

DEAL MECHANICS

Practical Insights for Corporate Transactions

SHARE PURCHASE COMMITMENT AGREEMENTS

Share Purchase Commitment Agreements constitute one of the key preparatory mechanisms in merger and acquisition transactions, enabling the parties to secure a future ownership structure in advance. In practice, these agreements are often confused with the definitive share transfer transaction or perceived as part of a single transaction. However, by their legal nature, they merely constitute preliminary agreements that impose upon the parties an obligation to effect the transfer at a future date. In other words, Share Purchase Commitment Agreements are not dispositive transactions that directly transfer title to the shares; rather, they are obligation creating agreements.



The transfer of shares requires the completion of a two step mechanism consisting of an obligation creating transaction and a dispositive transaction. As a preliminary agreement by its legal nature, a Share Purchase Commitment Agreement constitutes the obligation creating stage of this process. Upon execution of the agreement, the parties become bound by a legally enforceable commitment; however, this does not, in itself, confer upon the purchaser shareholder status or title to the shares.

The legal basis for the validity of Share Purchase Commitment Agreements lies in the principle of freedom of contract embodied in the Turkish Code of Obligations (Law No. 6098). However, since the transfer of uncertificated shares is subject to the rules governing the assignment of receivables, a written form becomes practically indispensable for evidentiary and validity purposes. While commitments relating to shares in joint stock companies are generally valid in simple written form, commitments concerning shares in limited liability companies must be executed in the form of a notarial deed prepared *ex officio*.

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Pursuant to the principle of privity of agreement, Share Purchase Commitment Agreements generally produce legal effects only between the parties thereto, and the company is not bound by such commitments unless it has expressly become a party to the agreement. Accordingly, a Share Purchase Commitment Agreement entered into solely between shareholders neither entitles the promisee to exercise shareholder rights attached to the shares nor confers shareholder status upon it. The company may become bound by such commitment and assume obligations only if a duly authorised corporate body has expressed its intention accordingly.

The fact that a Share Purchase Commitment Agreement has been validly concluded does not necessarily mean that the contemplated transfer can be performed in all circumstances. Statutory provisions or restrictions arising under the company's articles of association may limit or even render impossible the performance of the contemplated transfer. In such cases, although the agreement remains valid between the parties, the impossibility of performance gives rise to liability under the general principles of the law of obligations. Likewise, temporary transfer restrictions imposed by law or by the articles of association may directly affect performance; even if the agreement cannot be performed during the period of such restrictions, the parties' contractual relationship may still give rise to remedies such as damages or termination rights.

In the event of a breach of the commitment, the general rules governing breach of contractual obligations apply, and claims for specific performance, damages, or contractual penalties may be pursued where the relevant requirements are satisfied. However, specific performance is available only to the extent that no legal, administrative, or contractual impediment prevents the transfer of the shares. Otherwise, the dispute effectively becomes one of damages. It should be emphasised that a breach of a Share Purchase Commitment Agreement does not, in itself, result in the transfer of title to the shares. In such circumstances, the purchaser may assert only its contractual rights arising under the agreement.

In conclusion, Share Purchase Commitment Agreements serve as an important preparatory mechanism, particularly in merger and acquisition transactions, by establishing in advance the legal framework for a contemplated future share transfer. Nevertheless, these agreements are not dispositive transactions that directly transfer ownership of shares but rather obligation creating preliminary agreements relating to a future transfer. To avoid commercial disputes and ensure effective legal protection, it is essential that Share Purchase Commitment Agreements be structured in full compliance with corporate approval mechanisms, restrictions contained in the articles of association, and mandatory legal requirements.

