TRANSFER OF SHARES IN JOINT STOCK COMPANIES

Introduction

Under Turkish law, JSCs have two types of shares: Registered shares and bearer shares.

In principle, both the registered and bearer shares of a JSC may be transferred freely without being subject to any restrictions. However, there are various exceptions to this rule.

Bearer Shares

Under Turkish commercial law, the owner of the bearer shares of a JSC is the person who has them in his possession. As a result, it is possible to transfer the bearer share of a JSC simply by delivering its possession to the transferee.

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It is not mandatory to register the bearer shares to the share ledger as well. In such case, it is impossible for the JSC to prohibit or limit the transfer of the bearer shares.

Registered shares

In principle, even the registered shares of a JSC may be transferred without being subject to any restrictions. There are, on the other hand, some exceptions to this general rule.

Some of the exceptions are found in the commercial code itself. The articles of association (AoA) of a JSC, provided that it includes express wording, can also restrict the transfer of registered shares.

Restrictions by law

Unless the approval of the JSC has been taken, with certain exceptions, the registered shares that were not fully paid cannot be transferred.

The JSC's power to approve or reject the transfer, on the other hand, cannot be used arbitrarily. The JSC can abstain from approving the transfer of unpaid registered shares only if there is reasonable doubt regarding the solvency of the new owner of the shares and the collateral asked by the JSC was not provided.

Restrictions by the articles of association

It can be stipulated in the AoA of a JSC that its registered shares, regardless of being paid or not, can only be transferred upon the approval of the JSC. Such limitation affects beneficial owners as well.

In case the JSC that has a limitation in its AoA, goes into liquidation, such limitation will lose its ground and it will be possible to transfer its shares without taking the approval of the JSC.

"The JSC may refuse to give its approval to the transfer of shares in the case of an important reason if this is expressly stated in its AoA."

It is also possible to draft the AoA in a way that not all the transfers of shares would require the approval of the JSC but only in circumstances where there is an "important reason". The JSC may refuse to give its approval to the transfer of shares in the case of an important reason if this is expressly stated in its AoA.

The approval of the JSC in case of a transfer of shares to a competitor of the JSC may be required or prohibiting the transfer of shares to those who are not a member of the family that founded the JSC may be thought as important reasons.

Under Turkish law, unlike limited liability companies, 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.

As seen from the restrictions mentioned in the law and those that can be brought by the AoA of the company, the Turkish Commercial Code has not granted the JSC an unlimited discretion in its right to avoid approving the transfer of shares.

Right of First Refusal

Under Turkish law, it is possible to stipulate in the AoA of the JSC 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 buy the shares.

Transfer Procedure

The bearer shares of a JSC can be freely transferred by merely delivering their possession to the transferee.

Even though it is not obligatory, a JSC can issue share certificates.

When the company chooses to issue share certificates, unless the AoA stipulates otherwise, the transfer of the registered shares will be completed once the share certificates are endorsed and delivered to the transferee. It should be noted that the transfer of the shares will not be valid until such transfer is registered to the share ledger.

When there is no share certificate, a written share transfer agreement must be made between the seller and purchaser. The transfer of shares must then be registered in the share ledger of the JSC.

It is possible to notarize the share transfer agreement or register the transfer of the shares of a JSC to the trade registry and announce such transfer in the official trade registry gazette. However, none of the aforementioned transactions is obligatory and the JSC can choose not to notarize the share transfer agreement or register and announce the transfer of its shares.

The JSC, on the other hand, has to register the names, titles and addresses of the shareholders and beneficial owners to its share ledger. Hence, it is important to register the details of the transferee to the share ledger as it constitutes documentary evidence regarding the ownership structure of the JSC.

Foreign Ownership

When the shares of a JSC is 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 a JSC in these sectors is subject to further restrictions.

Taxation

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

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Income Tax

When the transferor is a real person;

a) When the shares of a listed JSC are transferred, the capital gains made from such transfer are not subject to income tax.

b) When the shares of an unlisted JSC are transferred;

   a. If the JSC has issued share certificates or interim certificates, provided that the transferor has been holding the shares for at least two years, the transaction will not be subject to income tax.

   b. If the JSC has not issued share certificates or interim certificates, no matter how long the transferor has held the said shares, the transaction will be 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;

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

Currently, the corporate tax is applied at a standard rate of 25% in Türkiye.

VAT

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

"For the transfer of JSC shares, if it is triggered, the VAT rate is 20%."

a) When a real person transfers the shares of a JSC, 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 a JSC;
    a. If the JSC has issued share certificates or interim certificates, the transaction will not be subject to VAT.
    c. If the JSC has not issued share certificates or interim certificates, provided that the transferor legal person has been holding the shares for at least two years, the transaction will, again, not be subject to VAT.

Currently, the VAT is applied at rates ranging from 1% to 20% in Türkiye. For the transfer of JSC 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. In connection with the transfer of shares;

a) If the JSC has issued share certificates or interim certificates and the transfer of the shares is made by endorsing and delivering these certificates, the transaction will not be subject to stamp duty.
b) If the JSC has not issued share certificates or interim certificates and the transfer of the shares is made by executing a share transfer agreement, the transaction will be subject to stamp duty.
c) If the JSC has not issued share certificates or interim certificates, provided that the transferor legal person has been holding the shares for at least two years, even if the transfer of the shares is made by executing a share transfer agreement, the transaction will not be subject to stamp duty.

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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