



## **Visibility of Shareholders in Non-Public Turkish Joint-Stock Companies: Can Shareholders Remain Anonymous?**

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In Turkish corporate law practice, names of the founding shareholders shall be explicitly stated in the articles of association (“**AoA**”), registered with the trade registry and published in the Turkish Trade Registry Gazette while incorporating a private joint stock company (“**JSC**”). This step is mandatory and cannot be skipped in any way. As a result of such registration and publication, names-surnames/legal entity names of shareholders become publicly accessible and available through the trade registry gazettes.

This initial disclosure provides transparency as it shows founders of the company. That said, after the incorporation phase, publicly available trade registry records may not be an accurate source of information to follow the share transfers and detect the current and existing shareholding structure in a JSC. This is because for JSCs, it is not mandatory to have share transfers registered with the trade registry as a rule. Unlike limited liability companies (“**LLCs**”), as share transfers in JSCs are not subject to registration with the trade registry to become valid, changed shareholding ratios or even new shareholders of private JSCs may remain anonymous in certain circumstances.

To be more precise, in a JSC, transfers of registered shares, registered share certificates and uncertificated bearer shares are recorded in the share ledger of the company. If there are bearer share certificates issued by the company, share transfers shall be notified to the Central Securities Depository (MKK). These records do not have a publicly accessible nature. On the other hand, in terms of companies which keep their corporate books electronically in online environment and/or which are subject to notification to MKK due to having bearer share certificates, corporate books records and shareholding structure can be accessible by relevant public authorities, as the case may be.

Although JSC type is suitable for preserving anonymity of shareholders to a certain extent from corporate law point of view and this characteristic indeed comes from the lack of registration requirements for share transfers in JSCs, there might be also certain post-transfer notification and registration requirements that trigger disclosure of names of shareholders and shareholding ratio in the company to the public.

One of the most common exceptions and registration requirements that result in the disclosure of shareholders, and their shareholding ratios arise from Article 198 of the Turkish Commercial Code (“**TCC**”) and Article 107 of Regulation on Trade Registry. Accordingly, if an enterprise directly or indirectly reaches or falls below the shareholding ratio of 5%, 10%, 20%, 25%, 33%, 50%, 67% or 100% in a JSC company, then said enterprise shall disclose such event to the company, within 10 (ten) days following realization of the transaction. Afterwards, the company shall have this event registered with the trade registry within 10 (ten) days following such internal disclosure. For this registration, trade registries generally seek the company to be part of a company group consisting of at least two

companies. Upon registration of this event and announcement of the registration in the Turkish Trade Registry Gazette, the shareholding percentage and names of shareholders who exceed or fall below the relevant thresholds become visible to third parties. It should be noted that such an announcement does not disclose a complete shareholders list, instead it only reveals shareholders involved in the transaction having or decreasing certain shareholding ratio in a JSC. Furthermore, this registration requirement is not a condition precedent to the validity of the share transfer. This is merely a post-closing notification requirement which must be fulfilled following the share transfer, if need be.

Secondly, another event that requires registration with the trade registry and disclosure through the Turkish Trade Registry Gazette is becoming a single shareholder company. As per Article 338/2 of the TCC, if a real person or legal entity directly reaches 100% of shares representing the share capital of a JSC following a share transfer, this event shall be notified to the board of directors within 7 (seven) days. The board of directors shall have such an event registered with the trade registry within 7 (seven) days following the notification. Accordingly, if a company initially had multiple shareholders and it becomes a single shareholder company or if an existing single shareholder is changed with another shareholder as a result of a share transfer, this event must be registered with the trade registry. In this way, the sole shareholder becomes visible to third parties. Similar to the registration requirement arising from Article 198 of the TCC, such registration requirement does not affect validity of the transaction. Having said that this is a formality that must be performed at the post-completion phase. This requirement has a disclosure function eliminating anonymity in JSCs.

Change in shareholding structure of the company due to share capital increase or share capital decrease transactions would also result in the disclosure of shareholder names and shareholding details in Turkish Trade Registry Gazette, as these transactions require amendment of share capital article of the articles of association and are subject to registration with the trade registry to become effective.

In conclusion, while the basic structure of private JSCs under Turkish law is designated to allow anonymity of shareholders to some extent, such anonymity does not have an absolute nature. Certain corporate restructuring transactions may trigger mandatory registrations leading to the disclosure of shareholders to third parties. Despite this, compared to LLCs, JSCs still provide a lower level of transparency against third parties. All in all, it might be inferred that in a JSC, anonymity can be limitedly preservable where the shares are transferred among mostly the real persons or non-group companies.

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