is understood that the parties clearly state the matter of removing or limiting liability. However, in some cases, the will of the parties may not be clear. For example, if there is no expression such as "no responsibility is accepted" clearly in the contract, the existence of a non-liability agreement should be inferred from the behavior of the parties, contract negotiations, and other special conditions. In these cases, the existence of the contract or the intention of non-liability is determined by considering various elements such as the correspondence, negotiations, behaviors of the parties, and sector practices as a whole. Another example is that non-liability agreement terms can also be put forward through announcements, as we frequently see in cafes, libraries, and travel vehicles: "Our company is not responsible for lost items." The validity of such non-liability announcements can be determined by the analogous application of general transaction conditions.

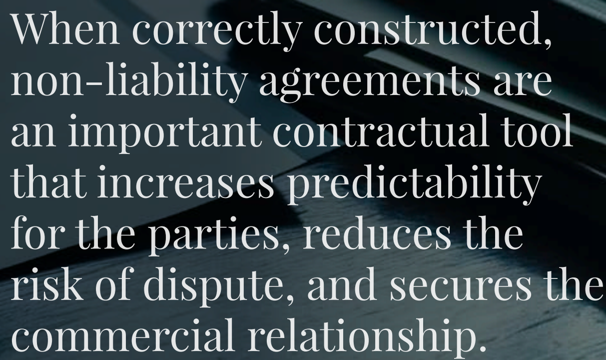
### *3. It Must Be Compatible with Laws, Customs, and Moral Rules*

Although one of the basic principles in contract law is freedom of contract, this freedom is not unlimited. Non-liability agreements must also not be contrary to the mandatory provisions of the law, public order, general moral rules, and rules of custom and tradition. Just as contracts made contrary to these rules will be invalid, non-liability agreements concluded between the parties will also be invalid.

Example of a Gradual Non-Liability Clause: "In the event that the declarations and undertakings of the SELLER in Article 12 of this AGREEMENT do not reflect the truth or are not complied with, the SELLER declares, accepts, and undertakes to compensate for the damage suffered by the BUYER due to said violation. The SELLER shall be liable for the portion of the damage arising from one or more violations for the BUYER exceeding a total of 1,000,000 (one million) Turkish Liras within the scope of the compensation obligation regulated herein. In any case, the BUYER's compensation liability arising from this article shall not exceed 20% of the Sales Price." In this example, it can be seen that the liability is partially limited, the limit is drawn with a certain amount, and for damages exceeding this amount, it is subject to a second limit in terms of percentage over the original contract price.

## 5. Points to Consider in Non-Liability Agreements

These agreements, which eliminate the liability that will arise in case of violation of the obligations arising from the contract, do not eliminate the debtor's obligations to fulfill and the duties of care that must be shown while fulfilling these obligations. What is completely or partially eliminated is the responsibility for compensation of the damage arising




as a result of these violations. The consequence of this legal nuance is as follows: if the debtor does not fulfill the debts they are obliged to fulfill by relying on the shield of the Non-Liability Agreement or does not show the necessary care, "gross fault" will occur regarding their own obligations, and thus the shield of the Non-Liability Agreement will also disappear.

According to Article 115 of the Turkish Code of Obligations, where Non-Liability Agreements are regulated:

1. A prior agreement that the debtor will not be responsible for their gross fault is absolutely null and void.

2. Every kind of agreement previously made by the debtor regarding not being responsible for any debt arising from a service contract with the creditor is absolutely null and void.

3. If a service, profession, or art requiring expertise can only be carried out with permission given by the law or competent authorities, the prior agreement that the debtor will not be responsible for their slight fault is absolutely null and void.

## 6. Non-Liability Agreements in the European Union and English Law

Similar approaches are adopted regarding liability limitations in the common law regulations of the European Union and in English law. For example, due to the "fraud exception" in English law, the limitation of liability is deemed invalid. This approach is similar to the exception of gross fault and intent in Turkish law.

## 7. Conclusion and Recommendations

Non-liability agreements are an important legal tool that allows parties to determine the risk distribution in advance in contractual relations. Nevertheless, the validity of these agreements is limited by the mandatory provisions of the Turkish Code of Obligations. Especially the inability to remove liability in cases of intent and gross negligence, the prohibitions brought to non-liability clauses in service contracts, the lack of tolerance even for slight fault in professions requiring expertise, and the limitations brought regarding auxiliary persons show that the legislator has meticulously drawn the limits of freedom of contract.

For this reason, the preparation of non-liability agreements does not consist merely of a technical clause arrangement; it requires a multi-dimensional legal evaluation taking into account the position of the parties, risk profile, sectoral needs, insurance coverage, compensation regime, and possible types of damage for each specific contract. The compensation ceilings, indirect damage exceptions, liability limits compatible with insurance limits, and sector-based special risks frequently encountered in practice can only gain functionality with a correct legal framework.

