

The limits of the transfer of the shares contained in the Statute of joint stock company.

The law of the joint stock company is continually changing. For this reason we must distinguish between primary principles, steady through the time, and secondary principles born to satisfy temporary needs.

The joint stock company rose to gather money from people, as its history shows. Its origins came from the development of the colonial companies and from the codification of the anonymous companies. In this historical period it was necessary to gather considerable income in order to realize important business. Of course only a group, and not one single person, could have the whole amount of money. The joint stock company made easier to pick up all the money.

In the joint stock companies, the customers are encouraged to invest their money because they are sure to have it back easily and quickly. In fact if someone confers a sum of money to a joint stock company, he will receive low amount securities to sell freely to another person. This sale has a great advantage: when the shareholder leaves the company, he obtains his money selling his shares; moreover, the company does not have to pay anything.

The right of free transfer foster the gathering of money and the capital sum of the society is not compromised or touched. So, it is possible to establish a fixed company's capital that will not change whenever a member leaves the company. This right is a fundamental principle in the joint stock company. It exists until the origin of the joint stock company and other principles come from it: the principle of fixed capital as well as the matter of dividing the capital into low amount shares.

The right of free transfer has led to a wide spread of joint stock companies and also to another important principle: the limited liability. The limited liability was a grant given by the king to the companies during the 17th. The report to the civil code, in 1942, has shown as the law is following the same direction, in spite of the time. According to the report the joint stock company is an instrument to gather money from the people in order to finance big ventures.

The joint stock company has two advantages: the limited liability and the possibility to have back immediately the invested money without reducing the capital sum of the company.

The right of free transfer of the shares is fundamental for the joint stock company and for this reason absolutely binding. This concept has been confirmed also by the Reform of the Law concerning the societies in 2003. The Reform has changed two aspects of the law. It has given a sort of freedom to the members to organize the company, but it has also prescribed some rules that can not be derogated.

This test stresses which rules can not be derogated. As we said before, the right of free transfer is fundamental and it can not be derogated, but we should specify that this principle consists of a part which can not be derogated and of a part that can be derogated.

The shareholder must not be considered as a "prisoner" in the company: whenever he wants, he can leave the company and have his money back. This part of the principle can not be derogated.

The shareholder can choose his customers, he can choose to whom he sells his shares and he can choose the price. This part of the principle can be derogated. The shareholders can write in the Statute that the buyer and the date will be established by the company and not by the seller. The more frequent clauses that limit the freedom of the seller to choose his buyer are the clause of pre-emption and the clause of approval.

The clause to forbid the shareholders, for max 5 years, to sell their shares is a limit to the free choice of time in case of selling.

The system to limit the transfer of shares contained in the statute of joint stock company respond to univocal standards applied in each clause.

For this reason, all the remained limits, typical and atypical, that are in the praxis of the statutes, should be analyzed as, for instance, the clause of ransom or the clause "di tetto massimo".

Spero vada bene, ho cercato mantenermi più attinente possibile al testo.

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