EXAMINING THE UTILISATION OF SHAREHOLDERS' AGREEEMENT FOR THE TRANSFER OF INTERGENERATIONAL WEALTH AND MAINTAINING / GAINING CORPORATE CONTROL – A COMPARATIVE ANALYSIS BASED ON CASE LAW ANALYSIS

By Caroline A. B. Sesay (Ms.)

L.L.M. Thesis
Supervisor: Professor Tibor Tajti
Central European University – Private University

17th June 2024

Abstract

This thesis will explore the use of shareholders' agreement (SHA) as a tool for facilitating intergenerational transfer of wealth and maintaining corporate control with a particular focus on the legal frameworks of England and the United States (U.S.). This paper proceeds on the presumption that legal practitioners and shareholders in small and medium scale enterprises (SMEs) within Sierra Leone (SL) underutilise shareholders' agreements (SHAs) thereby missing out on the potential benefits they can offer to shareholders, and particularly the growth of SMEs. Thus, this thesis aims to uncover how SHAs can be effectively used to ensure smooth succession planning and preserve corporate control by using voting agreements, thereby mitigating the risk of corporate failure after the demise of a key shareholder.[1]

As stated by Ewasiuk, "[A] *dispute amongst the shareholders can lead to the demise of the business itself. […]. [Yet] when there are clear and exhaustive rules as to how to deal with a given situation, then shareholders will generally follow those rules even when they do not like them.*"[2] Thus, by conducting a comparative analysis, this thesis will look at how SHAs can be used for the transfer of intergenerational wealth and to maintain / gain corporate control as illustrated by the milestone US ***Galler v Galler***[3] case. Additionally, this research will assess the legal enforceability of SHAs across the selected jurisdictions, examining how courts recognise such agreements and their impact on corporate governance. The goal is to provide a better understanding of SHAs as important tools for sustaining corporate continuity and control,[4] thereby providing actionable insights for legal practitioners and shareholders in SMEs particularly in developing economies / legal systems.

[1] Kingsley Napley-Diva Shah, 'Death of a Founder = Failure of the Business?' (*Lexology*, 6 September 2023) <https://www.lexology.com/library/detail.aspx?g=d4b07bda-c348-4ba2-9cdc-90fa74e1cd5a> accessed 14 May 2024.
[2] 'A Guide to Drafting Shareholder's Agreements - Ewasiuk, Ricky W.
[3] 'Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' <https://casetext.com/case/galler-v-galler-3> accessed 14 May 2024.
[4] Charles W Steadman, 'Maintaining Control of Close Corporations' (1959) 14 The Business Lawyer 1077 <https://www.jstor.org/stable/40683368> accessed 13 June 2024. Page 1084

Acknowledgment

First and foremost, I express my profound gratitude to God for granting me the strength, guidance, and perseverance throughout the journey of writing this thesis.

I extend my sincere thanks to the Central European University for awarding me the scholarship that made this possible.

I owe a special debt of gratitude to Professor Tibor Tajti for his inspiring Law for Small and Medium-Scale Enterprise class, which motivated me to choose this topic for my thesis. I am also grateful, for his supervision, his swift responses to emails, and availability for consultations and guidance throughout this process. I also extend my sincere thanks to the professors at the GBLR programme and the support staff at the legal department for their invaluable assistance.

I am thankful to my family and friends for their support. In particular, I want to thank Augustine Sorie-Sengbe Marrah Esq., for his invaluable help in reviewing my work.

I am deeply grateful to Parpah Chendeka, for his unwavering encouragement, support and companionship throughout this period.

Lastly, I dedicate this thesis to my late mother, Umu Hawa Sall. I hope to continue making her proud and I strive to honour her memory in all that I do.

Table of Contents

List of Abbreviations

AGM	Annual General Meeting
AoA	Articles of Association
CAD	Corporate Affairs Directorate
CH	Companies House
DGCL	Delaware General Corporation Law
FBCA	Florida Business Corporation Act
OECD	Organisation for Economic Co-operation and Development
SHA	Shareholders' Agreement
SHAs	Shareholders' Agreements
SLBA	Sierra Leone Bar Association
SL	Sierra Leone
SMEs	Small and Medium Scale Enterprises
USA	United States of America

INTRODUCTION

I. Background

This research aims to explore how SHAs can be utilised to maintain corporate control and facilitate intergenerational transfer of wealth. This is important for businesses in SL where effectively managing and transitioning assets can help promote business continuity. Using the ***Galler v Galler***[5] case, this thesis will provide an insight into how SHAs can be structured to safeguard against abuse while ensuring that control remains within the designated hands[6] after the demise of the founding shareholders. This approach has proven effective in jurisdictions like England and the USA which makes it a viable model for countries like SL to better enhance corporate stability and continuity.

II. Jurisdictions

This research will be conducted by doing a comparative analysis focusing on English and US law more particularly Delaware law and Florida law. Delaware law is chosen because it has specific provisions on voting agreements and decided cases which offer valuable lessons for SL. Florida law is chosen because it has express provisions for SHAs, offering a clear statutory basis for their use. English law is selected because it governs SHAs through contract law, providing flexibility and a different approach to corporate governance and because SLs position on SHAs is also based on contract law principles. The aim is that these jurisdictions will provide a comprehensive perspective on how SHAs can be effectively utilised, thereby providing valuable lessons for application in SL.

[5] 'Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' (n 3).
[6] Claudia Binz Astrachan and others, 'Addressing the Theory-Practice Divide in Family Business Research: The Case of Shareholder Agreements' (2021) 12 Journal of Family Business Strategy 100395 <https://www.sciencedirect.com/science/article/pii/S1877858520301224> accessed 11 June 2024. Page 2.

III.Research and Methodology

Being that SHAs are confidential documents with no legal requirements for filing in SL, the ideal methodology would be to look at the uses of SHAs and ideally, the research would commence with a survey to determine the percentage of legal practitioners in SL who have used SHAs during their practice and the contents of such agreements. The thesis would then proceed with an analysis of the contents of such agreements in comparison to the selected jurisdictions. However, due to limitations in time and resources and being that SHAs are confidential documents without a requirement for public filing in the selected jurisdictions, the author will build on her own experience in SL, being a legal practitioner in the jurisdiction with 6+ years standing at the Bar and will use a case study from Senegal. Thus, this paper proceeds on the assumption that SHAs are an underutilised tool in SL. Thus, this thesis will conduct a comparative analysis of cases and legislations from the jurisdictions to be covered as well as looking at articles. The thesis will examine theories of corporate governance, succession planning and contract law to provide a theoretical foundation for analysing the role of SHAs in intergenerational transfer of wealth and maintaining corporate control by using voting agreements.

Additionally, the case study from Senegal has not yet reached the stage of legal action thus, the information regarding this case study is non-public and confidential so the identities of the parties involved in the transaction cannot be disclosed. Furthermore, the documents related to this transaction are in French and in the custody of the party with whom the discussions were held.

IV. Roadmap

Chapter one of my thesis will introduce SHAs, examining their scope, significance in corporate governance, interaction with articles of association (AoA) and the legal frameworks

governing them in both English and U.S. law. This chapter will explore the legality, enforceability and common challenges associated with SHA. Chapter two will focus on the use of SHAs in the transfer of intergenerational wealth illustrated through a case study comparison between the ***Galler*** case and a Senegalese businessman's family situation to better illustrate the practical applications and crucial benefits of these agreements in preventing the conflicts and possible dissolution of a company following the founders death. This chapter will assess how effective succession planning through SHAs can secure a smooth transition of control and wealth between generations, ensuring business continuity and stability.

Chapter three will explore how voting agreements; a specific form of SHA is used to maintain or gain corporate control. These chapters will collectively explore the practical applications and importance of SHAs in ensuring business continuity across generations and securing control. These chapters are covered in this order to first provide an overview of SHAs before analysing how they can be used for the transfer of intergenerational wealth and to maintain corporate control.

CHAPTER 1 – OVERVIEW OF SHAS

1.1. Understanding SHAs: scope of SHAs

Apart from the AoA, shareholders are free to enter contracts to regulate their relationship. One such contract is by way of a SHAs. However, SHAs are subject to the laws and mandatory rules of the relevant jurisdictions. A SHA is an agreement entered into by at least two shareholders within a company to establish a contractual relationship based on their share ownership.[7] SHAs serve as a vital tool for governing the relationship between the shareholders.[8] Through the use of a SHA, for example, minority shareholders can enhance their influence over the management and future trajectory of the company.[9] This can be achieved by securing the rights to nominate directors for appointment to the company's board or to nominate key personnel within the company.[10]

SHA in private companies typically cover various essential aspects including governance rights, voting procedures, decision-making processes, access to company's information, rules on the transfer of shares and mechanisms for shareholder exits.[11]

In deciding whether to address a specific issue in a SHA or within the AoA of the company, shareholders must consider several issues.[12] Firstly, dealing with an issue in a SHA helps to maintain confidentiality.[13] Unlike the AoA, which must be filed with the Corporate Registry

[7] Mock, Sebastian, Csach, and Havel, 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (De Gruyter 2018). Page 4
[8] ibid. page 253
[9] ibid.
[10] ibid.
[11] ibid.
[12] ibid.
[13] ibid.; Graham Muth, Sean FitzGerald and John Cadman, *Shareholders' Agreements* (Sweet & Maxwell 2009). Pages 3-4

or Companies House (CH) and is therefore open to the public for inspection, SHAs do not have such filing requirements, thus it allows for greater privacy.[14]

Secondly, a SHA is used to grant rights that are otherwise not provided for within the AoA of the company.[15] These can include 'personal rights' bestowed upon shareholders not solely in their capacity as shareholder, such as the right to act as a professional advisor to the company or to receive compensation for providing a service.[16] Thirdly, SHAs are useful in regulating the relationship between shareholders which are unconnected with the day-to-day management of the company for instance where a shareholder is appointed by the company to act in a different capacity.[17]

SHAs play an important role in safeguarding the rights of minority shareholders.[18] Another benefit of using SHAs rather than including the rights in the AoA of the company is the ease of amendment as there is no statutory requirement for a special resolution or filing of documents with the CH.[19] Lastly, unlike AoA, which is governed by the laws under which the company was incorporated, SHA grants the parties the flexibility to choose the governing law of their agreement and to select the appropriate dispute resolution mechanism.[20]

[14] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Page 253
[15] ibid.
[16] ibid.
[17] ibid.; Muth, FitzGerald and Cadman (n 13).
[18] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7).; Muth, FitzGerald and Cadman (n 13).
[19] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Page 253
[20] ibid.

