

Turkey: How to Pledge Shares in Joint Stock Companies?

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I. Introduction

Pledge of shares in joint stock companies is not specifically regulated in the Turkish Commercial Code (“TCC”). For this reason, it will be necessary to refer to the Turkish Civil Code (“TCL”) for share pledge in joint stock companies. In this context, the provisions between Articles 954 and 961 of the TCL shall apply for the pledge of shares in joint stock companies. As per the mentioned articles, the share pledge in joint stock companies differs depending on whether the shares are represented by a share certificate or not. In this article, we will focus on specifications of share pledges in terms of the different types of shares in joint stock companies in Turkey.

II. Types of Shares and Share Certificates

Article 484 of the TCC provides that a share in a joint stock company may either be (i) registered share, or (ii) bearer share.

Both types of these shares can be represented by share certificates. In fact in the case of bearer shares Article 486 of the TCC sets forth an obligation to issue share certificates. According to such obligation, in the event that the shares are bearer, the board of directors must issue bearer share certificates within three months of the capital contribution corresponding to such shares being paid in full. In addition, the board of directors is also obliged to announce the issuance of such share certificates and register the board resolution taken for the issuance of such certificates with the trade registry. In other words, it is obligatory to issue share certificates to represent bearer shares.

On the other hand, it is not obligatory to issue share certificates to represent the registered shares, but share certificates can be issued if the minority shareholder requests it. Registered share certificates are negotiable instruments that have the qualification of a promissory note issued to the name of a specific person. Pursuant to Article 490 of the TCC, unless otherwise stipulated in the law or articles of association registered shares can be transferred without any limitation.

III. Pledge on Different Types of Shares

According to Article 954 of the TCL, transferable receivables and other rights may be subject to the pledge. Also under Article 955 of the TCL, shares can be pledged through a written pledge agreement, regardless of whether those shares are represented by share certificates or not.

If a share is an uncertified share, the signing of the pledge agreement is obligatory. The pledge agreement must be in written form for the validity of the agreement. On the other hand, pursuant to Article 956 of the TCL, the establishment of the right of pledge is regulated differently in registered and bearer share certificates.

Bearer share certificates are those in which it is clear from the text of the certificate that the bearer is the shareholder. According to Article 956 of the TCL, delivery of certificates to the pledged creditor is sufficient for the pledge of bearer share certificates. However, the parties must agree on their will. In

other words, the parties should agree that the possession of the bearer share certificates is transferred for the purpose of pledge.¹ If the parties do not have the same will regarding the transfer of possession due to the pledge, the right of pledge will not be established even if the creditor has acquired possession of the certificates. Another condition of the establishment of the pledge is that the pledger must have the power of disposition, and in the absence of the power of disposition, the right of pledge cannot be mentioned.²

According to the Communiqué on Notification and Registration of Bearer Share Certificates to the Central Registry Agency (“**Communiqué**”), the bearer shareholders and bearer share certificates must be notified and registered to Central Registry Agency (“**CRA**”). According to Article 5 of the Communiqué, in case of the transfer of the bearer share certificates, a notification must be made to the CRA by the transferee whom actual possession of the bearer share certificate is transferred to. This notification may also be made by the company that issued the bearer share certificates. Therefore, in the pledge of the bearer share certificate, it will be necessary to notify the CRA due to the transfer of the possession of the share certificate.

On the other hand, in order to establish the right of pledge on the registered share certificates, as per the Article of 956/2 of the TCL, the transfer of the possession as well as a written transfer declaration or endorsement for the pledge is required. In case the registered share certificate is pledged with a written transfer declaration bearing the pledger's signature, instead of the pledge endorsement, the establishment of the pledge has to be understood from the meaning of the declaration.³ The transfer declaration for pledge may be written on the share certificate or on a separate piece of paper.

It should also be noted that, in a joint stock company, after the share is attached to the certificate, the rights owned by the shareholder cannot be asserted or transferred independently from the share certificate.⁴ Therefore, if there is a share certificate representing the share, then the certificate would also become a part of the pledge transaction.

In order to pledge the shares, the board of directors would take a resolution. In the said resolution of the board of directors, the company may specify the number of shares with the nominal value which will be pledged and the board of directors may decide to record the share pledge in the share book. Recording the pledge right to the share book shall be important for the notification and proof of the pledge to the third party.

