

Whether the member of the limited liability company may transfer the pre-emption right to a third party?

The former laws on business associations unambiguously excluded the transfer of pre-emption rights of members. Since the section on sale of the old Civil Code included a rule that the business organisation may designate the person who is entitled to exercise the pre-emption right, the question may arise whether this rule may be applicable in the company law. This question was all the more interesting because the old company laws referred to the old Civil Code as ancillary legislation.

Rules in effect before 15 March 2014

Such case arose in the practice that the member of the limited liability company designated a third party to exercise his pre-emption right. However, the Supreme Court declared in its judgement that the legal statements of designation regarding the transfer of business quota to third party are null and void. It highlighted in its justification that the company law fully prohibited the transfer of pre-emption right because on the one hand it does not allow an exception to the prohibition, on the other hand it does not allow the ancillary application of the provision on designation of the Civil Code

The rules of the new Civil Code

The new Civil Code integrated the rules of the company law thus the question of its application as an ancillary legislation will not arise. How does the new Civil Code regulate, at the same time, the transferability of pre-emption right of the member of the limited liability company?

The transferability of pre-emption right in limited liability company

The new Civil Code confirmed that the pre-emption right in legal relations of company law is personal. It means that the new Civil Code invariably maintains the nullity of the transferability of pre-emption right on the ground that the pre-emption right is a legal instrument serving the interest of the members of the limited liability company therefore a third party may not get into the ltd. against the wishes of the persons specified in law to be



entitled to exercise pre-emption right. Maintaining the former judicial practice, if the member of the limited liability company designated a third party for the exercise of his pre-emption right it invariably qualifies as null and void.

The withdrawal of the rule on designation of the entitled person in the old Civil Code, the transfer of right

The new Civil Code no longer includes the rule relating to the designation of the person entitled to exercise pre-emption right that the old Civil Code included under the rules of sale. At the same time, it is important to emphasize that the new Civil Code introduced the instrument of transfer of rights, thus it widely ensures the transferability of rights and so does the transfer of pre-emption rights. However, it does not mean that the rules relating to the transfer of rights of the new Civil Code make it possible that the member of the limited liability company transfers his pre-emption right to a third party in the legal relations of the company law. Its reason is that the new Civil Code attaches the legal consequence of nullity to the transfer of pre-emption rights in the legal relations of company law and it does not allow an exception to the prohibition.

In conclusion, it can be ascertained that the new Civil Code no longer includes the rules relating to the designation of entitled person under the scope of sale, at the same time it generally makes the transfer of rights tradable including the transfer of pre-emption rights. At the same time there is no possibility for the transfer of rights in the legal relations of company law because the new Civil Code maintains the former judicial practice and it invariably and fully excludes that the member of the limited liability company transfers his pre-emption rights to a third party.