DEDICA
—DEDICATED LAWYERS—

COURTROOM STORIES | SHARE TRANSFER

RISKS OF BUYING A FOUNDING SHAREHOLDER'S SHARES WITHIN THE FIRST 3 YEARS

(Based on Appellate Judgment No. 121/2019/KDTM-PT dated 22 October 2019 of the People's Court of Hanoi)

www.dedica-law.com · david@dedica-law.com · 039 969 0012

VND 4 billion transferred first, share purchase contracts signed later

ABOUT COMPANY H

Company H is a joint stock company, first granted business registration on 30 December 2004, with charter capital of VND 6.5 billion and 19 founding shareholders. Mr. H is Chairman of the Board of Directors and Director, and also the company's legal representative.

THE TRANSACTION

In February 2007, Mr. H, on behalf of the company, signed a framework contract to sell 100% of the shares to Mr. N's group for VND 13.3 billion.

On 2 March 2007, Mr. N transferred VND 4 billion to the company's bank account.

Three days later, on 5 March 2007, 10 founding shareholders signed 10 contracts selling a total of 216,437.2 shares to Mr. N.

WHAT HAPPENED NEXT?

On 6 March 2007, the Chairman of the Board of Directors issued a decision recognising Mr. N as an official shareholder of the company.

However, the company never completed the business registration amendment to record Mr. N as a shareholder.

On 20 December 2007, the company sold 100% of its shares to three other persons for VND 40 billion.

Nearly 11 years of litigation across four judgments

2007	Late 2008	16 Dec 2010	08 Feb 2012	02 Jan 2018	22 Oct 2019
5 Mar 2007: 10 founding shareholders signed 10 share sale contracts with Mr. N. 20 Dec 2007: the company sold 100% of its shares to three others.	Mr. N sued Mr. H and Company H in court.	First-instance court declared the contracts void; Mr. H to pay VND 4.83 billion (principal and damages).	Supreme People's Court appellate panel in Hanoi set this aside: bank-rate damages are unfair once shares have risen.	On retrial, Mr. H was ordered to pay VND 15.49 billion.	On appeal, the interest was revised; Mr. H to pay VND 15.38 billion.

> Every court found the share purchase contracts void. What changed from one trial to the next was how to calculate the amount Mr. N would get back.

What did the buyer claim, and how did the appellate court rule?

MR. N'S CLAIMS

- Compel Company H to complete the procedures recognising Mr. N as owner of 216,437.2 shares, equal to 29.083% of charter capital.
- Annul the contract selling 100% of the shares to the three later buyers.
- If the contracts are declared void, pay Mr. N VND 11.632 billion (29% of the VND 40 billion price) plus late-payment interest.

APPELLATE COURT'S DECISION

✗ Mr. N is not recognised as a shareholder of Company H.

✗ The sale to the three later buyers is not annulled, as it is a separate transaction.

✓ The share transfer contracts signed on 5 March 2007 are declared void.

✓ Mr. H is ordered to pay Mr. N VND 15,382,582,500.

The appellate judgment took legal effect on the date it was pronounced, 22 October 2019.

Why were the 10 share purchase contracts void?

THE RULE AT THE TIME OF THE TRANSACTION

Article 84.5, Law on Enterprises 2005: *"Within three years from the date the company is granted the Business Registration Certificate, founding shareholders may freely transfer their ordinary shares to other founding shareholders,* ***but may only transfer their ordinary shares to persons other than founding shareholders with the approval of the General Meeting of Shareholders****. In this case, the shareholder intending to transfer shall not have the right to vote on the transfer of such shares, and the transferee shall automatically become a founding shareholder of the company."*

Basis: Article 84.5, Law on Enterprises No. 60/2005/QH11

THE COURT FOUND

(i) The contracts were signed on 5 March 2007, before the 3-year period from the company's first business registration (30 December 2004) had expired.
(ii) The minutes dated 25 April 2006, although titled minutes of the General Meeting of Shareholders, were not supported by any documents or resolution showing the meeting followed proper procedures. They therefore did not count as the General Meeting's approval.
(iii) The company had not amended its business registration to record Mr. N as a shareholder.