As per the Regulation on the Procedures and Principles of General Assembly Meetings of Joint Stock Companies and Ministry Representatives Attending These Meetings (“**Regulation**”), all shareholders included in the list of those who can attend the general assembly meeting prepared by the board of directors have the right to attend the general assembly meeting. However, according to Article 18/3 of the Regulation, in order for the bearer shareholders to attend the general assembly meetings, in

¹ Ergüne, Mehmet Serkan. “Anonim Şirket Payı Üzerinde Rehin Hakkı Kurulması” [Pledge Establishment On Corporate Shares]. İÜHFİM, 2016, C. S.74 (2), at 749.

² See Ergüne, Mehmet Serkan, supra note 1, at 750.

³ See Ergüne, Mehmet Serkan, supra note 1, at 752.

⁴ Hizli, Irmak. “Anonim Şirket Payları Üzerinde Rehin Hakkının Kurulması” [Establishment of Right of Pledge on Joint Stock Company Shares]. Ankara Üniversitesi Sosyal Bilimler Enstitüsü Özel Hukuk Anabilim Dalı Yüksek Lisans Tezi [Ankara University Institute of Social Sciences, Department of Private Law Master's Thesis]. 2020, at 20.

addition to their names or titles in the shareholder chart provided by the CRA, they must also prove to the board of directors that they are in possession of the bearer share certificate before attending the general assembly meeting. Also Article 18/4 of the Regulation regulates that the person holding the bearer share certificate due to pledge, lien, custody agreement or usage loan agreement and similar agreements may attend the general assembly and vote if authorized by the shareholder pursuant to the provisions of this Regulation. Here, it should be noted that according to the Provisional Article 3 of the Regulation, if the general assembly is called until December 31, 2021, bearer share holders who have applied to the company to be notified to the CRA but have not yet been notified, will also be included in the list of those who can attend the general assembly.

Pursuant to Article 379 of the TCC, a joint stock company may acquire its own shares or accept them as pledge, with consideration, so long as they do not exceed 10% of the principal or issued capital of the company. However, for the acceptance of the company's own shares as pledge, the general assembly must authorize the board of directors. This authorization may be given for a maximum of five years and in this authorization, the general assembly has to determine the total nominal value of the shares while setting the lower and upper limits for the amount to be paid.

Article 385 of the TCC also mentions that if the shares are not established as a pledge in accordance with the regulation specified in the Article 379 of TCC, the pledge on shares shall be removed within six months at the latest from the date they are accepted as pledge.

IV. Effect of Share Pledge on Shareholder Rights

According to the TCC, it is shareholders' right to receive dividend, so that the pledgee does not have such a right in principle. However, as per Article 959 of the TCL, whether the dividend is in the scope of pledge will change depending on whether the shares are represented by share certificates or not. In this regard, if the company has registered or bearer share certificates, a separate pledge must be established on the share in accordance with the legal form requirements in order for the dividend to be pledged. On the other hand, if there is an uncertified share, dividends that have not yet become due at the time of foreclosure of the pledge will be included in the pledge.

It should also be noted that in case of liquidation of the joint stock company, the right of pledge will stand as a pledge of receivables on the liquidation share. This issue is not clearly regulated in the law, but Article 798/2 of the TCL applies by analogy.

V. Conclusion

In financing transactions, creditors often request collaterals to secure performance and one of the mostly preferred collaterals in Turkish practice is establishment of a share pledge on shares that the debtor owns. The right of pledge would not automatically grant the right of ownership on the shares; however, it provides the right of disposition to the owner. Since there are different types of shares in joint stock companies, right of pledge will also differ according to the types of shares in question. The shares are divided into two as registered or bearer shares and can be represented by share certificates. It is not mandatory to sign a written pledge agreement to establish a pledge on bearer shares, delivery of certificates to the pledged creditor is sufficient. On the other hand, in order to establish the right of pledge on the registered shares, the transfer of the possession of the share certificate as well as a written transfer declaration or endorsement for the pledge is required.



Regardless of the type of joint stock company share, there is no need for the pledge right to be recorded in the company share book or to be notified to the company. However, recording the pledge right to the share book shall be important for the notification and proof of the pledge to the third party. In case of the transfer of the bearer share certificates, a notification must be made to the CRA by the transferee whom actual possession of the bearer share certificate is transferred to. This notification may also be made by the company that issued the bearer share certificates.

When pledging a joint stock company share, existing agreements of the shareholder granting the pledge should be examined in order to see if there are any restrictions regarding the pledging, so that if there are restrictions on additional collateral in the agreements, then the consent of the relevant parties of the agreements should be required. In addition to all these, it should be noted that a joint stock company may also acquire its own shares or accept them as pledge, with consideration, so long as they do not exceed 10% of the principal or issued capital of the company. Also it should be noted that share pledge in joint stock companies also affects the shareholders' right in terms of receiving the dividend and liquidation share.

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