Consequently, when correctly constructed, non-liability agreements are an important contractual tool that increases predictability for the parties, reduces the risk of dispute, and secures the commercial relationship. However, incorrectly structured non-liability clauses or those exceeding legal limits, far from protecting the parties, can lead to invalidity and severe legal consequences. Therefore, receiving support from expert lawyers at the stage of preparing contracts and constructing non-liability provisions is one of the most critical steps in contractual risk management.

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LAW FIRM

# Company Restructuring

## A New Generation Legal and Strategic Advisory Approach

In today's business world, companies must be structured not only by focusing on commercial success but also in accordance with the principles of corporate resilience, risk management, and sustainable growth. Increasing competition, regulatory pressure, investor expectations, and financial risks have made it mandatory for companies to be managed through a holistic corporate architecture rather than just contracts.

Driven by this need, BSHK Hatip Law Firm has moved beyond the classical understanding of legal consultancy to develop a holistic, systematic, and sustainable advisory model under the title of Company/ Corporate Restructuring. This approach is an integrated corporate transformation program aiming to: 1. Minimize legal and criminal risks. 2. Accelerate management processes. 3. Clarify areas of responsibility and authority. 4. Strengthen corporate trust and investor perception. 5. Make growth controlled and auditable.

Our corporate restructuring approach does not merely provide legal assurance; it offers a strategic architecture that redesigns the company's operational logic, management reflexes, and decision-making mechanisms.

***"Companies are protected by contracts, but managed by systems."***

## The Four Pillars of Corporate Restructuring

Essential building blocks for corporate security, management efficiency, and sustainable growth:

### 1. Smart Management of Board Responsibilities:

Fair responsibility instead of collective risk. Corporate trust instead of chaos.

### 2. Building Corporate Governance Architecture via Contract Sets:

From uncertainty to system. From risk to predictability. From clutter to corporate memory.

### 3. Controlled Growth Model via Franchise Systems:

A structure that expands the brand without losing control.

### 4. Strategic Grouping via Holding and Umbrella Company Models:

A structure that divides risks, measures performance, and builds investor confidence.

# The Principle of Differentiated Liability

## Corporate Assurance and Limitation of Liabilities for the Board of Directors

**Currently, board members often face joint and several liability for all transactions. This situation:**

Weakens the board's decision-making power and slows down processes.

Creates disproportionate responsibility by putting all members under the same risk.

Damages the perception of professional management and investor confidence.

## Risk Map of Board Responsibilities

### Criminal Risks

**Violations of Tax, SGK** (Social Security), **occupational safety, and environmental legislation** (risk of imprisonment and fines).

**KVKK** (GDPR) and **compliance deficiencies** (creates personal liability).

**Abuse of authority** (leads to criminal liability for the entire board).

### Legal Risks

**Personal asset risk** due to company debts.

**Compensation lawsuits** resulting from wrong decisions or negligence.

**Disproportionate joint liability** due to ambiguous authority limits.

**Board decisions can easily turn into legal and criminal disputes when a clear separation of duties is not established.**

## Limiting the Responsibilities of Board Members

In joint-stock companies, the Principle of Differentiated Liability ensures that in the event of damage caused by multiple members, each board member is held liable only to the extent of their own fault. In other words, it prevents board members from being held responsible for errors made by others.

**This principle divides board responsibilities by assigning specific individuals to specific subjects, tasks, or departments. Instead of facing equal liability for every incident, members divide their duties so that each is responsible for their own designated area.**

# The Solution

## Establishing the Management Architecture

**Protecting board members from collective risk requires establishing an organizational chart supported by corporate governance principles.**

### 1. Function-Based Segregation of Duties

Each member takes responsibility in their own area of expertise (e.g., a Board Member as Factory Manager for production, or as Accounting Manager for tax/finance). Decisions are made faster, errors remain individual, and chain risks are eliminated.

### 2. Distribution of Authority and Signatures

**Once responsibility areas are defined, decisions are categorized by importance:**

**Critical Decisions: High strategic impact, financial, or legal risk.**

- These require double signatures or board unanimity.

**Routine Decisions: Daily operational transactions within set limits.**

- These can be executed quickly with a single signature.

### 3. Duty and Authority Contracts

**These documents clearly define every member's area of responsibility, job description, and role in decision-making.**

**They clarify:**

- Job descriptions and obligations for every position.
- Approval mechanisms and decision chains.
- Reporting lines and communication flow.