Basis: Section [2], Appellate Judgment No. 121/2019/KDTM-PT

Outcome: The court applied Article 122.1(b) and Article 128 of the Civil Code 2005, under which a transaction whose purpose and content violate a legal prohibition is void. Mr. N therefore did not become a shareholder of the company.

Who was at fault for the void contracts?

THE PARTY AT FAULT

As Chairman of the Board and legal representative, Mr. H was obliged to know when the company was established and the 3-year transfer restriction.
Even so, Mr. H approved selling 100% of the capital to outsiders without a resolution of the General Meeting of Shareholders.

WHO PAYS

Mr. H voluntarily took responsibility for resolving the entire dispute with Mr. N, in place of Company H and the former shareholders.
The court accepted this, as it matched Mr. H's undertaking when transferring the shares to the three later buyers.

ARGUMENT REJECTED

Mr. H appealed, arguing that Mr. N was also at fault for buying shares that were not yet eligible for transfer.
The appellate court rejected this and upheld that Mr. H was the party directly at fault.

Outcome: Mr. H, in his personal capacity, must pay the full amount to Mr. N.

How much does the buyer get back?

15.38

VND billion payable by Mr. H

VND 8.204 billion in value due to Mr. N plus VND 7.178 billion in late-payment interest at 9% per year.

HOW THE COURT CALCULATED

Principal: Mr. N paid VND 4 billion and received back VND 72 million, leaving principal of VND 3.928 billion.

Value due: VND 8.204 billion, based on Company H's own notice dated 22 January 2008. This includes the gain from the rise in share value.

Late interest: 9% per year from 12 April 2008, the day Mr. N's representative came to collect the money but Mr. H demanded a VND 2.6 billion penalty deduction.

CLAIMS REJECTED

Mr. N claimed 29% of the VND 40 billion price. The court refused, as the company then had 897,000 shares in total, not 650,000.

Mr. H sought to deduct a VND 2.6 billion penalty and VND 18 billion paid to a partner. The court found these claims groundless.

Where is the judgment well-founded?

DAMAGES BASED ON SHARE VALUE

Once shares have risen in value, refunding only principal plus bank interest does not fully compensate the buyer. The appellate court made this point in 2012, and every later trial used the increased share value.

MINUTES MUST FOLLOW PROCEDURE

A document titled minutes of the General Meeting of Shareholders is not enough. There must be documents and a resolution showing the meeting followed proper procedures.

BOARD CONFIRMATION IS NOT ENOUGH

The Board confirmed the contracts and its Chairman issued a decision recognising Mr. N as a shareholder. Even so, the court declared the contracts void, because the law requires approval of the General Meeting of Shareholders.

TWO SEPARATE TRANSACTIONS

The sale of 100% of the shares to the three later buyers was a separate transaction unrelated to Mr. N, so it was not annulled. Mr. N's interests were addressed through a payment order.

Which points in the reasoning remain open?

OUTRIGHT BAN OR JUST APPROVAL?

The law allows founding shareholders to sell shares to non-founding shareholders in the first 3 years with the approval of the General Meeting of Shareholders.
However, the judgment's conclusion says the contracts were void because they were “made before the transfer period had elapsed”. Read on its own, this sentence suggests that transfers are completely banned for 3 years.

SHOULD THE BUYER CHECK FOR ITSELF?

The selling shareholders stated that Mr. N knew the shares had not yet met the time condition for transfer but bought them anyway.
The court found Mr. H directly at fault, but the judgment did not separately analyse whether Mr. N knew of the transfer conditions.

In your view, should a buyer who knowingly purchases restricted shares share part of the fault? Tell us what you think in the comments.