1.2. Significance of SHAs in corporate governance – AoA vs. SHAs

Corporate governance is defined as the system by which companies are governed and controlled.[21] According to the UK Corporate Governance Code, the purpose of corporate governance is to "*facilitate effective entrepreneurial and prudent management that can deliver the long-term success of the company*."[22] Thus, corporate governance plays a critical role in achieving a balance between the interests of a company's many stakeholders, including its shareholders, management, customers, and the community. Black's Law dictionary defines AoA as "*a governing document similar to articles of incorporation that legally creates a nonstock or non-profit organisation – also termed articles of organisation.*"[23] In SL, in accordance with section 31 the AoA which is to be signed by the subscribers sets out the regulations governing the company's operations.[24] AoA are public documents filed with the CH[i] / corporate affairs directorate (CAD)[ii] and it outlines the rules that governs the company's internal affairs.

The AoA is the constitution of the company, it defines the corporate structure of the company including the rights of shareholders such as rights receive dividends, pre-emptive rights, rights to attend general meetings and vote, powers of the directors and the CEO, board proceedings, appointments, share capital, powers and duties of the company secretary and for amendment of the AoA.[25]

[21] *Report of the Committee on the Financial Aspects of Corporate Governance. Hauptw.,Repr* (Reprinted, Gee 1996).; K Rushton, *The Business Case for Corporate Governance* (2008). Page 2; OECD, *G20/OECD Principles of Corporate Governance 2023* (OECD 2023) <https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2023_ed750b30-en> accessed 3 June 2024.
[22] 'UK Corporate Governance Code 2018' (*FRC (Financial Reporting Council)*) <https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/> accessed 3 June 2024.; The Chartered Governance Qualifying Programme, 'Corporate Governance, study text' CGI Publishing Limited, 2021.
[23] Bryan A Garner (ed), *Black's Law Dictionary* (9th edition, West Group 2009). Page 128.
[24] Section 31 (1) Companies Act No. 5 of 2009
[25] 'Corporate Governance' (n 22).

1.3. Differentiating SHAs from AoA

First, it is important to establish a clear definition of SHAs in order to differentiate it from the AoA.[26] According to Mock et al, this distinction can be challenging.[27] From a formal perspective, the AoA and the SHAs are differentiated by the "*formalization of a particular provision in a formal document regulated by corporate law adopted by a defined body*."[28] Thus, the AoA encompass "…*all arrangements incorporated into [this] formal document*."[29] Thus, a "[SHA] is any other agreement between shareholders that is – formally – not included in the AoA".[30] Also, these two documents could also be distinguished based on their actual content. AoA regulates the affairs of the company while any other contractual agreement executed between shareholders is regarded as a SHAs.[31] Nevertheless, it is noted that this simplistic criterion may have some limitations as AoA, and SHAs may address similar issues thereby leading to an overlap.[32]

Unlike the AoA which binds all present and future shareholders of the company, SHAs only bind the parties to the said agreement. In drafting SHAs, practitioners have to ensure that there is no conflict with the said agreements and the articles of the company.[33] With regards, unanimous SHA, in order to deal with conflicts between the articles and the SHAs, it is important to have an a "supremacy clause" in the SHA.[34] This clause is important because it will provide that the terms and conditions contained in the SHA takes precedence over other documents including the AoA, bylaws or other SHAs executed by the company. Thus, in the

[26] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Page 4
[27] ibid. page 5
[28] ibid.
[29] ibid.
[30] ibid.
[31] ibid.
[32] ibid.
[33] ibid. page 257
[34] *Olaf Grabowski v German Drilling Group & Ors (FTCC 340 of 2016) [2017] SLHC 1177 (17 July 2017)* (2017) <https://sierralii.gov.sl/akn/sl/judgment/slhc/2017/1177/eng@2017-07-17> accessed 3 June 2024.; 'Corporate Governance' (n 20).

event of a conflict, the SHA will prevail.[35] In the event that there is no such express provision, then the AoA will take precedence.[36]

1.4. Legal framework

This sub-chapter will cover English law on the basis that it has a similar legal framework to SL and Florida law because the state of Florida has specific provisions on SHAs and will conclude by providing recommendations for SL based on Florida's legal framework.

1.4.1. English Law

Under English Law, SHA is not subject to any specific regulation, it is instead primarily governed by contract law principles[37] and some considerations of the Company Law. According to Gullifer & Payne, shareholders are free to enter a separate agreement with other shareholders known as SHA[38] and SHA "*operates separate and outside the [AoA] and operates as conventional contract. It can be used by the shareholders as an additional method to order their relationship: a provision in the shareholders' agreement can have an effect [like] a provision in the articles*."[39] Thus, SHAs are essentially contracts between the parties involved and as such they must adhere to the principles of contract law. In accordance with the doctrine of contractual freedom, shareholders are free to agree on several issues concerning the rights, obligations, and management of the company for example they could

[35] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Page 257
[36] ibid.
[37] ibid. page 252
[38] Louise Gullifer and Jennifer Payne, *Corporate Finance Law: Principles and Policy* (3rd edition, Hart Publishing 2020). Page 11
[39] ibid.

agree on dividends policy stating the timing, amount, and method of payment of dividends as well as capitalisation of the company.[40]

Contrary to the AoA, which is regulated by the Company's Act 2006, there is no prescribed form for the SHA or the manner of amendment.[41] Therefore, SHA can be entered into an amended by the consent of all the parties to the agreement, whereas to amend the AoA, a special resolution is required.[42] Moreover, under English law there is no requirement for SHA to be registered with the CH, "*a [SHA] has an advantage over the articles in that it need not be registered at [CH], and therefore remains private*."[43] Thus the agreement itself is confidential between the parties unlike the AoA which has to be registered and is open to the public for inspection.

Furthermore, if a unanimous SHA , conflicts with the provisions of the AoA of the company, then it would have the effect of a special resolution which amends the company's AoA.[44] Consequently, the said agreement would have to be registered and failure to register the agreement would constitute a breach of the Companies Act.[45] In order for registration of the SHA to be avoided in the event of conflict with the AoA, "*a provision is sometimes included that in the event of a conflict with the AoA, the shareholders shall use their voting rights to amend the articles*."[46] The rationale being that the amendment was not as a result of the SHA

[40] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7).
[41] ibid.
[42] ibid.
[43] Gullifer and Payne (n 38).
[44] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Pages 255-256
[45] ibid. pages 256
[46] ibid.

hence the registration requirement does not arise thus ensuring that the content of the SHA continues to remain confidential.[47]

1.4.2. USA – Florida

In the State of Florida, SHAs are governed by the Florida Business Corporation Act[48] (FBCA). In accordance with Chapter 607 section 0732 (1) of the Act, SHAs that complies with section 0732 (1) of the FBCA are effective among shareholders and the corporation itself, even if they contravene other provisions of the Act. Section 0732 (1) (a) to (j) of the FBCA outlines various provisions that SHAs may cover. These include the elimination or restriction of the board of directors' powers[49], distribution procedures regardless of share ownership[50], appointment or removal of officers including their terms of office[51], regulation of voting power among shareholders and directors[52], mechanism for resolving deadlocks among shareholders or directors[53] and governance structures concerning corporate powers, management, and shareholder-corporation relationships[54].

However, there are several challenges that needs to be addressed. Similarly to Kaplan's[55] observations in the Supreme Court of Illinois decision in ***Galler***, s.0732 does not address the permissible duration of a SHA leading to uncertainties and possible legal disputes about the validity and enforceability of SHAs without specific termination dates. To solve this issue, shareholders should clearly indicate termination dates in their agreements to avoid disputes.

[47] ibid.
[48] 'Chapter 607 Section 0732 - 2021 Florida Statutes - The Florida Senate' <https://www.flsenate.gov/Laws/Statutes/2021/0607.0732> accessed 3 June 2024.
[49] ibid. Section 0732 (1) (a).
[50] ibid. Section 0732 (1) (b).
[51] ibid. S.0732 (1) (c).
[52] ibid. S.0732 (1) (d).
[53] ibid. S.0732 (1).
[54] ibid. S.0732 (1) (j).
[55] Stanley A Kaplan, 'Review of Corporate and Tax Aspects of Closely Held Corporations' (1972) 39 The University of Chicago Law Review 466 <https://www.jstor.org/stable/1599011> accessed 11 June 2024.

Moreover, the FBCA could be amended to ensure that it aligns with the rule against perpetuity.[56]

Additionally, s.0732 (2), requires that the SHA is to be signed by all shareholders at the date of execution.[57] However, it is not clear how a change in the shareholding structure will affect the enforceability of the terms of the agreement. To remedy this issue, SHAs should include a clause that automatically binds new shareholders to the terms of the agreement. It would also be beneficial for this provision to be dealt with by clear legislative guidelines because not all SHA is unanimous thereby making it more difficult for shareholders to reach an agreement as it is sometimes challenging to obtain consent of all shareholders.

Lastly, there is provision for the existence of a SHA to be noted on the share certificate or information statement with respect to uncertified shares.[58] Failure to provide this notice could lead to potential dispute and possibly rescission of share purchases by unsuspecting buyers. To prevent disputes, it is important that companies adhere to this requirement by noting the existence of SHAs on all relevant certificates or information statements.

