

# Types of Share Certificate and Share Certificate Transfers in Joint Stock Companies

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A share certificate is a legal document that certifies ownership of a specific number of shares in a company. There are, generally speaking, two types of share certificates; registered share certificates and bearer share certificates. Normally, a registered share certificate only proves title, and a record of the true holders of the shares is kept in the stockholders' register of the corporation. A bearer share certificate, as its name implies, is a bearer instrument; thus physical possession of the certificate entitles the holder to exercise all the legal rights associated with the share.

## Share Certificates in Joint Stock Companies

In Turkey, these two types of share certificates can be issued by joint stock companies. A joint stock company shall issue registered share certificates unless the articles of association provides otherwise. Bearer share certificates shall not be issued for non-fully paid shares by joint stock companies. If bearer share certificates are issued for a non-fully paid share, these share certificates will be deemed invalid. However, the type of share certificate can be changed, unless this is prohibited by the articles of association. In order to change the type of share certificates from registered to bearer certificates, the price of the share shall be fully paid.

In practice, joint stock companies do not issue share certificates on the grounds that issuing bearer and registered share certificates is not a legal obligation for such companies. Therefore, companies issue interim certificates as temporary instruments in lieu of registered and bearer share certificates. Interim certificates provide several advantages in terms of corporate tax and value added tax, and also embody the right to be a shareholder of the issuing company and provide their holders certain shareholder rights such as the right to attend general assembly meetings, right to vote, right to share in dividends, as well as represent the shares until the issuance of share certificates. Once the share certificates are issued, the interim certificates are replaced by these share certificates and lose their validity. The types of interim certificates are set out in Article 411 of the Turkish Commercial Code. Pursuant to this article, these are the registered interim certificates issued instead of

the registered share certificates and the registered interim certificates issued instead of the bearer share certificates.

Share certificates cannot be issued before the registration of the joint stock company. However, the obligations arising from subscription commitment will remain valid. The form of share certificates is set out in Article 413 of the Turkish Commercial Code. Pursuant to this article, share certificates shall include the title of the company, the amount of the principal capital, the registration date and the authorized signatories. In addition, registered share certificates shall also include the name and residence of each of the founders and the amount that has been paid. There is no provision setting out the form of interim certificates. However, based on this article with respect to the form of the share certificates, the interim certificates shall also include the type and the value of the interim certificate.

## Share Certificate Transfers

Share certificate transfers in joint stock companies are set out between Articles 415 and 419 of the Turkish Commercial Code. Joint stock companies may also set out the terms of share transfers in the article of the association of the respective company. Unless prohibited by the articles of association or the Turkish Commercial Code, the registered shares may be transferred without any restriction. According to Article 416 of the Turkish Commercial Code, registered shares can be transferred by way of endorsement and transfer of possession of the share certificates. The transfer of a share shall only be effective

from the company's perspective after being registered with the company. The board of directors of a company may refuse the registration of the transfer based only on the grounds set forth under the Turkish Commercial Code or the articles of association of the company. It is even possible to state in the articles of association of the company that the company may refuse to register the transfer without stating any reason. If the transfer is refused by the company, the acquirer of the shares does not acquire full ownership status and is prevented from exercising his/her governance rights, such as the right to vote, until the registration is completed. Therefore, the articles of association should be thoroughly reviewed before any joint stock company's share transfer to prevent any unintended situation.

Registration of the transfer of registered shares in the share ledger of the joint stock company is a validity condition for the transfer. However, registration of the transfer of such shares to the Trade Registry is not a legal obligation. The board of directors of the company is responsible for keeping the share ledger of the company up-to-date. Therefore, once the company is notified of the transfer of shares, the board of directors registers such transfer in the share ledger, usually via a resolution. Otherwise, the acquirer would not be considered a shareholder of the company.

If registered share certificates are not printed, the shares can be transferred through a written transfer agreement. Shares in bearer form can be transferred freely by delivery of the share certificates. If the share certificates are not printed, a written agreement is required for the transfer of shares in bearer form. Pursuant to the Turkish Commercial Code, shares issued in exchange for capital contributions in kind cannot be transferred for a two (2) year period starting from the date of the registration of the joint stock company with the respective Trade Registry or the relevant capital increase.

The transfer of interim certificates issued instead of registered share certificates is subject to endorsement and delivery similar to the transfer of the registered share certificates. Even if the subscribed shares are not fully paid, it is possible to issue registered interim certificates instead of the registered share certificates. According to Article 409 of the Turkish Commercial Code, bearer interim certificates may be issued instead of the bearer share certificates provided that the share prices are fully paid.

Pursuant to Article 411 of the Turkish Commercial Code, the transfer of the registered interim certificates issued instead of bearer share certificates, unlike the transfer of those issued instead of registered share certificates, is subject to the provisions concerning the assignment of receivables. In the same article, it is also stated that the consent of the joint stock company is not required for completion of the transfer; however, to ensure the validity of the transfer vis-à-vis the company, a notification should be made to the company. In other words, the transfer of shares inures from the date of notification.

## Conclusion

In conclusion, share certificates can be issued to represent the capital of a joint stock company. Such share certificates may be bearer share certificates or registered share certificates. On the other hand, in practice joint stock companies in Turkey issue interim certificates instead of bearer share certificates and registered share certificates that have considerable advantages for such companies in terms of taxation. As mentioned above, unless a specific provision is stated in the articles of association prohibiting the transfer of registered share certificates, such certificates are transferable upon the approval of the board of directors. Meanwhile, bearer share certificates may be transferred without any restrictions, subject to the provisions of the Turkish Commercial Code.