

## Company & Commercial - Hungary

### Share sale and purchase restrictions in the articles of association

Contributed by **Nagy és Trócsányi**

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**Limited liability companies**  
**Private companies limited by shares**  
**Public companies limited by shares**

The main provisions and restrictions on share sale and purchase are set out in the Act on Business Associations (4/2006). The act contains general rules concerning the sale of shares (ie, quotas) in limited liability companies, private companies limited by shares and public companies limited by shares. It allows members not only to deviate from the general regulations, but also to impose further restrictions or conditions on the sale and purchase of shares.

#### Limited liability companies

Membership in limited liability companies, unlike general partnerships and limited partnerships, cannot be terminated by ordinary notice or with immediate effect, but only by the transfer of quotas.

Pursuant to the act, quotas may be freely transferred among the members of a limited liability company, with the exception of the company's own quotas. However, in terms of quota transfers between members of the company, free transfer of quotas may be limited by members granting each other pre-emption rights in the articles of association. The granting of such rights to another member will be effective only if the legal ground for the transfer is sale and purchase.

In terms of the transfer of quotas to third parties, members may restrict the transfer of quotas to non-members or make such transfer subject to the consent of the company. The conditions for granting or refusing such consent must be laid down in the articles of association. The right to make such a decision falls within the competence of the members' meeting. A transfer of quotas based on legal grounds other than a sale and purchase contract (eg, exchange or donation) may also be excluded or restricted by the members in the articles of association.

Where quotas are to be transferred by means of a sale and purchase contract, pre-emption rights may be exercised by the members of the company, the company itself or a person designated by the members' meeting, in this order of priority. However, such pre-emption rights may also be excluded or restricted by the members in the articles of association.

As a general rule, the articles of association need not be amended as a result of any transfer of quotas. In all cases the quota may be transferred to a third party only if the member concerned has paid its capital contribution in full.

#### Private companies limited by shares

Pursuant to the act, the general rule concerning share sale and purchase at private companies limited by shares is that shares are freely transferable. Any restriction on the free transfer of shares to third parties can be imposed only if it is expressly authorised by law.

The act contains special regulations concerning the transfer of shares in private companies limited by shares. The shareholders have the right to attach pre-emption rights, redemption rights or purchase options to their shares under a separate contract; the establishment of such rights is considered a restriction on their free transfer.

Further restriction rules may be imposed – for example, the categories or classes of share that may be acquired by certain persons by way of transfer may be restricted by law or the articles of association.

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In connection with shares offered to shareholders on a pre-emptive basis, the conditions for the exercise of the pre-emption right must be set out in detail in the articles of association.

Private companies limited by shares may also issue employee shares. It is a general rule that employee shares may be transferred only to other employees of the company. However, the articles of association may also grant this right to other persons on the basis of their previous employment at the company. The conditions for acquiring employee shares at the time of issue and for their subsequent transfer must be defined in detail in the articles of association.

Similarly to the limited liability companies, the articles of association may contain provisions to render the transfer of shares subject to the consent of the company. The right to consent to the transfer of shares as required by the articles of association falls within the competence of the management board, unless the articles of association provide to the contrary.

Apart from these provisions, on the basis of the Company Act, the articles of association may contain further restrictions concerning the acquisition of shares by way of transfer.

### **Public companies limited by shares**

It is a general rule that in the case of public companies limited by shares, such shares are freely transferable, with the exception that shareholders have the right to attach pre-emption rights, redemption rights or purchase options to its shares. The special regulations concerning the transfer of shares (eg, restrictions on the transfer of different classes of share or rendering the transfer of shares subject to the consent of the board of directors) do not apply in connection with public companies limited by shares.

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