1.4.3. Sierra Leone

Unlike Florida, the SL Companies Act No. 5 of 2009 as amended does not have any specific provisions governing SHA. Similarly to English law, SHAs are governed by contract law, thus parties are free to agree on the terms of the agreement. Based on the Florida legal framework, several recommendations can be made for SL to enhance the use of SHAs for transferring intergenerational wealth and maintaining corporate control. First, SL should

[56] ibid. Page 472
[57] 'Chapter 607 Section 0732 - 2021 Florida Statutes - The Florida Senate' (n 48).
[58] ibid.

consider amending its Companies Act to have specific provisions governing SHAs. These provisions should explicitly recognise the validity and enforceability of SHAs.[59]

Furthermore, similarly to the comprehensive list[iii] contained in s.0732(1) (a) – (j) of the FBCA, the scope of SHAs should be clearly defined, this could include eliminating or restricting the board of directors' powers, distribution procedures, officer appointments and removals, voting agreements and deadlock resolution mechanisms among shareholders or directors. Moreover, to enhance transparency there should also be a requirement for noting the existence of a SHA on share certificates as provided by the FBCA.[60] This would help to protect potential investors by ensuring that they are aware of any agreements that could impact their rights or obligations. At the same time, provisions allowing purchasers to rescind their share purchase if a SHA was not disclosed at the time of the purchase should also be adopted.[61] Liability provisions should also be included to transfer responsibilities from directors to the individuals with decision making authority under the said agreement. Implementing these recommendations will facilitate the effective use of SHAs in SL, thereby supporting intergenerational transfer of wealth.

1.5. Legality and enforcement of SHAs – problems with enforcement

Minority shareholders may use SHAs in order to acquire corporate control particularly in close corporations.[62] As stated by Elson, a minority shareholders interest "*may be substantial and yet impotent in the affairs of the close corporation*."[63] Whereas minority interest might be substantial in terms of percentage of shares owed, it may still lack significant influence

[59] ibid. S.0732 (1)
[60] ibid. S.0732 (2) (3)
[61] ibid.
[62] Alex Elson, 'Shareholders Agreements, a Shield for Minority Shareholders of Close Corporations' (1967) 22 The Business Lawyer 449 <https://www.jstor.org/stable/40684172> accessed 2 June 2024. Page 449
[63] ibid. page 451.

when it comes to control and management of the company's affairs.[64] Therefore, SHAs are particularly important for minority shareholders when it comes to maintain corporate control. The case of ***Zion v Kurtz***[65] is a classic example of how SHA can be utilised to remedy the challenges faced by a minority shareholder in maintaining control in close corporations.

When it comes to SHAs, it is important to ensure effective enforcement and avoiding making common mistakes when drafting. This sub-chapter will look at challenges faced in the enforcement of SHA and highlight typical mistakes that may arise when drafting and implementing SHA.

The excerpt from the International Handbook on SHAs,[66] provides valuable insight into the most typical anomaly that is encountered when dealing with SHA. Professor Tajti underscored the difficulties that could arise when dealing with multiple interlinked agreements ('SHA', the 'Frame Agreement' and the 'Operations Contract) and the said agreements are at variance / conflicting with the AoA of the company or with each other.[67] The fact that these documents are conflicting could lead to conflicts and possible challenges when it comes to enforcement.[68]

To illustrate this point, professor Tajti used the example of a case decided by the Supreme Court of Hungary.[69] The said case concerned a dispute based on a conflict of the AoA and the SHA. The central issue in the case was whether an arbitral tribunal had the authority to

[64] ibid.
[65] 'Zion v. Kurtz, 50 N.Y.2d 92 | Casetext Search + Citator' <https://casetext.com/case/zion-v-kurtz-2> accessed 3 June 2024.
[66] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Pages 384-385
[67] ibid.
[68] ibid.
[69] ibid. page 384

declare a contractual provision null and void without giving the parties the opportunity to be heard. The Supreme Court annulled the award on the grounds that the termination clause in the 'Operations Contract' excessively limited the parties right to terminate the said agreement.[70]

In SL***, Dr. Olaf Grabowski v. German Drilling Group***[71] case provides a compelling example of the challenges involved in determining the validity and enforceability of a SHA. In the said case, Dr. Grabowski initiated legal proceedings against German Drilling Group asserting his status as a majority shareholder based on the SHA executed between the parties. However, the Defendants contested the validity of the said SHA, raising objections on the authority of the company's directors to execute the said agreement and non-compliance with legal formalities. The crux of the dispute centred around the interpretation and implementation of the agreement, raising questions about the shareholders rights and obligations.

The court acknowledged the existence of the SHA executed between the parties. The Defendants argued that the agreement lacked proper execution and did not follow the procedures outlined in the company's AoA.[72] The court rejected the objections raised by the Defendants and noted that the 2nd and 3rd defendants, being directors of the 1st Defendant company had the authority to represent the company and enter into contractual agreements on its behalf.

The court had to determine the status of Dr. Grabowski's status as a shareholder in German Drilling Group. In deciding whether Dr. Grabowski meet the definition of a 'member', the

[70] ibid.
[71] *Olaf Grabowski v German Drilling Group & Ors (FTCC 340 of 2016) [2017] SLHC 1177 (17 July 2017)* (n 36).
[72] *Olaf Grabowski v German Drilling Group & Ors (FTCC 340 of 2016) [2017] SLHC 1177 (17 July 2017)* (n 32). Page 3.

court had to analyse the legal requirements outlined in section 64 (1) and (2) which states that:

(1) "The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees in writing to become a member of a company, and whose name is entered in its register of members, shall be a member of the company".[73]

In deciding, the court emphasised the significance of shareholders/members registration and strict compliance with the provisions of section 64. Despite Dr. Grabowski's assertion of majority ownership based on the SHA, the court held that his name was not entered in the company's register of members, nor was it registered at the Companies Registry thereby casting doubt on his status as a shareholder.[74]

Thus, although the parties had validly executed the SHA and the Plaintiff had made financial contributions to the company, his name was not subsequently officially registered in the Company's Register, as required by law.[75] The court therefore held there had been a renunciation of the SHA.[76] The said renunciation of the agreement constituted a breach of contract, which entitled the Plaintiff to seek legal remedies for damages.[77]

The court in its orders, determined that the Plaintiff does not hold shareholder status in the company. This determination was based on the lack of his registration in the company's

[73] Companies Act No.5 of 2009 'Sl001en.Pdf' <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/sl/sl001en.pdf> accessed 3 June 2024.
[74] *Olaf Grabowski v German Drilling Group & Ors (FTCC 340 of 2016) [2017] SLHC 1177 (17 July 2017)* (n 32). page 7.
[75] ibid. pages 7 – 8
[76] ibid. page 9
[77] *ibid.* page 10

Register of members and the Companies Registry. Thus, while the Plaintiff lacked the capacity to institute legal proceedings against the 1st Defendant Company as a shareholder, he retains the right to pursue legal proceedings against the 2nd and 3rd Defendants as directors of the 1st Defendant for breach of the SHA.[78]

The ruling affirmed the existence of the SHA but found that the defendants actions amounted to a renunciation of the agreement, thereby invalidating its enforceability. This case underscores the challenges parties face when it comes to enforcement of SHAs and underscores the importance of properly drafting a SHAs and ensuring that all the statutory requirements are complied with.

To conclude, this chapter has explored the scope, significance and legal framework of SHAs, distinguishing SHAs from AoA and addressing issues of enforceability. The next chapter will analyse how SHAs can be used for the transfer of intergenerational wealth thereby ensuring business continuity.

[78] ibid. page 11

CHAPTER 2 - INTERGENERATIONAL TRANSFER OF WEALTH

2.1. Introduction

The sudden demise of a business founder can precipitate a crisis, threatening the continuity and survival of the company they help built.[79] This chapter will explore the importance of succession planning as an important tool for the transfer of intergenerational wealth and ensuring the sustainability of privately held companies. According to Shah, recent studies suggest that the death of a founding entrepreneur can drastically reduce a firm's sales by 60% and cuts jobs by approximately 17%, with such companies experiencing a 20% lower survival rate within two years compared to those companies where the founder remains alive.[80]

According to Stout, the concept of corporate perpetual life can play a crucial role in the mechanisms of intergenerational transfer of wealth, "*unlike a mortal human being, a corporate entity gains no advantage from consuming its resources within a relatively brief time frame. It can afford to be patient. This makes corporations ideal institutions for pursuing long-term projects whose benefits will not be realized until well after the current cohort of human beings has ceased to exist*."[81] Thus, corporations by their perpetual nature are able to undertake long-term projects and manage resources across several generations.[82] Historical examples such as the centuries-long construction of the Milan Cathedral by the Veneranda Fabbrica del Duomo di Milano, illustrates how corporations can transcend the lifespan of individual shareholders to secure enduring legacies.[83] This capacity for perpetual life enables corporations not only to preserve wealth but also to implement expansive projects

[79] Shah (n 1).
[80] ibid.
[81] Lynn A Stout, 'The Corporation as a Time Machine: Intergenerational Equity, Intergenerational Efficiency, and the Corporate Form' 38. Page 696
[82] ibid.
[83] ibid.

that benefit future generations. By exploiting this aspect of corporate structure, shareholders can implement SHAs that safeguard assets and ensure their strategic utilization long after their initial acquisition.

Succession planning is often overlooked by business founders overshadowed by more immediate concerns or the assumption that untimely deaths are unlikely.[84] However, the lack of a formal succession plan can lead to severe disruptions, including power struggles, loss of directions, a significant exodus of employees and a loss of the founder's knowledge.[85] This chapter will discuss the necessity for businesses to foresee and formalise the process of leadership transition to avoid chaos and preserve the business legacy through the use of a SHA.

