

Law Bulletin

Mergers and Acquisitions | November 2025

EXIT PROVISIONS IN SHAREHOLDERS' AGREEMENTS AND ENFORCEABILITY

Shareholders' agreements are executed to determine the relations between the shareholders among each other and with the company, as well as to establish specific governance rules applicable to the company. In practice, such agreements are frequently used in conjunction with the mandatory provisions of the Turkish Commercial Code ("**TCC**") and the company's articles of association to personalize the partnership structure.

1. The Legal Nature of the Shareholders' Agreement

According to the regulations set forth under the TCC and referred to as the "single obligation principle" in Turkish doctrine, shareholders of a joint stock company may only undertake capital commitments as stipulated under the articles of association. As per the single obligation principle, shareholders cannot be subject to any obligations other than paying the capital they have subscribed for. However, since shareholders' agreements are governed by the law of obligations rather than commercial law, obligations that cannot be stipulated under the articles of association pursuant to the single obligation principle may, in principle, be determined under these agreements. In practice, shareholders' agreements most commonly include provisions regarding minority shareholders' protection, quorum requirements at board of directors/general assembly meetings, non-compete clauses, and exit provisions.

2. Exit Provisions

In practice, exit provisions generally take the form of the following rights: the right of first offer, the right of first refusal, call and put options, as well as tag-along and/or drag-along rights.

2.1. Right of First Offer and Right of First Refusal

The right of first offer is a right that requires a shareholder wishing to transfer their shares to first offer the shares to shareholders with a right of first offer, before entering into negotiations with third parties. Shareholders to whom the first offer is made are not obliged to accept the offer to purchase the shares. However, depending on how the right is structured in the agreement, it may be stipulated that if the relevant shareholders reject the initial offer and the shares are subsequently transferred to a third party, the third party cannot acquire the shares at a lower price than the initial offer price. On the other hand, some shareholders may also be entitled to a right of first refusal, which is often confused with the right of first offer but is a separate right. In this case, a shareholder who has already received an offer from a third party in relation to the purchase of its shares must offer the shares to the shareholder with the right of first refusal on the same terms before accepting the third party's offer. If the shareholder with the right of first refusal rejects the offer, the shares may be transferred to the third party.

2.2. Call Option

The call option is a formative right and grants the entitled shareholder the right to acquire a predetermined or determinable number of shares owned by the other shareholder at a price determined under the agreement through a unilateral declaration of intent. This right is typically granted in favor of the majority shareholders.

2.3. Put Option

The put option is also a formative right and allows the shareholder exercising the put option to sell a predetermined or determinable number of shares at a price determined under the agreement to other shareholder(s) through a unilateral declaration of intent. This right is typically granted in favor of minority shareholders.

2.4. Tag-Along Right

The tag-along right allows shareholders exercising a tag-along right the opportunity to sell their shares to the same third-party buyer along with the shareholder who is selling their shares to the relevant third-party, enabling them to exit the company. The tag-along right protects the minority shareholders in the event of a potential change of control in the company and usually allows shareholders with tag-along rights to exit the company. This right is commonly granted in favor of minority shareholders.

2.5. Drag-Along Right

In practice, the drag-along right is often granted to majority shareholders. The shareholder possessing a drag-along right who intends to sell its shares to a third-party buyer may exercise this right to compel the other shareholders to sell their shares to the same third party. Upon the exercise of this right, the shareholder who is subject to the drag-along right will be obligated to sell their shares to the third party, along with the shareholder exercising the right.

3. Enforcement of the Exit Provisions

According to the single obligation principle, shareholders' primary obligation is to pay the capital they have subscribed for, and they cannot be subject to any additional commitments beyond this. The fundamental rule under the TCC is that registered shares in joint stock companies should be transferred freely without being subject to any restrictions. However, as an exception, the articles of association may include specific provisions that restrict the transfer of shares and the transfer of registered shares may be made subject to the approval of the company. In this regard, the articles of association may include restrictive provisions regarding the transfer of shares, and the company may refuse to approve a share transfer by asserting that the share transfer contradicts with a material reason specified in the articles of association. However, matters regarding the composition of the shareholders' structure that qualify as a "material reason" must fall within one of the categories relating to the subject of the company's business or its economic independence, and must be duly substantiated. Consequently, the Cassation Court has emphasized that even if provisions that strain share transfers in excess of the restrictive provisions permitted under the TCC are included in the articles of association, such provisions will not have corporative effect and therefore will not be valid in the context of commercial law. Therefore, in principle, exit provisions mentioned above that impose additional obligations on shareholders during the transfer of shares are not included under the articles of association.

Nevertheless, within the framework of contractual freedom, there is no obstacle to stipulating such rights and restrictions in the shareholders' agreements to be executed between the shareholders. Accordingly, in the event of a breach of the exit provisions stipulated in the shareholders' agreement, the adequate remedy may be stipulated as the delivery of the shares to the entitled holder specified in the agreement by way of "specific performance." While it is theoretically possible to file a specific performance lawsuit under Turkish law in such cases, there are obstacles in practice to the application of specific performance, particularly when the share certificates are not physically accessible or in other similar circumstances. In any case, given the lack of consistent Cassation Court precedents on this issue and the courts' general tendency to award compensation rather than specific performance, even where the agreement expressly provides for such performance in the event of breach, the predictability of securing specific performance remains limited.

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