### 4. Alignment with Shareholders' Agreements

**If board members are also shareholders, their duties and authorities are harmonized with the shareholders' agreement.**

### 5. Preparation of Internal Directives

**Decision-making processes, signature limits, and approval mechanisms are put in writing and registered with the Trade Registry. This creates a binding, transparent, and auditable structure for both internal and external stakeholders.**

***Board membership is no longer a risk area. Limit your risk with Differentiated Liability and separate your personal assets from company risks with a legal shield.***

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# Contract Sets

## Building the Corporate Governance Architecture

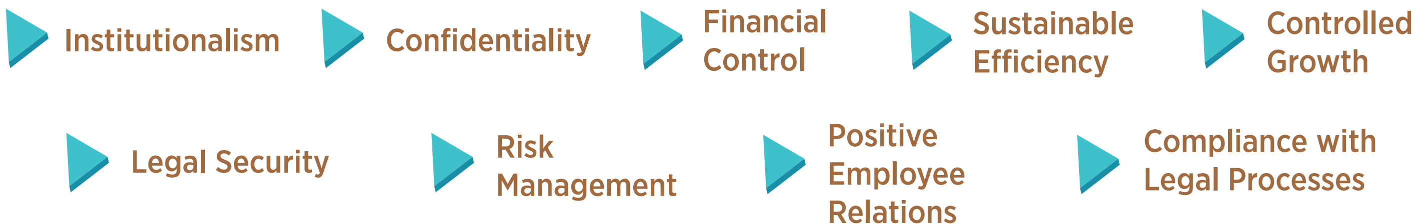
### WHAT IS CONTRACT SETS?

Contract sets are drafted based on the company's fields of activity, covering all commercial stakeholders.

They are organized according to existing commercial/legal relationships and the daily needs of the company. For example: employment contracts for personnel, lease agreements for properties to be rented, and non-compete agreements for senior executives.

Establishing existing or prospective commercial relationships with all stakeholders on a legal foundation is only possible by executing formal contracts between the parties.

## Key Pillars




## THE PROBLEM: HOW CAN I INCREASE THE VALUE OF THE COMPANY?

## SOLUTION: CONTRACT SETS

**While a company's business volume may be large in practice, the value attributed to it on paper may not be proportionally high. Contract sets are required to increase this value. The aim is to establish the company's corporate structure, thereby increasing its tangible value.**

Legal and commercial relations with all stakeholders proceed on a stable and secure ground. By preventing unpredictable situations, a protective mechanism is created, leading to a reduction in the number of legal disputes brought against the company.

A company's compliance with regulations is ensured through these contracts. Consequently, in a potential Merger & Acquisition (M&A) or Initial Public Offering (IPO) process, the company increases its competitive power by projecting a profile that strictly adheres to the law.

## Contract Sets

# In Which Subject Areas Can They Be Drafted?

### Customer Contracts

- Service Agreements,
- Product Purchase Agreement

### Supply Contracts

- Service Agreements,
- Subcontractor Agreements

### Intellectual Property Contracts

- License Agreements,
- Trademark Transfer Agreements.

### Sales and Distribution Contracts

- Sales Agreements,
- Distributorship Agreements.

### Confidentiality Agreements (NDAs)

A contract containing an undertaking between two or more parties that the transferred information will be kept confidential and will not be used for any purpose other than contract negotiations.

### Lease and Real Estate Agreements

Defines the usage conditions of leased properties, lease terms, payment conditions, and maintenance/repair responsibilities. This prevents potential legal disputes.

## Conclusion

**The preparation of fundamental contract sets required by a company, combined with the regular revision of existing contracts in line with company needs, increases the company's efficiency and effectiveness in a rational and quantifiable manner. These contracts fulfill one of the most critical criteria for institutionalization. Preparing contracts in accordance with legal regulations contributes to the healthy continuation of company operations. Furthermore, it aims to minimize potential legal disputes and increase the lifespan and quality of life of the company.**

***From uncertainty to system. From risk to predictability. From clutter to corporate memory. A company model where authority, responsibility, and processes are clarified; a model that is manageable, measurable, and auditable.***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# How to Build a Franchise System?

## WHAT IS FRANCHISE AGREEMENT?

A franchise provides a framework for both the brand owner wanting to grow and the investor wanting to do business with an established system.

**The franchise agreement establishes the relationship: "I am operating your business in my city, with your system and your standards."**

Various audits are conducted to ensure brand value does not decline. The investment is generally provided by the Franchisee, and all products are purchased from the Franchisor or from locations designated by them.

## THE MUST-HAVES in Franchise Agreements

Trademark Usage Rights and Limits

Fee Structure: Entry Fee, Royalty, Advertising Contribution

Exclusivity and Territory

## Critical Points in Franchise Agreements

Defining Brand Standards

Establishing a Training and Support Mechanism

Designing Regional Strategy

Managing Procurement and Logistics Processes

# Financial Rights in Franchise Agreements

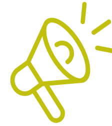
### Entry Fee

A one-time fee charged in exchange for brand, system, training, and opening support.