The focus will be on close corporations and family-owned businesses and for the purpose of this thesis we will use the definition of a close corporation provided by the Illinois Supreme Court in ***Galler***.[86] The court defined a close corporation as "*one in which stock is held in a few hands, or in few families, and wherein it is not at all, or only rarely, dealt in by buying or selling,*"[87] As stated by Elson, "*A minority interest may be substantial and yet impotent in the affairs of the close corporation…He often has a large part of his invested capital tied up in the business. He is more than a mere investor and for his protection must have an effective voice in all aspects of the corporation's activities, in order to guard against the infirmities of character that may develop in his fellow stockholders*."[88] Thus, SHAs are of great importance in closely held corporations in order to ensure that they protect their interests effectively and

[84] Shah (n 1).
[85] ibid.
[86] 'Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' (n 3).
[87] ibid. Para 27
[88] Elson (n 62). Page 451

have an active role in corporate decision making thereby safeguarding them from mismanagement or overreach by majority shareholders.[89]

According to Shah, "*most business owners are motivated by the idea of building something with an enduring value and creating a lasting legacy for future generations."*[90] However, without a strategic succession planning within a family-owned business, unexpected transfers of ownership can occur which could potentially place control of the company in the hands of inexperienced family members, which could destabilise the business and undermine the founder's legacy.[91]

With the proper utilisation of SHA and proper planning, companies can continue to exist and be transferred from one generation to the other. Thus, in this sense, intergenerational transfer of wealth is the process through which the corporation or the control of the corporation is passed from one generation to the other. This transfer is not only important for the financial stability of the beneficiaries but also for the continuation of the corporation and ensuring that the business does not die with the founder.

It is usually the case that transfer of assets is done using trusts, deeds of gifts, wills or in accordance with intestacy laws.[92] However, when it comes to family-owned businesses SHA is an important tool to effect such transfers. As stated by Stout, *"we are mortal creatures, we grow old and die…That hard truth carries [several] fundamental implications about the nature and objectives of individual human beings. It also carries [several] fundamental*

[89] ibid. page 450
[90] Shah (n 1).
[91] ibid.
[92] Robert A Schnur, 'The Use of Shareholders Agreements in Estate Planning Estate Planning Tactics' (1974) 20th Annual Tax Conference 41 <https://heinonline.org/HOL/P?h=hein.journals/antcwilm14&i=43> accessed 16 May 2024.

implications about the nature and objectives of an entity that (unlike human beings) need not grow old and die: the corporation."[93] Hence the nature of a corporation necessitates the need for proper business planning and corporate governance, and this can be done using a SHA.

2.2. The goal and benefits of SHAs in succession planning

According to Schnur[94], the primary estate planning goals of a shareholder in closely-held corporations are *"…(i) to distribute the individual's assets, upon his death, to the recipients chosen by him, (ii) to minimize the transfer taxes imposed on the distribution and (iii) to insure that sufficient funds are available to pay those taxes.*"[95] Thus, a SHA is an important instrument to effectively achieve these goals. SHAs are strategic in ensuring the orderly transition of assets and safeguarding the financial foundation of a family-owned business across generations. A properly drafted SHA can provide a structured approach to managing and distributing the shares of a deceased shareholder, preventing potential conflicts among surviving shareholders and the deceased shareholder's successors[96] and as stated by Elson, "*few disputes are as bitter and acrimonious as those between shareholders and resentment and fury seems to be most intense when stockholders are of the same or related families.*"[97]

SHAs are therefore an indispensable tool when it comes to estate planning in closely held corporations. However, unlike the US, in countries like SL it is not widely used. Thus, by integrating SHAs into the business framework, businesses in SL will be able to properly safeguard the transfer of intergenerational wealth by aligning succession planning goals with business continuity needs.

[93] Stout (n 81). Page 685
[94] Schnur (n 92).
[95] ibid. Page 41
[96] ibid.
[97] Elson (n 62). Page 450

2.3. The Galler v Galler case

In the seminal U.S. case of ***Galler v Galler***,[98] Benjamin and Isadore were brothers who co-founded the Galler Drug Company and were equal partners owing 47% of the issued shares of the company. In 1954, the brothers decided to enter a SHA to provide income for the support and maintenance of their families and maintain equal control over the company after the death of either brother. The agreement was finalised in July 1955 following Benjamin's health issues. The wives of the two brothers, Emma and Rose were also parties to the SHA.

The relevant portions of the SHA were as follows:

I. That the bylaws of the corporation be amended to provide for a board of four directors
II. That the quorum shall be three directors and the notice period for board meetings shall be 10 days;
III. The shareholders will cast their votes for Isadore, Rose, Benjamin, and Emma as directors in any meetings held for the purpose of electing directors;
IV. That in the event of death of any brothers, his wife shall have the right to nominate a director;
V. Minimum annual dividend of $50,000.00 to be declared and paid if the corporations accumulated earned surplus was above $500,000.00;
VI. If the 50% of the annual net profits after taxes exceeded the minimum $500,000.00 the directors could exercise discretion to declare additional dividends up to 50% of the annual net profits;
VII. The continuation of salary to a deceased shareholders widow to be paid monthly over a five-year period but to be paid to the widows' children in the event she remarries during that period;

[98] 'Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' (n 3).

VIII. The corporate purchase of shares from the estate of either brother upon their deaths to cover tax expenses. If the stock purchase results in a reduction of the dividend amounts received by the heirs, the agreement ensures that their influence and representation at the board remains the same.[99]

After Benjamin's death, Emma sued for an accounting and specific performance of the agreement. The court then had to resolve the issue of whether the SHA was enforceable and whether the provisions of the agreement were contrary to public policy or the provisions of the Illinois Business Corporation Act.

The court upheld the validity of the SHA. According to the court, "*the power to invalidate the agreements on the grounds of public policy is so far reaching and so easily abused that it should be called into action to set aside or annul the solemn engagement of parties dealing on equal terms only in cases where the corrupt or dangerous tendency clearly and unequivocally appears upon the face of the agreement itself....*"[100] Thus, such agreements are valid as long as they do not harm public interest or minority shareholders and it is done in accordance with the wishes of the parties involved, the rationale being that "*There is no reason why mature men should not be able to adapt the statutory form to the structure they want, so long as they do not endanger other stockholders, creditors, or the public, or violate a clearly mandatory provision of the corporation laws*."[101]

The court in its ruling emphasised the rights of shareholders, especially in closely held corporations, to enter into agreements that secure management continuity and make financial provisions for family members. The court stated that "*SHA similar to that in question here*

[99] ibid. Paras 20-22
[100] ibid. para 26
[101] ibid. para 30

are often, as a practical consideration, quite necessary for the protection of those financially interested in the close corporation."[102] The purpose of the SHA in ***Galler*** was primarily to make provision for financial security for the families of the shareholder and to maintain control over the corporation even after the death of one of the shareholders. The SHA was drafted to protect the interest of the respective families and the provisions of the agreement ensured income stability for the widows after the death of the brothers, maintained equal control over the company by providing for nomination of a director in place of a deceased brother. Moreover, the requirements for quorum of three and 10 days' notice for calling of meetings made it impossible for one of the family to take a decision without the consent of the other.

This case underscores the importance of SHAs in ensuring continuity and stability in family-owned business following the death of a shareholder.[103] Particularly for countries like SL where family businesses often lack succession plans, the case highlights how structured agreements can safeguard intergenerational wealth transfer, maintain equal control within the surviving family members, prevent conflicts and ensure financial stability for dependants.[104]

2.3.1. Legal Uncertainties in closely held corporations

This sub-chapter explores the legal uncertainties and challenges faced by closely held corporations, based on the implications of the Supreme Court's decision in ***Galler***. According to Kaplan,[105] while the ***Galler*** case represents significant progress, the case leaves several

[102] ibid. para 27
[103] Tibor Tajti, 'Berle and Means' Control and Contemporary Problems' (2022) 6 Bratislava Law Review 59 <https://blr.flaw.uniba.sk/index.php/BLR/article/view/309> accessed 1 June 2024. Page 73
[104] ibid. pages 73-74
[105] Kaplan (n 55).

questions unanswered, suggesting the need for explicit legislative enactments to provide certainty for both the bar and the business community.[106]

One such question is that whereas the court upheld the mandatory dividend provisions out of accumulated earnings above $500,000.00 in excess of the stated capital in Galler, it is not clear how courts will handle mandatory dividend requirements when there is no large reserve.[107] Thus, without legislative guidelines on the kind of mandatory dividend that are legally enforceable, shareholders may face difficulties when drafting the terms of their agreements.

Another major unanswered question relates to the courts holding that the agreement was enforceable because it had been signed by all shareholders. This raises several questions, firstly, is an agreement unenforceable simply because it is signed by less than all the shareholders.[108] Or does enforceability depend on the percentage of shareholders signing the agreement and lastly, does the enforceability of the SHA depend on the specific provisions within the agreement.[109] It is therefore unclear how courts are to interpret and enforce agreements with varying levels of shareholders participation.

Lastly, the court held that the agreement was enforceable despite it not specifying a termination date.[110] Thus, uncertainties arises because the court did not provide guidance on how agreements without specific terms or those tied to the lives of individual, trusts or corporations will be treated under the ancient "life or lives in being" rule against

[106] ibid. page 472.
[107] ibid.
[108] ibid.
[109] ibid.
[110] 'Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' (n 3). Para 32.

perpetuities.[111] This uncertainty is particularly problematic for jurisdictions like SL where the perpetuity rule[iv] is followed, making it unclear how such agreements will be enforced.

2.4. African Case Study Analysis – the need for a SHA in family businesses

This case study explores a business partnership in Senegal involving a Senegalese businessman and a French-Algerian businessman. It highlights the disputes that arose from the absence of a formal SHA, emphasizing the essential role of SHAs in safeguarding shareholder rights and facilitating the smooth transfer of intergenerational wealth, particularly in privately held companies. Due to confidentiality reasons, the names of the individuals and the company involved will not be disclosed.

The Senegalese businessman, who owned a valuable mining license, entered an agreement with a French-Algerian businessman. Under a gentleman's agreement, he transferred 85% of his company's shares to his partner without formal payment, opting instead for a profit-sharing arrangement. The Senegalese businessman continued as Manager of the company and the defacto head of the company. Unfortunately, no SHA was executed to properly define the terms of the shareholding, profit distribution, or management roles nor was the agreement contained in any other document.

