

Obligations of LLC Shareholders

Introduction

Obligations of the shareholders in a Limited Liability Company ("LLC") can be examined under three headings, namely basic capital share payment obligation, additional payment obligation and secondary performance obligation. In this article, these obligations will be elaborated briefly.

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Payment of Capital

LLCs have a basic capital which is agreed upon in their Articles of Association ("AoA") and it is divided into shares. Therefore, the fundamental obligation of the shareholders is to pay the basic capital share price. As a principle, shareholders are not liable for the debts of the company. If there is no provision found in the AoA regarding the additional payment and secondary performance obligation, the shareholder's obligation ends with the payment of the basic capital share price. Since the obligations of shareholders are towards the company itself, third parties do not have the right to demand the fulfillment of this obligation.

Additional Payment Obligation

It is possible to impose an additional payment obligation with a provision to be incorporated into the AoA. Such an obligation can be requested by the manager(s) which are set forth in the Turkish Commercial Code (Law No. 6102, "TCC") only (*numerus clausus*) if;

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- i. the sum of basic capital and legal reserves does not cover the company's losses,
- ii. it is impossible to conduct business properly without such payments, and
- iii. a situation which is defined in the AoA that causes the need for equity occurs,

The additional payment obligation becomes binding once it is included in the AoA. It is possible to insert such a provision to the AoA at a later stage or to increase the existing additional performance obligation with a General Assembly resolution ("GA") adopted by the approval of the shareholders, who as a result will be put under such an obligation. The additional performance obligation can only be agreed upon as a cash payment.

The shareholders' additional payment obligation which becomes due under the conditions stipulated in the TCC ends with the fulfillment of this obligation.

With the adjudication of bankruptcy, the additional payment obligation becomes due. The bankruptcy of the company may also affect former shareholders within the context of additional payment obligation. That is to say, if a shareholder leaves the company and then the company goes bankrupt within two years after the former shareholder's withdrawal is registered to the Trade Registry, the former shareholder will be liable for the additional payment obligation, only if the successor of the former shareholder does not fulfill the additional payment obligation, be it partially or entirely.

The amount of the additional payment set forth in the AoA cannot exceed twice the nominal value of the basic capital share. The additional payment can be refunded partially or wholly in cases where the amount of additional payment can be recoverable with the available reserves and funds of the company.

In order to reduce the amount of the additional payment or cancel the obligation, the sum of the legal reserves and basic capital must cover the losses of the company completely.

Secondary Performance Obligation

If deemed necessary to achieve company's goals and objectives, LLCs may put the shareholders under secondary performance obligation by way of including a provision in the AoA. The scope, subject and conditions of the obligation have to be specified in the AoA.

Contrary to the additional payment obligation, secondary performance obligation can only be determined as a non-cash performance obligation. The subsequent introduction of the secondary performance obligation is subject to a GA resolution to be adopted by the approval of the shareholders who will be put under such an obligation.

Liability of the Shareholders from the Public Receivables

LLC's shareholders are not liable for company's debts. However, there is a significant exception to this rule brought by the Law on the Procedure for the Collection of Public Receivables (Law No. 2481, "The Law"). Accordingly, the shareholders of LLCs are responsible in proportion to their basic capital shares for the public receivables that cannot be collected from the company wholly or partially. However, unlike LLCs, in Joint Stock Companies ("JSC"), shareholders are not personally liable for the public receivables.

Taxes, duties, charges, fees, tax penalties and interests payable to the State, provincial special administrations, and municipalities are some examples of public receivables mentioned in the aforementioned Law.

In order to request the public receivables from the shareholder, it is mandatory to attempt to collect the public receivables from the company's assets first.

The following cases indicate situations where there is a public receivable that is evidently uncollectible and, therefore, shareholders can be held liable:

- i. If it is clear that the appraised value for the confiscated assets of the company by the provisions of the Law cannot meet the public receivables,

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- ii. If it is evident from the circumstances that the public receivables requested from the bankrupt company cannot be collected from the bankrupt's estate,
- iii. If public receivables cannot be collected from the company at any stage of the proceedings carried out by the debt collection offices.

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