



Share Transfers in Limited Liability Partnerships under the Turkish Commercial Code

The Turkish Commercial Code No 6102 (the “**Commercial Code**”) significantly altered the longstanding legal framework of Turkish companies law. With the entry into force of the Commercial Code on 1 July 2012, limited liability partnerships may be composed of single partner, with a minimum share capital of 10.000.-TL (approximately EUR 4,300.-). Those changes in incorporation process have also affected share transfer scheme, as outlined below:

- **General rule.** Unless otherwise provided in the Articles of Association, shares of limited liability partnerships may be freely transferred at all times¹.
- **Execution of a share transfer agreement.** Seller and buyer must execute a share transfer agreement in writing before a Notary Public, where the amount of shares to be transferred must be 25.-TL or multiples, and which must include obligations of seller (*e.g.*, non-compete; right of first refusal; preemption right). Lack of this requirement as to the form of the share transfer agreement will lead to its nullity.
- **Request of approval.** Seller and/or buyer and/or any of their legal representatives must notify the limited liability partnership regarding the transfer of shares, and request its approval. The notification and its date will be the milestone of approval process.
- **General Assembly of Partners’ approval of share transfer.** Pursuant to the Commercial Code, to be valid, share transfers must be approved by a General Assembly of Partners’ resolution, with a quorum representing majority of votes present in that meeting. This condition on General Assembly’s approval may be removed by the Articles of Association of the company.
 - **Separation (*çıkma*) right of seller.** Unless otherwise provided in the Articles of Association, General Assembly of Partners may refuse approving transfer of shares without any reason. In that case, seller may use its *separation right on valid ground* set forth under the Commercial Code, and cease to be a partner of that entity in exchange of actual value of its shares as separation payment (*ayrılma akçesi*).
 - **Collateral.** If there is doubt on solvability of buyer for obligations arising from the transferred shares, General Assembly may request collateral from buyer.
 - **3 months time bar.** If the General Assembly of Partners does not resolve on the approval of share transfer within three (3) months following a request of approval, the approval is deemed automatically granted.
- **Registration with the Trade Registry.** Manager(s) (*müdür(ler)*) are responsible to register the transfer of shares with the Trade Registry² within thirty (30) days starting from approval date of share transfer. This is crucial due to tax and other public debts liabilities of partners.
- **Registration with the share ledger.** Transfer of shares must be registered with the share ledger of the company. However, the registration has only declaratory legal value, and non-registration with the share ledger will not have any effect on the validity of transfer of shares.
- **Function of registered shares.** The Commercial Code allows limited liability partnerships to issue registered (*nama yazılı*) share certificates for evidencing purposes. On the other hand, however, the Commercial Code is silent on the function of those certificates during a share transfer operation. Therefore although they are not negotiable, it is recommended for seller to endorse and deliver those certificates to buyer to avoid any eventual confusion.
- **Tax implications.** Income Tax Code No 193 does not provide any tax exemption for transfer of limited liability company shares. Therefore, gains that will be generated through sale of limited liability company shares will be subject to income tax as *capital gains tax* at all times. Transfer of limited liability partnership shares may also be subject to 18% value added tax, provided that seller owns the transferred shares by less than two (2) years.

¹ Since the Commercial Code allows single partner limited liability partnerships, one person may acquire all of the shares of a limited liability partnership.

² Although it is compulsory to make an additional declaration in joint stock companies when there remains only one shareholder as a result of share transfer(s), in limited liability partnership no such requirement exists due to registration of each share transfer with the Trade Registry.