The untimely death of the Senegalese businessman exposed several critical issues within the business, highlighting the vulnerabilities in intergenerational wealth transfer when formal agreements are not in place. The cessation of dividend payments by the French-Algerian businessman, due to the lack of a formal agreement severely impacted the family's financial stability. Additionally, the mismanagement of the AGMs and the alleged manipulation of

[111] Kaplan (n 55). Page 472

meeting minutes compromised the family's ability to effectively influence business decisions and safeguard their interests. Further complications arose with disputes over asset ownership and changes to the company's capital which threatened the family's control within the company. These issues illustrate the importance of formalizing SHAs to provide clarity and enforceability on the rights and obligations of parties; protect against mismanagement and ensure that major business decisions are made collectively; incorporate mechanisms for dispute resolution and succession planning, ensuring that a business can smoothly transition between generations without losing the intended purpose of the founder.

Unlike ***Galler*** where the detailed and legally binding SHA provided clear procedures on dividend distribution and director appointments which were crucial after the death of Benjamin and ensured the company's stability and adherence to the intentions of the brothers, the Senegalese case suffered because of the absence of a SHA. The Senegalese case underscores the importance of incorporating estate planning within a SHA to ensure business continuity and facilitate intergenerational transfer of wealth. The ***Galler*** case is a clear example of how a properly drafted SHA can prevent disputes and safeguard the businesses and family's interests even after the death of the founder.

2.5. How to keep the business running after a founder's death

The challenges faced by the Senegalese business following the founder's death underline the critical importance of structured planning for business continuity. As illustrated by the Senegalese case, the absence of formal SHA and clear succession plan can lead to significant operational disruptions and disputes over ownership and control. These issues are not unique to this case but are common in many family-owned businesses where succession planning has been neglected. Thus, a clear succession plan is important for maintaining stability and

continuity in a business after the founder's death. Many businesses fail to properly prepare for what happens after the founder's death, often due to misconceptions that the transition of ownership and management will naturally resolve itself.[112] However, as can be seen in the Senegalese case, such assumptions can lead to conflicts.

According to Shah, the success of intergenerational transfer of wealth using a SHA hinge on an understanding of the financial landscape and the dynamics within the family and the business.[113] Thus, effective succession planning should begin with a thorough assessment of the current financial status of the company and the economic environment in which the business operates. To achieve this, "*a clear understanding of the family dynamics, aspirations, priorities and medium and long-term goals is needed.*"[114] For a proper succession plan it is important to ensure that the AoA and SHA clearly outlines the procedures following the death of a shareholder.[115] These documents are essential to ensure that the business runs smoothly even after the transition from one generation to the next and they are instrumental to mitigate against the risks associated with the transition process.[116] The SHA can make provision for how decisions are to be made, shares are allocated, pre-emption rights,[117] buy-sell agreements, how disputes are to be resolved and rights of first refusal as was the case in the SHA in ***Galler***.

In ***Galler***, the SHA included a provision for right of first refusal "*in the event either Benjamin or Isadore decides to sell his shares [during their lifetime] he is required to offer them first to*

[112] Shah (n 1).
[113] ibid.
[114] ibid.
[115]ibid.
[116] ibid.
[117] ibid.

the remaining shareholders and then to the corporation."[118] This provision was important in ensuring that the shares are first offered to the existing shareholders before being made available externally, thereby ensuring that control of the company is kept within the family. The shares were to be offered at book value, and there was a stipulated period of six months for the offer to be accepted.[119]

2.6. SHAs versus estate laws

The case of in the ***Riefberg***[120] illustrates the complexities that could potentially arise when using SHAs without due consideration of estate laws. And it is a clear example of how SHAs can intersect with estate planning and affect the rights of surviving spouses thereby impacting the transfer of generational wealth. In ***Riefberg,*** Sid Riefberg and his brother were the sole shareholders of a closely held corporation, which was governed by a buy-sell agreement that required the corporation to purchase shares from the estate of a deceased shareholder. Shortly, before Sid's death, an amendment to the SHA was made, directing that the value of Sid's shares be paid directly to his former wife and children rather than to his estate.[121] The current wife of the deceased shareholder contested the amended SHA. The court then had to determine whether the buy-sell provision in the SHA and the amendment made before Sid's death constituted a testamentary substitute. The New York Court of Appeals held that the amended SHA was designed to circumvent Maria's spousal rights and thus should be treated as part of the estate for the purposes of her election.[122]

[118] 'Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' (n 3). Para 22
[119] ibid. Para 22
[120] 'Matter of Riefberg, 58 N.Y.2d 134 | Casetext Search + Citator' <https://casetext.com/case/matter-of-riefberg-1> accessed 16 May 2024.
[121] ibid. Para 127.
[122] ibid. Paras 141-142

Thus, while the SHA and its buy sell provisions were not invalidated, the last-minute amendment made to redirect the share's proceeds to Sid's ex-wife were considered as part of the assets of the estate and therefore relevant to the computation of Maria's elective share under New York's Estates, Powers, and Trusts Law.

2.7. Fiduciary Duties in SHAs

The ***Battaglia v Battaglia***[123], case illustrates the courts application of fiduciary duties in closely held corporations. In this case, three brothers executed a SHA to ensure that ownership of their family-owned business Battaglia Holding Inc remained within the family. The SHA also included a provision for handling shares in the event of the death of one of the brothers. As per the said SHA, the shareholders were prohibited from selling, assigning, transferring, or otherwise disposing of their shares without the written consent of the other brothers. The agreement also stipulated that upon the death of any of the shareholders, their shares must first be sold to the corporation and any remaining shares must be purchased by the surviving brothers in equal portions[124]. The purpose of the agreement was to maintain control within the family and prevent outsiders from acquiring a stake in the company.

However, upon realising that the agreement could prevent their sons from inheriting any ownership interest the brothers decided to rescind the agreement. This rescission was to remove the restrictions that would prevent their sons from inheriting ownership interest in the company thereby supporting the brothers plans to pass on ownership to the next generation. A dispute then arose when Frank Battaglia purchased shares from his brother Anthony without the consent of the other brother Joseph. Joseph sued claiming breach of fiduciary

[123] 'Battaglia v. Battaglia, 231 Ill. App. 3d 607 | Casetext Search + Citator' <https://casetext.com/case/battaglia-v-battaglia-11> accessed 16 May 2024.
[124] ibid.

duty and breach of the SHA, claiming that the purchase of Anthony's shares violated the terms of the said agreement which required that transfer of shares be consented to by all shareholders.

According to the court, "*Joseph had a right to continued equality based on the first section of the Buy/Sell Agreement, which prohibited one brother's transfer of Battaglia Holding stock without the others' consent*."[125] The court held that Frank's action in failing to obtain the required consent for share transfer was a breach of the fiduciary duty he owed to joseph and that, in acquiring Anthony's stock without permission from either Joseph or Battaglia Holding, Frank "*took opportunity as a director without offering that opportunity to the corporation [to which] he had a fiduciary duty*."[126] The Court affirmed the decision of the lower court, on the grounds that the SHA and the requirement for mutual consent among the brothers was integral to maintaining control of the company.

To conclude, SHAs are crucial for the smooth transfer of integenerational wealth, as illustrated by the ***Galler*** case. This case exemplies how a well drafted SHA can ensure smooth business transitions and maintiaing conrtol over a business after the death of a key shareholder. By providing mechanisms usch as stipulations for dividend distribution, salaray continuation, board representation, quorum and notice period, such agreements protect both the finanical stability and the governance influence of the beneficiaires. Chapter three will focus on how voting agreements can be used to maintain corporate contol thereby securing the company's stability and the familys interest.

[125] ibid.
[126] ibid.

CHAPTER 3 – VOTING AGREEMENTS

3.1. Introduction

According to Zakrzewski, "*a core component of SHA is the regulation of voting right*."[127] The regulation of voting rights within a SHA is important because it helps define how control and decision making are to be distributed among shareholders in the corporation.[128] Thus, this chapter will explore the tactical use of SHAs to regulate voting rights, using voting agreements. Voting agreements is an essential tool for maintaining and gaining control especially within the context of close corporations / family-owned businesses. This chapter will examine how SHAs can prevent disputes, preserve the company's legacy, and ensure that control remains within the family thereby contributing to the long-term stability and growth of the company.

A voting agreement is defined as an agreement in which a "*shareholder agrees to vote its voting shares generally or in favour of a specific proposal and against any contrary proposal*."[129] Thus, a voting agreement is a contractual agreement among shareholders where they agree to vote their shares in a specific manner, usually in support of a proposed business transaction or election of directors.

3.2. Purpose of voting agreements

The purpose of voting provisions in SHAs which are mutually agreed upon by the shareholders is multifaceted; they ensure stability and predictability with the company by establishing clear rules on how voting rights are to be exercised, thus preventing sudden or unexpected shifts in control.[130] Thus, SHAs serve to protect minority shareholders by

[127] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Page 261
[128] ibid.
[129] 'Voting Agreement' (*Practical Law*) <http://uk.practicallaw.thomsonreuters.com/3-569-8092?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 16 June 2024.
[130] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7). Page 261

requiring higher majority votes, or even unanimity, for certain decisions thereby protecting minority shareholders by safeguarding against the potential dominance of major shareholders.[131]

Furthermore, "*modern corporate financing frequently requires the creation of a united majority of stockholders, by a contract or trust, which will successfully resist both the attack of the original parties to the undertaking and the objections raised by transferees of the affected shares*."[132] Thus, voting agreements serve as essential tools in modern corporate financing, particularly in the context of maintaining stability and control within family-owned businesses and during significant corporate transitions such as mergers reorganisations or the securing of financing. These agreements typically involve a contract among the shareholders to vote as a unified bloc.

The primary purpose of voting agreements is to secure corporate control, however, its legality hinges on its ability to properly align with corporate law without infringing on the principles that safeguard the treatment of shareholders and the autonomy of corporate governance.[133] In Illinois, a voting agreement is defined as "*a contract among two or more stockholders whereby they retain not only the legal and beneficial ownership of their shares, but also their individual right to vote them, and merely agree to vote all their combined stock as a unit in a pre-determined way to accomplish some corporate purpose such as the election of directors.*"[134]

[131] ibid.
[132] Law Review Editors, 'The Validity of Stockholders' Voting Agreements in Illinois' (1936) 3 University of Chicago Law Review <https://chicagounbound.uchicago.edu/uclrev/vol3/iss4/6>. Page 640
[133] ibid. page 641
[134] ibid.