How does the current Law on Enterprises differ?

	2005 LAW (ARTICLE 84.5)	CURRENT LAW (ARTICLE 120.3, 120.4)
Sale to outsiders within 3 years	Founding shareholders may sell to outsiders only with the approval of the General Meeting of Shareholders.	**General Meeting of Shareholders approval is still required.** Within ~~three years,~~**03 years** from the date the company is granted the ~~Business Registration Certificate, founding shareholders may freely transfer their ordinary shares~~**Enterprise Registration Certificate, ordinary shares of founding shareholders may be freely transferred** to other founding shareholders~~, but~~ **and** may only be transferred ~~their ordinary shares~~ to persons other than founding shareholders with the approval of the General Meeting of Shareholders.
Status of the transferee	The transferee automatically becomes a founding shareholder of the company.	**The rule "automatically becomes a founding shareholder" is removed.** ~~In this case~~**In such case**, the **founding** shareholder intending to transfer **ordinary** shares shall not have the right to vote on the transfer of ~~such shares, and the transferee shall automatically become a founding shareholder of the company.~~**such shares.**
Unrestricted shares	Article 84 does not exempt any category of shares from the restriction.	**Two categories of shares are now exempt from the transfer restriction.** **4. The restrictions in Clause 3 of this Article do not apply to the following ordinary shares: a) Shares acquired by founding shareholders after enterprise registration; b) Shares already transferred to persons who are not founding shareholders.**

Basis: Article 84.5, Law on Enterprises 60/2005/QH11; Articles 120.3 and 120.4, Law on Enterprises 59/2020/QH14 (Consolidated Document 67/VBHN-VPQH dated 15 August 2025). The principle that "the party at fault for the damage must compensate" when a transaction is void is retained in Article 131.4 of the Civil Code 2015.

Lessons from this case...

1. In the first 3 years, founding shareholders may sell ordinary shares to non-founding shareholders only with the approval of the General Meeting of Shareholders. Without valid approval, the contract may be declared void even if the parties have signed and paid.

2. Confirmation by the Board of Directors or a decision of its Chairman cannot replace the approval of the General Meeting of Shareholders.

3. A legal representative who arranges a non-compliant transaction may be found at fault and ordered to pay the buyer.

4. Where shares have risen in value, damages may be calculated on the increased share value, not just principal plus bank interest.

RECOMMENDATIONS

Where do you stand in this transaction?

INVESTOR BUYING SHARES

- Check the issue date of the Enterprise Registration Certificate and the list of founding shareholders to see whether the shares are still restricted.
- Ask the seller for the General Meeting resolution approving the transfer, together with the meeting minutes and notice of meeting.
- Pay only after receiving the full documents, or agree to pay via an escrow account.

FOUNDER SELLING SHARES

- Determine whether the shares to be sold are still within the 3-year restriction period.
- Shares acquired after enterprise registration are not restricted, so separate them out in negotiations.
- Do not accept money from the buyer before the General Meeting of Shareholders has approved.

LEGAL REPRESENTATIVE

- Do not sign contracts or receive money on behalf of shareholders without a resolution of the General Meeting of Shareholders.
- Hold the General Meeting of Shareholders under proper procedures and keep full records of the notice and voting.
- Complete the recording of the new shareholder promptly once the transaction is validly made.

DEDICA
—DEDICATED LAWYERS—

Contact Us

DEDICA's team of lawyers and legal experts is always ready to assist. Contact us today for advice and in-depth legal services.

Corporate & Investment
Criminal Law

Ongoing Legal Advisory
Mergers & Acquisitions (M&A)

Dispute Resolution
Trademarks & Copyright

Address

11th Floor, A&T Building, 171 Hai Bà Trưng Street, Xuân Hòa Ward, Ho Chi Minh City

Phone

+84 39 969 0012

Email

david@dedica-law.com

Website

www.dedica-law.com

Call us now or leave a message to get advice.