

# Bearer Temporary Share Certificates Issued as a Substitute for Bearer Share Certificates

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A share certificate is a written instrument signed on behalf of a company, and serves as legal proof of ownership of the number of shares indicated. Within the framework of the Turkish Commercial Code, companies are not legally obligated to issue share certificates. However, in practice, share certificates are issued mostly to gain corporate tax and value added tax advantages.

Bearer temporary share certificates may be issued in lieu of bearer share certificates and such bearer temporary share certificates will remain valid until the issuance of bearer share certificates. Holders of bearer temporary share certificates enjoy all ownership rights associated with the shares such certificates represent. Principles set forth for bearer share certificates are mostly preserved within the framework of the New Turkish Commercial Code with some significant amendments and developments.

Pursuant to Article 409 of Turkish Commercial Code no. 6762 (“**TCC**”), shares of a joint stock company shall be registered or to bearer. Under the TCC, companies do not have a legal obligation to issue share certificates, however they may find it convenient to do so for the purpose of easing the transferability of shares and gaining corporate tax and value added tax advantages.

Article 570 of the TCC defines bearer share certificate as a share certificate the substance or form of which indicates that the bearer of the share certificate is the legal owner of such share certificate. Bearer share certificates are issued in the form set out in Article 413 of the TCC. Pursuant to Article 413/1 of the TCC, share certificates shall indicate the trade name, the amount of the capital and the date of registration of the company and the kind and nominal value of the share and shall be signed by at least two (2) persons authorized to sign on behalf of the company. The signature may be set in the form of a stamp or seal or it may be printed. As implied from the definition stated above, one of the most unique characteristics of bearer share certificates is that such share certificates do not indicate the name of the holder of the certificate.

Another important characteristic of bearer share certificates is their method of transfer. Pursuant to Article 415 of Turkish Commercial Code, bearer temporary share certificates shall be transferred only by delivery of such certificate. This ease of circulation is unique to bearer share certificates and bearer share certificates are mostly preferred for this reason.

Bearer temporary share certificates may be issued as a substitute for bearer share certificates in the event that the company does not issue share certificates representing the shares. Bearer temporary share certificates shall be issued in the same form as bearer share certificates and issuance of such certificates shall be subject to fulfillment of the same conditions set out for issuance of bearer share certificates.

Bearer temporary share certificates issued as a substitute for bearer share certificates shall be replaced with bearer share certificates once the company issues such share certificates. Upon issuance of bearer share certificates, temporary bearer share certificates issued as a substitute for such certificates shall be null and void. It should be borne in mind that in the event the company delivers the newly issued bearer share certificates without taking back bearer temporary share certificates, the board of directors

shall be responsible for any loss incurred resulting from such wrongdoing.

The holder of a bearer temporary share certificate may exercise all rights associated with the ownership of shares represented by such share certificate such as, inter alia, voting rights, the right to receive dividends and preemptive rights to purchase newly issued shares.

### Conditions for Issuance of Bearer Temporary Share Certificates

As mentioned above, issuance of bearer temporary share certificates shall be subject to the same conditions set forth for issuance of bearer share certificates under the TCC.

First of all, in order to issue bearer share certificates, issuance of such certificates has to be envisaged in the articles of association of the company. This requirement is inferred from Article 409 of the TCC, which states that in the absence of any provision to the contrary in the articles of association of the company, share certificates shall be registered.

Secondly, since share certificates, either registered or to bearer, issued before the company is registered with the Trade Registry are null and void under Article 412 of the TCC, bearer share certificates may be issued only after the registration of the company with Trade Registry is complete.

Last but not least, it should be noted that although the capital sum of the company determined in the articles of association does not have to be paid in full at the time of incorporation, pursuant to Regulation no. 2003/3 issued by the Ministry of Industry and Commerce, bearer share certificates may not be issued unless capital contribution corresponding to such shares is paid in full.

### Exercise of Voting Rights in the General Assembly by the Holder of Bearer Temporary Share Certificates

As stated above, holders of bearer temporary share certificates shall enjoy all ownership rights that holders of bearer share certificates enjoy. Pursuant to Article 360/2 of the Turkish Commercial Code, shareholders may exercise their voting rights in person during general assembly meetings and they also may exercise their voting rights through a third party, who does not have to be a shareholder unless otherwise provided for in the articles of association of the company.

Holders of bearer temporary share certificates should entrust their certificates to the company one (1) week prior to the date of the general assembly meeting in exchange for entrance cards in order to vote at the general assembly in person under Article 360/3 of the TCC.

In order to exercise voting rights related to bearer temporary share certificates by proxy, entrance cards to be given in exchange for the entrustment of such certificates to the company must indicate the name and status of the representative. It should be noted that a document evidencing proxy is required to place the name of the representative on the entrance card.

### Pledge on Bearer Temporary Share Certificates

Pursuant to Article 956 of the Turkish Civil Code, a bearer share certificate may be pledged by delivery of the certificate to the pledgee. In the event that bearer temporary share certificates are pledged by delivery to the pledgee, ownership rights related to the shares represented by such certificates, such as voting rights, the right to receive dividends and preemptive rights to purchase newly issued shares will remain with the legal owner of the shares.

Pursuant to Article 360/3 of the TCC, voting rights associated with the shares may be exercised by the pledgee only if a proxy is granted to such pledgee in a separate document.

### Grant of Usufruct Right on Bearer Temporary Share Certificates

In the event that a usufruct right is granted upon a bearer temporary share certificate, such share certificate shall be delivered to the holder of the usufruct right or entrusted to a secure place, such as a bank under the name of the holder of the usufruct right.

The holder of the usufruct right shall be entitled to receive dividends during the term that such usufruct right is in effect. The holder of usufruct right is entitled to vote at general assembly meetings unless otherwise provided for in the articles of association or stipulated in an agreement concluded between the shareholder and usufruct right holder.

However the holder of the usufruct right should observe the interests of the shareholder while exercising voting rights at the general assembly and should not exercise such voting rights to the detriment of the shareholder.