However, the implementation of voting agreements should be carefully scrutinised to ensure that it does not overstep by separating voting rights from beneficial ownership, a challenge that is often highlighted in legal disputes.[135] In comparing SHAs to public elections "…it has been held that stockholders cannot sell his vote and retain all the other incidents of ownership."[136] Thus, similarly to public elections where voters cannot sell their right to vote, shareholders should not be able to detach their voting rights from their share ownership. This principle is aimed at preventing practices that could potentially undermine corporate governance structures, such as selling voting rights to parties who do not have an economic stake in the company, potentially leading to governance decisions that do not benefit the company.

The enforcement of voting agreements, especially in Illinois, reflects a nuanced understanding that while voting agreements are vital for maintaining corporate control, they must not infringe on the rights of minority shareholders or the duties of directors.[137] "The legality of shareholders contracts which prevent the directors from freely exercising their judgment in the management of the corporation is now a subject of inquiry."[138] Thus, it is important that voting agreements balance the need for corporate control with the protection of minority shareholders rights and directors autonomy.[139] It also worth noting that voting agreements, while critical in aligning shareholder interests and ensuring planned outcomes, are not self-executing instruments.[140] Thus, the execution of a voting agreement does not

[135] ibid. page 642
[136] ibid.
[137] ibid. page 646
[138] ibid.
[139] ibid.
[140] page 653

negate the need for a corporation to follow the standard legal formalities required for directors and shareholder actions.[141]

3.3. Legal framework

This sub-chapter will analyse the legal framework related to voting agreements in both English law and Delaware law, with a specific focus on case law to better understand how voting agreements can be used to maintain corporate control. It will also highlight the significance of Delaware law due to its specific provisions on voting agreements in the Delaware General Corporations Law (DGCL).

3.3.1. English law

In accordance with English law, voting agreements are considered valid and enforceable and the possibility to enter into such agreements is derived from the principles of contact law and the freedom to contract.[142] Shareholders have the freedom to exercise their voting rights as they deem fit. Courts in the UK have also ruled that shareholders can vote their shares in a manner that aligns with their interests.[143] Thus, voting agreements are enforceable by courts, enabling the courts to issue mandatory injunctions if necessary to compel shareholders to vote or abstain in accordance with the terms of their agreement.[144] While the Companies Act 2006 does not regulate SHAs, there are limitation that have been established by the courts. Majority shareholders or those acting together through a SHA cannot use their voting rights to the detriment of minority shareholders or the company itself.[145]

[141] 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis' (n 7).
[142] Paulius Miliauskas, 'Shareholders' Agreement as a Tool to Mitigate Corporate Conflicts of Interests' (29 October 2012) <https://papers.ssrn.com/abstract=2380629> accessed 2 May 2024.
[143] ibid.
[144] LS Sealy, 'Shareholders' Agreements. An Endorsement and a Warning from the House of Lords' (1992) 51 The Cambridge Law Journal 437 <https://www.jstor.org/stable/4507715> accessed 3 June 2024. Page 437
[145] Miliauskas (n 142).

In the case of ***Cook v Deeks***[146], the court ruled against a resolution that sought to benefit the majority shareholders at the expense of the company and the minority shareholders. In ***Cook***, the majority shareholders who were also directors of the company resolved to transfer a profitable contract, negotiated on behalf of the company to another company wholly owned by themselves. This meant that the remaining shareholders and the company did not receive any benefit from the transferred contract. The court ruled that majority shareholders are not entitled to enrich themselves at the cost of the company and the minority shareholders. The court refused to sanction the voting power by the majority shareholders who were also directors of the company to benefit themselves at the expense of the company and the minority shareholders. This decision highlights the courts' role in ensuring that the exercise of voting rights is done in accordance with the principles of fairness and the best interest of the company.

In ***Puddephat v Leith***[147], the Plaintiff owned 2,500 shares in London and Cosmopolitan Mining Company Ltd, she mortgaged her share to the defendant resulting in the transfer of the shares into the defendant's name.[148] Despite the said transfer, an agreement was made evidenced by a letter from the defendant that the plaintiff would retain her voting rights and the defendant would vote according to the plaintiffs wishes.[149] Contrary to the said agreement, during the company's general meeting, the defendant who was also a director of the company decided to vote against the plaintiff's wishes.[150] The plaintiff instituted legal proceedings for an injunction to prevent the defendant from voting the shares contrary to her

[146]Cook v Deeks (1916), 1 AC 554
[147] 'Puddephat v Leith (No.1), [1916] 1 Ch. 200 (1915) | Westlaw UK' (*Practical Law*) <http://uk.practicallaw.thomsonreuters.com/Document/I2DD2B7A0E42811DA8FC2A0F0355337E9/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=ecaf39de59f444c2bc161fcdaff93375&contextData=(sc.Search)&comp=wluk> accessed 3 June 2024.
[148] ibid. page 200
[149] ibid.
[150] ibid.

direction and for the court to order the defendant to vote in a specific manner at the upcoming general meeting against a certain proposed resolution and in favour of other specified resolutions.[151]

The court then had to decide whether the agreement allowing the Plaintiff to control the voting of shares formally transferred to the defendant was legally enforceable and whether an injunction could be granted to enforce such an agreement.[152] The court held that the agreement was binding and enforceable, and an injunction was granted compelling the defendant to vote according to the plaintiffs wishes in future meetings.[153] This case illustrates that shareholders can maintain corporate control even when shares are mortgaged, emphasising the importance of voting agreements in corporate governance, voting agreements can allow shareholders to retain influence over corporate decisions despite not holding title to their shares.

In the context of the Senegal case study where a lack of formal SHA led to significant disputes and mismanagement following the death of the Senegalese businessman, this case highlights the importance of reducing the agreement into writing[154] and show that courts are willing to enforce voting agreements that are not formally documented in a SHA provided there is clear evidence of such agreement being acknowledged by the parties involved. Thus, in the Senegal case study, if a similarly voting agreement had been informally agreed upon but clearly acknowledged like in ***Puddephat***, it could have potentially allowed for continued control and management as originally intended by the deceased founder.

[151] ibid. pages 200 - 201
[152] ibid. page 201
[153] ibid. page 202
[154] F Hodge O'Neal, 'Protecting Shareholders' Control Agreements Against Attack' (1958) 14 The Business Lawyer 184 <https://www.jstor.org/stable/40683298> accessed 3 June 2024. Page 194

Additionally, companies cannot contractually restrict their power to alter the AoA or to increase its share capital. In ***Russell v Northern Bank Development Corporation Ltd***[155] the case involved a non-unanimous SHA that was aimed at controlling the share capital of Tyrone Brick Ltd, a holding company that was formed to manage two brick-making companies. The agreement was entered into among several shareholders, including the plaintiff and other executives who were allotted shares alongside the first defendant, Norther Bank Development Corporation which held a majority. The issue was whether the SHA, which restricted the issue of new share capital without the consent of all parties was enforceable. The court held that the company itself could not be bound by an agreement that restricted its statutory power to alter its capital, the individual shareholders could enter into a private agreement on how they intend to vote their shares.[156]

The House of Lords distinguished between the company's formal undertaking restricting its statutory power which is void "*as an unlawful fetter on the company's statutory powers,*"[157] and the personal agreement among shareholders, which is deemed valid and enforceable.[158] According to the court, "*this agreement is purely personal to the shareholders who executed it and…does not purport to bind future shareholders*."[159] Thus, being that the agreement was a non-unanimous SHA it did not bind the company or future shareholders not party to the agreement, the court therefore upheld the agreement among the existing parties without infringing on the statutory right of the company.[160] The court found that the SHA did not bind the company. Thus, in applying the doctrine of severance[161], it was held that shareholders are therefore free to vote as they chose, but companies cannot bind themselves to override their

[155] 'Russell v Northern Bank Development Corp Ltd [1992] 1 W.L.R. 588
[156] ibid. page 594
[157] Sealy (n 144). Page 438
[158] ibid.
[159] 'Russell v Northern Bank Development Corp Ltd | Westlaw UK'. Page 594
[160] Sealy (n 144).
[161] ibid. page 438

statutory powers solely through contractual means.[162] Legal practitioners should therefore ensure that the SHA contains a severability clause to ensure that if any provision is deemed invalid, the remainder of the agreement can still be enforced, thereby preserving the intentions of the parties and the agreements effectiveness.[163]

According to Ferran, "*the decision in Russell provides a firm and unequivocal answer to the question: there can be no contracting out by a company in respect of its statutory powers*."[164] Thus, it is important to recognise the legal limitations imposed on SHA particularly concerning statutory corporate powers and legal practitioners should ensure that when drafting SHA that the agreements do not attempt to circumvent or override the statutory duties that are central to corporate governance. This is particularly important because it will safeguard the validity of the agreements as well as strengthening the governance structures against potential legal challenges that may arise from provisions that are considered overreaching.

3.3.2. United States – Delaware

Section 218 (c) of the DGCL[165], makes provision for two or more shareholders to enter into a written agreement to provide for how they intend to exercise their voting rights. Subsection (d) makes it clear that the provisions of section 218 does not invalidate any voting or other agreement among shareholders which is not otherwise illegal.

[162] Miliauskas (n 142).
[163] O'Neal (n 154). Page 202
[164] Eilis Ferran, 'The Decision of the House of Lords in Russell v. Northern Bank Development Corporation Limited' (1994) 53 The Cambridge Law Journal 343 <https://www.jstor.org/stable/4507949> accessed 30 May 2024. Page 343
[165] 'Delaware Code Online' <https://delcode.delaware.gov/title8/c001/sc07/index.html> accessed 23 May 2024.