### Royalty Fee

A regular share of the business's turnover paid to the brand.

### Advertising and Marketing Contribution



Funding allocated to the brand for national campaigns, social media, public relations, and brand image.

### Procurement and Supply System Revenues

Income generated from products purchased from the brand or approved suppliers.

## Non-Negotiable Clauses

### Must-Have Clauses

- Duration of the Agreement and Renewal Option
- Just Cause for Termination
- Cure Periods (Right to Rectify)

## Post-Termination in Franchise Agreements

**Regulating the stages following the termination of a Franchise Agreement is of critical importance. Post-Termination**

- Stopping brand usage.
- Removal of brand elements.
- Transfer of stocks (at what price they will be transferred or returned).

## Protection of Intellectual Property Rights in Franchise Agreements

**It can be specified in the agreement that the logo, brand, visual design, and business methods belong to the Franchisor and cannot be used if the contract is terminated.**

It is vital for the Franchisor to register trademarks and patents to protect brand rights. If the Franchisee handles registrations, they may acquire the rights in their own name, forcing the Franchisor to file lawsuits for infringement. Thus, intellectual property rights should be protected both contractually and in practice.

***Don't just open a branch; build a solid chain. Grow securely and scalably with the BSHK Hatip approach.***



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# Smart Corporate Restructuring: Holding and Umbrella Company Model

## Risk-Free, Scalable, and Manageable Business Models

### As companies grow:

- Fields of activity diversify.
- Risks increase.
- Management becomes complex.
- Financial control becomes difficult.

**At this point, the issue is not just growing, but making that growth manageable and sustainable.**

**Holdings are the institutional answer to this need.**

### What is a Holding Company (Holding Model)?

It is the legal, financial, and strategic structuring of multiple subsidiaries under a single parent company.

In this model:

- The holding company serves as the strategic decision-making center.
- The subsidiaries carry out operational activities. Financial and managerial control is centralized.

## Primary Objectives of Forming a Holding

Organizing the intra-group structure

Separating risks

Consolidating financial resources

Providing tax planning advantages

Increasing investor confidence

Creating an infrastructure for long-term growth

Forming a holding company is not simply an “increase in the number of companies,” but a structural reorganization.

## Example Structure: Holding Inc. and Group Companies

**By conducting activities under separate legal entities:**

- Operational risks are isolated.
- Financial burdens do not spread across the group.
- Each company acts within the limits of its own balance sheet. This structure is a protective mechanism, especially for groups operating in different sectors.

**In the Holding Model:**

- Investment decisions are centralized.
- Resource allocation is planned.
- Group strategy is determined from a single center.
- Disorganized management is eliminated.

***This system brings growth under control.***

## Financial Consolidation and Resource Management

### Holding Structure;

- Facilitates intra-group borrowing and the transfer of funds.
- Centralizes cash flow.
- Standardizes financial reporting.
- Creates a stronger structure in the eyes of banks.
- Corporate financial management transitions from a fragmented structure to a systematic one.

## Tax Benefits of Holding Structures

- ✓ Exemption on gains from the sale of subsidiaries.
- ✓ Tax advantages on the sale of shares
- ✓ Intra-group dividend planning
- ✓ Opportunities for loss carryforward

## Investor Confidence and Market Value

### Through a corporate and transparent structure:

- The group structure becomes clear.
- Financial statements become more understandable.
- Valuation processes become easier.
- Entry of new investors accelerates.

## Share Transfer and Flexible Exit Opportunities

### The Holding Model

- Offers the opportunity to sell based on specific subsidiaries.
- Facilitates the entry of strategic partners.
- Allows for partial exit scenarios.
- Accelerates restructurings.

## Strategic Partnership and Structural Flexibility via Holding

### Through this model:

- A specific company or business line within the group can be positioned under a separate structure.
- Investors can be taken into only the relevant business line instead of the entire company.
- Strategic partnerships can be designed in a targeted and controlled manner.

### Holding Infrastructure allows for:

- Separation of a specific business unit (e.g., marketing, retail, production, or technology) through a partial spin-off.
- Capital increases through this new structure.
- Provision of financing in selected areas while maintaining control of the main group.
- Reorganization within the framework of tax advantages.

### This flexibility:

- Enables taking a partner without transferring the entire company.
- Allows for the separate valuation of business lines.
- Increases the selling and valuation capability across the group.
- Makes growth financing more strategic.

## *In conclusion, forming a Holding is a Growth Strategy.*

***Instead of cramming all your operations into a single company, we're designing a structure that spreads risk, boosts efficiency, and facilitates growth.***

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