

Transfer of Shares by Operation of Law: Death of LLC's Shareholder

Effect of Death on Transfer of Shares

In a Limited Liability Company ("LLC"), unless otherwise stipulated in the Articles of Association ("AoA"), the approval of the General Assembly ("GA") is required in order to transfer shares. In other words, the validity of the transfer depends on the approval of the GA. GA may refuse to approve the transfer of shares without showing any reason. On the other hand, transfer of shares can be completely prohibited by the AoA of the company.

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In certain circumstances, the share transfer occurs by operation of law. Pursuant to the law, in cases where the provisions of inheritance apply, all rights and debts pass to the person who acquires the share ("the right holder"), without the approval of GA. In other words, the shares will be transferred to the right holder by operation of law upon the death of the shareholder.

It should be noted that joint ownership is also possible if there is more than one right holder acquiring the share. In this case, rights over the shares are exercised through a common representative appointed by joint owners.

Company's Right of Refusal and its Consequences

In order to protect the company's rights, the Turkish Commercial Code ("TCC", Law No. 6102) provides options that enable the company to refuse a new transfer which arose from inheritance.

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Accordingly, starting from the moment the company becomes aware of the death (transfer of the share), it has the right to refuse the new transfer within three months.

To be able to do that, the company must make an offer to the inheritor(s) to take over the shares with real value, either for the company itself, for its partners' or for a third person determined by the company.

If the company does not refuse to approve the right holder as a new shareholder expressly and in a written form within three months, it may be regarded as an implicit approval. This period starts when the company becomes aware of death or when the right holder applies to the company with documents proving the share transfer.

Resolution regarding the refusal shall be retroactively effective from the date of transfer. However, the latter decision shall not affect the validity of the other GA resolutions adopted before refusal resolution. Thus, right holder may attend the GA and vote during the interim period and such GA resolutions will be valid.

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Effect of Death on Dissolution of an LLC

Grounds for dissolution can be set forth in the AoA of an LLC. When a reason for the dissolution of the company is materialized, the company automatically dissolves without a need for a GA resolution or a court decision. In such circumstances, a shareholder may request a court decision regarding the dissolution of the company. Although it is incompatible with the capital structure of an LLC, situations such as the death of a shareholder leading to the dissolution of the company can be stipulated as a reason of dissolution within the AoA.

Death of the Director

With the enactment of TCC in 2012, it has become possible for LLCs to be established with a sole shareholder. Under the TCC, at least one of the shareholders must be the director of the company. In principle, in companies where the sole shareholder is the only director of the company, the death of the director does not lead to the dissolution of the company. In such cases, the share of the deceased shareholder

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is transferred to his/her inheritors (i.e. right holders). After the death of the sole shareholder, the heirs of the deceased become the new shareholders of the LLC in proportion to their inheritance shares, under principles of inheritance law. If the deceased director is the sole director in the company, the right holders will be the new shareholders and, accordingly, at least one person must be appointed as a director among the right holders.

Furthermore, pursuant to TCC, the third-party director (not a shareholder) can be appointed and dismissed by a GA resolution at any time. In this regard, right holders have the right to dismiss the third-party director when the deceased director's shares are transferred to the new right holders.

GURULKAN ÇAKIR AVUKATLIK ORTAKLIĞI

Beybi Giz Plaza, Office 43
Maslak 34398
Istanbul, TURKEY

T +90 212 215 30 00
M info@gurulkan.com
W www.gurulkan.com



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