In ***Zion***,[166] Zion and Kurtz were the only shareholders of Lombard Wall Group Inc (Group). Zion purchased minority interest in the Group and the parties agreed to enter a SHA. The terms of the agreement being that the Group would not engage in any business or activities without Zion's approval[167]. In breach of the SHA, Kurtz caused the corporation to take decision on an interest-bearing loan agreement and an escrow agreement with Chase Manhattan Bank despite Zion's objections.[168] As a result of the breach, Zion instituted legal proceedings against Kurtz seeking declaratory and injunctive reliefs.

In accordance with the said agreement, the agreement was to be governed by DGCL.[169] The issue for the court was whether a SHA that removes management power from the board and instead places it in the hands of the shareholders is enforceable even when the company in question has failed to meet the statutory requirements.[170]

The court held that a SHA that limit management functions is valid and enforceable even though the corporate formalities had not been strictly followed. The rational for the court's decision hinges on section 351 of the DGCL which recognises a special subclass of close corporations where direct shareholder management is permitted.[171] Moreover, defendant's argument that the Group was not incorporated as a close corporation and the fact that the SHA agreement provision was not incorporated in the company's certificate of incorporation did not invalidate the agreement. The court held that "sterilization" of the board of directors is therefore possible under Delaware law "*since there are no intervening rights of third parties, the agreement requires nothing that is not permitted by statute, and all of the*

[166] 'Zion v. Kurtz, 50 N.Y.2d 92 | Casetext Search + Citator' (n 65).
[167] ibid. Paras 97-98
[168] ibid. Para 98
[169] ibid. para 100
[170] ibid.
[171] ibid. para 101

stockholders of the corporation assented to it, the certificate of incorporation may be ordered reformed, by requiring Kurtz to file the appropriate amendments, or more importantly he may be held estopped to rely upon the absence of those amendments from the corporate charter".[172]

This case is significant because the SHA armed Zion with the right to be able to maintain control over the management and affairs of the Group even though he was a minority shareholder. The agreement levelled the playing field between Zion and Kurtz the majority shareholder and always ensured that his consent is required when making decisions. Furthermore, the case represents a significant departure from traditional corporate governance norms, particularly in its approach to the sterilisation of the board's decision-making powers. The majority decision in this case upheld the SHA that effectively transferred management functions from the board to a minority shareholder, bypassing the usual corporate governance structure.[173] This decision was justified on the grounds that there were no intervening rights of third parties involved, the agreement did not require anything that was not permitted by statute, and all shareholders of the company had consented to the agreement. Thus, the decision "*is indicative of a modern trend to relax the standards-both judicial and statutory-imposed upon close corporations*"[174] further highlighting the shift towards a more flexible interpretation of statutory requirements in corporate governance.

[172] ibid. para 102
[173] Richard A Kaplan, 'Close Corporation Shareholders' Agreements and the Signal of Zion v. Kurtz: Frustration of the Statutory Notice Requirement Note' (1981) 46 Albany Law Review 198 <https://heinonline.org/HOL/P?h=hein.journals/albany46&i=210> accessed 30 May 2024. Page 204
[174] ibid. page 206

In the case of ***Ringling v Ringling Bros-Braum & Bailey***,[175] the legal issue that the court had to decide was the validity and enforcement of a voting agreement between the Plaintiff and Healey to pool their votes for the election of board directors. Ringling and Haley executed an agreement which provides that they would vote their shares jointly and in the same manner. The agreement also provided for arbitration in the event of a dispute. However, at a 1946 AGM, the parties could not reach an agreement on the election of the fifth director. As per the advice of the arbitrator, they were to cast 4/5 of their votes as already agreed, however Mrs. Haley's husband who was acting as her proxy disregarded the decision and proceeded to vote all of her shares for himself and Mrs. Haley.[176] As a result, the chairman of the board ruled that Mr. Dunn was elected instead of Mr. Griffin, as Mrs. Haley's vote deviated from the voting agreement. Mrs. Ringling then instituted proceedings seeking declaratory relief against Healey argued that the agreement was not valid as it transferred voting right to a third part, Loos.

The court held that the pooling agreement was valid since it did not violate the rights of other shareholders or public policy "*it offends no rule of law or public policy of this state of which we are awar*e"[177]. The court decided that while the election itself should not be invalidated, the votes representing Mrs. Haley's shares should be disregarded.

Moreover, in this case the court addressed the issue of consideration. The court stated that the "*legal consideration for the promises of each party is supplied by the mutual promises of the*

[175] 'Ringling Bros. Inc. v. Ringling, 29 Del. Ch. 610 | Casetext Search + Citator' <https://casetext.com/case/ringling-bros-inc-v-ringling> accessed 16 June 2024.
[176] ibid. Para 617.
[177] ibid. Para 623.

other party."[178] Thus, the agreement between the parties to vote their shares in accordance with the decision of the arbitrator constituted a valid agreement.

Furthermore, in the recently decided case of ***West Palm Beach Firefighters Pension Fund,***[179] the Plaintiff a shareholder of Moelis & Company challenged the validity of certain provisions contained in the SHA executed between the defendant company and its CEO. As per the said agreement, the company's board of directors must obtain prior written consent before taking certain actions[180] and the board was also contractually obligated to maintain the membership of the board at no more than eleven members and further the CEO had the right to name a number of designees equal to a majority of the board, he was also given the power to fill vacancy on the board. The Plaintiff argued that the said provisions violated section 141 (a) which provides that the business of the corporations are to be managed by the board of directors unless specified otherwise in the Act or certificate of incorporation which can allocate board powers to other persons.[181]

In deciding whether the agreement violated section 141 (a) of the DGCL, the court established a two-step inquiry for claims under section 141 (1). Firstly, the court must determine whether the challenged provision is part of the corporation's internal governance arrangement. If not, the enquiry ends there. However, if it is considered part of the internal governance, then the court proceeds to applying the Abercrombie test to determine whether

[178] ibid.
[179] 'West Palm Beach Firefighters' Pension Fund v. Moelis & Company' (*Justia Law*, 5 June 2024) <https://law.justia.com/cases/delaware/court-of-chancery/2024/c-a-no-2023-0309-jtl-0.html> accessed 3 June 2024.;
[180] ibid. Page 4
[181] 'Delaware Code Online' (n 165). S.141 (a) DGCL.

the provision imposes a restriction that violates Section 141(a) by limiting the powers of the directors.[182]

The first step involved determining whether the challenged provisions were part of a governance arrangement. The court determined that the provisions in question were part of a typical governance agreement and as such subjected the SHA to the provisions of section 141 (a).[183]

In step two, the court applied the 'Abercrombie test' (established in the case of Abercrombie v Davies), and concluded that majority of the provisions in the agreement failed the test.[184] Specifically, the pre-approval requirements were deemed as direct restraints of the board's powers forcing the board to first seek the consent of the CEO before taking any major decision.[185] The court determined that the requirements allowed the CEO to block all actions by the board effectively transferring the management of the company to the CEO contrary to section 141 (a).[186] Thus, the court ruled "the Pre-Approval Requirements are direct, board level constraints."[187]

3.6. Use of voting agreement in intergenerational transfer of wealth and to maintain control

The ***Galler***[188] case is a clear example of how voting agreements are used in closely held corporations to facilitate intergenerational transfer of wealth while addressing issues such as

[182] 'West Palm Beach Firefighters' Pension Fund v. Moelis & Company' (n 179). Page 80.
[183] ibid.
[184] ibid. Page 102
[185] ibid. Page 108.
[186] ibid. Page 102.
[187] ibid.
[188] 'Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' (n 3).

consolidating voting power, preventing hostile takeover, and stabilising the management of the company.

The SHA in ***Galler*** was important in consolidating power within the family. The agreement ensured that after the death of either brother, the control of the company would remain balanced between the two brothers. The agreement provided that "*in the event of the death of either brother, his wife shall have the right to nominate a director in place of the decedent.*"[189] This provision in the agreement ensured that each family continue to have a say in the decision making of the company even after the death of one of the brothers. By further granting the widow [Emma] the right to nominate a director after her husband's death, the agreement ensured continuity in the decision making of the company thereby supporting a stable transition and maintaining the family's influence over the business operations.

Moreover, the agreement also granted the corporation the authority to buy Galler Drug Company shares from either Benjamin or Isadore's estate to cover estate taxes and administrative expenses, ensuring that the estate and heirs maintain proportional director representation regardless of reduced dividend income.[190] This provision of the SHA did not only address the immediate financial and tax obligations following the demise of a shareholder but also protects against dilution of the heirs control within the company in the event of share purchase by the company. Despite the potential reduction in the percentage of ownership due to the purchase of shares to cover estate related expenses, the agreement ensures that the heirs continue to appoint two out of the four directors. Thereby preventing the dilution of their governance power, even if their shareholding diminishes. The said clause

[189] ibid. para 21
[190] ibid. paras 21-22

also made provisions for additional benefits payments to the heirs in the event of dilution thereby safeguarding and maintaining the economic interests of the heirs.

Additionally, the SHA in ***Galler*** incorporates several key provisions that help to prevent hostile takeovers and ensuring that control of the company remains within the family. One of the most effective provisions is the right of first refusal clause which stipulates that "*In the event either Benjamin or Isadore decides to sell his shares he is required to offer them first to the remaining shareholders and then to the corporation at book value, according each six months to accept the offer*."[191] This provision in the SHA prevents outsiders from easily acquiring a controlling interest in the company, as it ensures that any available shares are first made accessible to those already within the existing shareholding.

To conclude, voting agreements serve as an important tool for families aiming to maintain control over their business across generations, effectively ensuring that voting power remains within the family. Thereby ensuring that business goals align with the interest of the founders and preserving the family's influence over business operations and decisions.

