

Shareholders Agreement From a Turkish Law Point of View

Parties entering into a partnership in Turkey usually execute Shareholders' Agreement ("SHA"), to secure their rights and obligations and for the determination of corporate issues such as the appointment of directors, commitments for future finance, deadlock provisions, non-competition restrictions, transferability of interests etc.

Whereas the Turkish Commercial Code ("TCC"), both the previous and the current one, does not explicitly regulate SHAs. According to Turkish law, they have no legal definition under the Companies' Law, and general provisions of the Turkish Code of Obligations apply thereto. Shareholders in Turkey may execute an SHA, provisions of which cannot override those of the Articles of Association ("AoA"). Therefore, matters that are typically subject to an SHA are generally set out in AoAs, in practice. In this manner, provisions of an SHA are applied by the parties, through adopting a functional AoA.

Amendments made via the TCC numbered 6102 have not introduced any changes in this respect, rather, it is prohibited to stipulate clauses in the AoAs of Joint Stock Companies which impose certain responsibilities on the shareholders such as tag along rights, put options etc. On the other hand, such provisions stipulating ancillary obligations on shareholders are enabled for the AoAs of Limited Companies. Overall, we can say that shareholders may always include these provisions in SHAs, to be reflected to the AoAs to a certain extent, where the performance thereof can be safeguarded via penalty obligations, escrow agreements etc. It is also possible to first

incorporate a company in a jurisdiction where these type of limitations are accepted, in order to utilize such company for the incorporation of the target company in Turkey or for holding shares in a Turkish company.

Other than the restrictive covenants on shareholders, the main features to be agreed in an SHA are as follows, in brief:

1. **Scope of Business:** It is common for the SHA to specify the scope of the business that the company will conduct and provide that shareholders' consent is required to change the nature of the company's business.
2. **Board/Management:** It is common for the SHA to establish the relative rights of representation that the shareholders will have on the company's Board of Directors/Managers. A minority shareholder may seek to have one director in the Board, in order to be kept informed of matters discussed at the managerial level whereas a majority shareholder may seek to appoint a large number of directors to reflect its proportionate holding of shares. Usually, an SHA provides that any director appointed by a shareholder can only be removed by that party.
3. **Veto Rights:** A list of material subjects which cannot be executed without one of the parties' consent can be agreed in the SHA. These subjects normally range from fundamental matters, such as issuing further shares or charging assets, to more day-to-day matters, such as capital expenditures.
4. **Business Plans and Budgets:** SHA may provide a procedure for adopting and amending business plans and budgets of the company, to ensure that certain shareholders or their appointed directors/managers are properly represented within the process.
5. **Intellectual Property:** In case parties are contributing know-how or proprietary information, it is essential for the SHA to provide for the ownership and license of intellectual property rights, preserving certain such rights for the parties themselves and others to the company.
6. **Representations & Warranties:** In general, these are a series of

statements about the parties that the shareholders would expect to be true and accurate.

7. **Non-Competition:** Non-competition clauses ensure that, while members of the management/shareholders are involved and for a certain period of time afterwards, they cannot compete with the company or solicit customers or employees.
8. **Deadlock:** If the Board or shareholders cannot convene or adopt resolutions for some reasons, the company may end up being in a blocked situation where it no longer can operate smoothly. To avoid such crisis, SHAs usually govern deadlock prevention mechanisms, where mediators/arbitrators may step into the scene and/or more drastically, exit provisions are activated for shareholders.
9. **Change of Control:** This term stands for a major change in one of the legal entity parties' internal organization. Prospective shareholders to a company may rightfully expect from each other to stand as a reliable and decent business partner, during the term of their investment together. To ensure that they will not associate in their internal structure with an undesired party dealing with illegal transactions or with a rival person/company, which can affect the control of such entity directly or indirectly in terms of ownership and/or management, provisions requiring the other shareholder's prior written consent and/or initiating exit/termination mechanisms are set forth in SHAs.
10. **Exit Provisions:** A shareholding in a private company may be illiquid by its nature, since there is no market in the shares. Accordingly, an SHA very often includes provisions intended to encourage or facilitate a realization by the shareholders of their investments. This is particularly important for minority shareholders who are unable to control an exit process.

There may be various provisions in question to be placed in an SHA furtherly, depending on the nature of the deal or requirements exclusive to the targeted venture. Hence, each investment should separately be evaluated diligently, in terms of the need of above-quoted provisions or further requirements of the shareholders.

We are of the opinion that private equities or investors shall not invest a substantial amount in a company without protecting themselves first with contractual rights to be regulated under an SHA. In this respect, we usually advise our clients that an SHA should be negotiated and drafted by and between the future shareholders, at the very beginning. Apart from the SHA, as set out at the beginning of this article, the AoA of a company should be prepared/amended as a tailor-made policy due to its vital importance in the operation of company, within the framework of the agreed SHA to the extent enabled under the TCC.

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