

## Basic Share Transfer in Joint Stock Companies

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### Introduction

A Joint Stock Company (“JSC”) capital is divided into shares and shareholders’ liability for debts of the company is limited to their participation in the share capital. Transferring the shareholder title to a third person is a simple and one of the most common transactions in a JSC. This article briefly examines the transfer of the basic shares which are not tied up to an instrument.

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### Definition of Share

There is no definition of share provided under the Turkish Commercial Code (“TCC”, Law No. 6102). The share has been defined as “a part of the capital” in the doctrine and represents the rights and obligations emergent by share ownership. In addition, the term “share” is also used instead of share certificate and share ownership.

### Acquisition of Shares

Shares of a JSC can be acquired in two different ways: via original acquisition or derivative acquisition. Original acquisition may occur; (i) in the establishment phase of a company, (ii) in capital increase as a result of purchase of shares issued by the board of directors or (iii) by acquisition of shares with the alteration of the company type. Derivative acquisition, on the other hand, may occur; (i) after the subscription of share capital and gaining the legal entity status of a

JSC, (ii) at the transfer of the basic shares which are not tied up to an instrument or (iii) acquisition of tied up bonds by a third party.

### **Transfer of Shares**

There are two types of shares in a JSC. Namely, registered shares and bearer shares (Article 484 of TCC). The transfer of these shares is not subject to any permission; such shares can be transferred without being subject to any restrictions.

Common stocks can be issued in accordance with Article 486 of TCC, but it should be noted that bearer shares certificates cannot be issued for the shares that are not fully paid-up. Paragraph 3 of Article 486 of TCC states that the registered share certificates can be issued and distributed to the owners of all registered shares with the request of the minority.

Under TCC, there is no requirement to bind non-public JSCs' shares to a registered share certificate for the shares whose share value is not entirely paid out.

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Whether the share being tied up to an instrument or not, does not affect the rights of shareholders. However, shares not tied up to an instrument are transferred in a different way than the ones tied up to an instrument.

### **The Concept of Basic Share and its Transfer**

According to the Turkish doctrine and judicial decisions, basic share is a share that is not tied up to an instrument. Basic shares are divided into two categories: registered and bearer basic shares.

Basic shares may be subject to all forms of transactions; they can be transferred, pledged or confiscated.

There is also no difference in rights, obligations and transactions between the shares tied up to an instrument and those not tied to an instrument. Additionally, the fact that share remains basic does not preclude the share from being transferred. Shares are subject to different methods of transfer depending on whether they are paid-up shares or not.

## Transfer of Paid-up Basic Shares

Once the shareholder's obligation to pay for the share is fulfilled, the shareholder will no longer have debt to the company. Therefore, the provisions for the "assignment of claims" can be applied to the paid-up basic shares. The "assignment of claims" is regulated in the general provisions of the Turkish Code of Obligations ("TCO", Law No. 6098): A creditor can transfer the claim to a third party without consent of the debtor. Assignment by agreement must be in written form (Article 184 of TCO) and should be recorded in the book of shares since the transfer concerns the basic share. However, the shareholder agreement may contain constraints regarding the transfer of share.

## Transfer of Unpaid Basic Shares

Transfer of unpaid basic shares is different than that of paid-up basic shares. There is no clear regulation in the law regarding transfer of the shares that have not been fully or partially paid. Pursuant to the judicial decisions, the provisions of the internal assumption of debt may be applied to transfer of unpaid basic shares. Under the internal assumption of debt in accordance with TCO, the third party assumes the capital payment debt of the previous shareholder. Hereafter, the third party has the obligation to pay the capital share to the JSC. However, the validity of the contract depends on the creditor's permission, in other words, approval of the company (Article 195 of TCO).

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