Conclusion

This thesis has examined the role of SHAs in the transfer of intergenerational wealth and maintaining corporate control, ensuring that the company survives the death of a key shareholder. By examining the legal frameworks in the U.S. and England several lessons can be learnt for jurisdictions like SL where such agreements are not widely utilised for these purposes. Chapter one provides an overview of SHAs, emphasising their significance in governing the relationships between shareholders and the governance of the company. These agreements offer flexibility and specificity thus can address various issues that the

[191] ibid. para 22

shareholders wish to contract on thereby providing a mechanism for planning and continuity and as such preventing a situation of death of the business following the founder's death.[192] Chapter two examined the use of SHAs for the transfer of intergenerational wealth, as illustrated by the ***Galler*** case. The ***Galler*** case highlighted the effectiveness of SHAs in ensuring that the founder's vision and control mechanisms are preserved across generations. As can be seen from Galler, the provisions in SHAs can address estate taxes, administrative expenses post the founders death, family maintenance and maintaining proportional representation on the board, thus safeguarding the interests of heirs, and ensuring a smooth transition.

Chapter three examined the role of voting agreements in maintaining corporate control. As seen from Galler, voting agreements are important tool to maintaining the founder's vision and control, even as ownership is transferred from one generation to the other.

Based on the research conducted into English and US law, several recommendations can be made for SL. Similarly to Florida's legal framework, it is recommended that SL adopts a Florida's legal framework by amending its Companies Act to include specific provisions for SHAs. The adoption of a legal framework like Florida's can significantly enhance the use of SHAs in SL. Clear provisions on the scope, form and disclosure requirements of SHAs would protect shareholder interests as well as promote investor confidence. Additionally, provisions to allow purchasers to rescind their share purchases in the event of non-disclosure of an existing SHA would safeguard against unfair contract terms. Furthermore, amending the companies Act to include a provision aligning liability with the decision-making authority in accordance with the SHAs would ensure that directors are not wrongfully held liable for actions that are outside their control. Thus, by adopting Florida's legal framework, businesses

[192] Shah (n 1).

in SL can facilitate effective intergenerational transfer of wealth and maintain corporate control, thereby ensuring business continuity.

[i] In the UK, the CH is responsible for incorporating and dissolving limited companies as well as maintaining a public register of companies. https://www.gov.uk/government/organisations/companies-house

[ii] In accordance with section 23 of the National Investment Board Act No. 11 of 2022, the CAD is responsible for administering the provisions of the Companies Act 2009 and responsible for the regulating and supervising the incorporation and registration of companies within SL.

[iii] See sub-chapter 1.4.2 dealing with Florida

[iv] This rule requires that future interests must be certain to vest within a defined period known as the perpetuity period. https://uk.practicallaw.thomsonreuters.com/3-383-5143?transitionType=Default&contextData=(sc.Default)&firstPage=true

BIBLOGRAPHY

TABLE OF CASES

ENGLAND

"Cook v Deeks (1916), 1 AC 554"

'Puddephat v Leith (No.1), [1916] 1 Ch. 200 (1915) | Westlaw UK' (*Practical Law*) <http://uk.practicallaw.thomsonreuters.com/Document/I2DD2B7A0E42811DA8FC2A0F0355337E9/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=ecaf39de59f444c2bc161fcdaff93375&contextData=(sc.Search)&comp=wluk> accessed 3 June 2024

''Russell v Northern Bank Development Corp Ltd [1992] 1 W.L.R. 588| Westlaw UK' (*Practical Law*) <http://uk.practicallaw.thomsonreuters.com/Document/I90E20FD0E42811DA8FC2A0F0355337E9/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=8f648aafeeb24a658cb622b526440b80&contextData=(sc.Search)&comp=wluk> accessed 3 June 2024

UNITED STATES

'Battaglia v. Battaglia, 231 Ill. App. 3d 607 | Casetext Search + Citator' <https://casetext.com/case/battaglia-v-battaglia-11> accessed 16 May 2024

Galler v. Galler, 32 Ill. 2d 16 | Casetext Search + Citator' <https://casetext.com/case/galler-v-galler-3> accessed 14 May 2024

'Matter of Riefberg, 58 N.Y.2d 134 | Casetext Search + Citator' <https://casetext.com/case/matter-of-riefberg-1> accessed 16 May 2024

'Ringling Bros. Inc. v. Ringling, 29 Del. Ch. 610 | Casetext Search + Citator' <https://casetext.com/case/ringling-bros-inc-v-ringling> accessed 16 June 2024

'West Palm Beach Firefighters' Pension Fund v. Moelis & Company' (*Justia Law*, 5 June 2024) <https://law.justia.com/cases/delaware/court-of-chancery/2024/c-a-no-2023-0309-jtl-0.html> accessed 3 June 2024

'Zion v. Kurtz, 50 N.Y.2d 92 | Casetext Search + Citator' <https://casetext.com/case/zion-v-kurtz-2> accessed 3 June 2024

SIERRA LEONE

Olaf Grabowski v German Drilling Group & Ors (FTCC 340 of 2016) [2017] SLHC 1177 (17 July 2017) (2017) <https://sierralii.gov.sl/akn/sl/judgment/slhc/2017/1177/eng@2017-07-17> accessed 3 June 202

LEGISLATIONS

ENGLAND

Companies Act 2006

UNITED STATES

Delaware General Corporation Law 'Delaware Code Online' <https://delcode.delaware.gov/title8/c001/sc07/index.html> accessed 23 May 2024

Florida Business Corporation Act 'Chapter 607 Section 0732 - 2021 Florida Statutes - The Florida Senate' <https://www.flsenate.gov/Laws/Statutes/2021/0607.0732> accessed 3 June 2024

SIERRA LEONE

Companies Act No. 5 of 2009 '<https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/sl/sl001en.pdf> accessed 3 June 2024

BOOKS

'A Guide to Drafting Shareholder's Agreements - Ewasiuk, Ricky W

Garner BA (ed), *Black's Law Dictionary* (9th edition, West Group 2009)

Gullifer L and Payne J, *Corporate Finance Law: Principles and Policy* (3rd edition, Hart Publishing 2020)

Mock, Sebastian, Csach, and Havel, 'International Handbook on Shareholders´ Agreements: Regulation, Practice and Comparative Analysis', (De Gruyter 2018)

Muth G, FitzGerald S and Cadman J, *Shareholders' Agreements* (Sweet & Maxwell 2009)

'The Chartered Governance Qualifying Programme, 'Corporate Governance, study text' CGI Publishing Limited, 2021.

ARTICLES

Binz Astrachan C and others, 'Addressing the Theory-Practice Divide in Family Business Research: The Case of Shareholder Agreements' (2021) 12 Journal of Family Business Strategy 100395 <https://www.sciencedirect.com/science/article/pii/S1877858520301224> accessed 11 June 2024

Editors LR, 'The Validity of Stockholders' Voting Agreements in Illinois' (1936) 3 University of Chicago Law Review <https://chicagounbound.uchicago.edu/uclrev/vol3/iss4/6>

Elson A, 'Shareholders Agreements, a Shield for Minority Shareholders of Close Corporations' (1967) 22 The Business Lawyer 449 <https://www.jstor.org/stable/40684172> accessed 2 June 2024

Ferran E, 'The Decision of the House of Lords in Russell v. Northern Bank Development Corporation Limited' (1994) 53 The Cambridge Law Journal 343 <https://www.jstor.org/stable/4507949> accessed 30 May 2024

Kaplan RA, 'Close Corporation Shareholders' Agreements and the Signal of Zion v. Kurtz: Frustration of the Statutory Notice Requirement Note' (1981) 46 Albany Law Review 198 <https://heinonline.org/HOL/P?h=hein.journals/albany46&i=210> accessed 30 May 2024

Kaplan SA, 'Review of Corporate and Tax Aspects of Closely Held Corporations' (1972) 39 The University of Chicago Law Review 466 <https://www.jstor.org/stable/1599011> accessed 11 June 2024

Miliauskas P, 'Shareholders' Agreement as a Tool to Mitigate Corporate Conflicts of Interests' (29 October 2012) <https://papers.ssrn.com/abstract=2380629> accessed 2 May 2024

O'Neal FH, 'Protecting Shareholders' Control Agreements Against Attack' (1958) 14 The Business Lawyer 184 <https://www.jstor.org/stable/40683298> accessed 3 June 2024

Rushton K, *The Business Case for Corporate Governance* (2008)

Schnur RA, 'The Use of Shareholders Agreements in Estate Planning Estate Planning Tactics' (1974) 20th Annual Tax Conference 41 <https://heinonline.org/HOL/P?h=hein.journals/antcwilm14&i=43> accessed 16 May 2024

Sealy LS, 'Shareholders' Agreements. An Endorsement and a Warning from the House of Lords' (1992) 51 The Cambridge Law Journal 437 <https://www.jstor.org/stable/4507715> accessed 3 June 2024

Shah KN-D, 'Death of a Founder = Failure of the Business?' (*Lexology*, 6 September 2023) <https://www.lexology.com/library/detail.aspx?g=d4b07bda-c348-4ba2-9cdc-90fa74e1cd5a> accessed 14 May 2024

Steadman CW, 'Maintaining Control of Close Corporations' (1959) 14 The Business Lawyer 1077 <https://www.jstor.org/stable/40683368> accessed 13 June 2024

Stout LA, 'The Corporation as a Time Machine: Intergenerational Equity, Intergenerational Efficiency, and the Corporate Form' 38

Tajti T, 'Berle and Means' Control and Contemporary Problems' (2022) 6 Bratislava Law Review 59 <https://blr.flaw.uniba.sk/index.php/BLR/article/view/309> accessed 1 June 2024

ONLINE SOURCES

OECD, *G20/OECD Principles of Corporate Governance 2023* (OECD 2023) <https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2023_ed750b30-en> accessed 3 June 2024

Report of the Committee on the Financial Aspects of Corporate Governance. Hauptw., Repr (Reprinted, Gee 1996) , < https://www.ecgi.global/sites/default/files/codes/documents/cadbury.pdf>

'UK Corporate Governance Code' (*FRC (Financial Reporting Council)*) <https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/> accessed 3 June 2024

'Voting Agreement' (*Practical Law*) <http://uk.practicallaw.thomsonreuters.com/3-569-8092?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 16 June 2024