

## TRANSFER OF SHARES IN LIMITED LIABILITY COMPANIES

### Introduction

In principle, with certain exceptions, both the bearer and registered shares of a joint stock company (JSC) may be transferred without being subject to any restrictions. However, unlike the share certificates that can be transferred by possession in JSC, the share certificates issued to represent the shares in limited liability companies (LLC) do not have the same characteristics. Even if the share certificates are issued, the transfer of the share depends on the permission of the company.

### Approval of the General Assembly

Unless it is stipulated otherwise in the articles of association (AoA), in order to transfer the shares of an LLC, the approval of the general assembly is required. When the transfer of the shares is rejected by the general assembly, the transfer will not become valid. In other words, the validity of the transfer depends on the approval of the general assembly.

Legally speaking, the date of the transfer is the date of the general assembly's approval.

In case the director or directors do not call for a general assembly meeting in order to discuss the approval of the transfer of share, the transferor may, provided that his share amounts to at least 10% of the shares of the LLC, call for the meeting. This call must be made through a notary public.

Unless stipulated otherwise in the AoA, the general assembly can refuse to give its approval to the transfer of shares without showing any reasons. However, the general assembly cannot use its authority for refusal arbitrarily.

When there is additional payment obligation or supplementary obligations for the shareholders prescribed in the AoA of the LLC, the general assembly may refuse to

approve the transfer of shares if there is reasonable doubt regarding the solvency of the transferee.

If the general assembly remains silent for three months, it will be deemed that the approval was given.

The transferor shareholder should also attend the general assembly meeting and sign the resolution of the general assembly. If the transferor shareholder is, at the same time, the director of the LLC, it should be decided in the resolution whether his position as the director will continue or cease.

In case the approval of the general assembly is waived by the AoA, a notarized share transfer agreement will be sufficient to legally transfer the shares.

The general assembly is the organ of the LLC that has the power to accept or reject the transfer of the shares of the LLC. The general assembly cannot transfer this power to any other person or organ of the LLC.

*“It is not permissible to put a complete ban on the transfer of shares of a JSC in its AoA.”*

As the approval to the transfer of shares is an ordinary decision, the decision quorum is simple majority of those present in the meeting. However, it is possible to determine a higher quorum in the AoA of the LLC.

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## Prohibition of Share Transfer

It is not permissible to put a complete ban on the transfer of shares of a JSC in its AoA. Even if such article does exist in the AoA of a JSC, it is deemed to be null and void.

On the contrary, the AoA of an LLC can be drafted in a way that transfer of its shares is totally prohibited. The commercial code expressly permits prohibiting the transfer of shares in the AoA of an LLC.

In case the AoA expressly prohibits the transfer or the approval for transfer of shares is not given by the general assembly, the shareholder who wants to transfer his shares will have the right to leave the LLC on a justifiable reason.

## Right of First Refusal

Under Turkish law, it is possible to stipulate in the AoA of the LLC that when a shareholder wants to sell his shares, the other shareholders who have been granted a right of first refusal will be able to buy such shares before third parties. The shareholder who wants to sell his shares does not have a choice if the shareholder who has the right of first refusal announces that he will exercise his right and buy the offered shares.

## Transfer Procedure

First of all, in order to transfer the shares of an LLC, the share transfer agreement must be made in writing and the signatures of the seller and the purchaser must be notarized.

Unless the AoA of the LLC is drafted in a way that the approval of the general assembly is not required to transfer the shares, the approval must be taken. The transfer will only take effect with such approval.

Even though registering the transfer of shares into the share ledger is not compulsory, for the sake of transparency and clarity, the transfer of shares should be registered in the share ledger. The transfer must be registered at the trade registry and announced in the trade registry gazette.

If the directors of the company neglect to make an application to the trade registry in order to register the share transfer within thirty days following the approval of the general assembly, the transferor has the right to make a personal application in order to remove his name from the company records in connection with the transferred shares. Such removal is important for liability issues as the shareholder of an LLC is liable for the public debts of the company.

The registration of the transfer is made through a Central Registration Recording System called MERSİS.

The application through MERSİS must include the following:

- a) Application letter,
- b) 2 copies of the notarized approval of the general assembly,

- c) Notarized share transfer agreement, and
- d) Signed and sealed copy of the updated share ledger.

## Foreign Ownership

When the shares of an LLC are sold to a foreigner (either a real or legal person), the General Directorate of Incentive Implementation and Foreign Investment must be informed regarding the transfer. Relevant documents of the new owner of the shares such as the tax registration number or the certificate of incorporation will be submitted as well.

Media, electricity production and distribution, civil aviation and sea transportation are seen as strategic sectors so that the transfer of shares of an LLC in these sectors is subject to further restrictions.

## Liability

When the shares of an LLC are transferred, both the transferor and the transferee will be severally liable for the public debts occurred before the date of share transfer.

The transferor, on the other hand, will not be liable for the public debts of the LLC that occur after the transfer of the shares.

*“... both the transferor and the transferee will be severally liable for the public debts occurred before the date of share transfer.”*

## Taxation

Under Turkish tax regulations, transfer of shares may trigger various types of taxes depending on certain variables. There are numerous exemptions as well.

## Income Tax

When a real person transfers the shares of an LLC, no matter how long the shares of the LLC are held, the capital gains made from such transfer are subject to income tax.

The income tax rate has a progressive schedule ranging from 15% to 40% under current tax regulations in Türkiye.

## Corporate Tax

When the transferor is a legal person; and provided that such legal person is a corporate taxpayer;

- a) If the shares of an LLC are transferred within two years after acquisition, the capital gains made from such transfer are subject to corporate tax.
- b) If the shares of an LLC are transferred after two years following the acquisition, 75% of the capital gains are exempt from corporate tax, provided that:
  - a. the capital gains are maintained in a special account and not withdrawn for at least 5 years, or
  - b. added to the capital of the transferor, and
  - c. the sale price is collected within two years following the date of share transfer.

## VAT

Transfer of shares is, in most cases, exempt from VAT (Value-Added Tax):

- a) When a real person transfers the shares of an LLC, no matter how long he has held the said shares, the transaction will not be subject to VAT.
- b) When a legal person transfers the shares of an LLC, provided that the transferor legal person has been holding the shares for at least two years, the transaction will not be subject to VAT.

Currently, the VAT is applied at rates ranging from 1% to 20% in Türkiye. For the transfer of LLC shares, if it is triggered, the VAT rate is 20%.

## Stamp Duty

Under Turkish tax regulations, execution of agreements that include prices triggers stamp duty. As explained above, in order to transfer the shares of an LLC, the share transfer agreement must be made in writing and the signatures of the seller and the purchaser must be notarized. This share transfer agreement is subject to stamp duty which must be paid at the notary public where the transaction takes place.

*“For the transfer of LLC shares, if it is triggered, the VAT rate is 20%.”*

The stamp duty rate is currently 0.948% of the price mentioned in the agreement.

In principle, no tax liabilities will be triggered when the shares of two different companies are exchanged between two parties.

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