THE ROLE OF SHAREHOLDERS' AGREEMENTS IN ENHANCING CORPORATE GOVERNANCE: INSIGHTS FROM THE UNITED STATES FOR GEORGIA

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Author’s Declaration

I, the undersigned, **Elene Landia,** candidate for the MA degree in Master of Laws in Global Business Law and Regulation, declare herewith that the present thesis titled "The Role of Shareholders’ Agreements in Enhancing Corporate Governance: Insights from the United States for Georgia" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.

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Abstract

The thesis aims to examine how Shareholders' Agreements (SHAs) can serve as a tool to enhance corporate governance in Georgia, a developing country, based on the analysis of the developed and amply tested laws, the rich repository of cases and practices of the United States (U.S.).

In the U.S., Shareholders' Agreements are essential instruments for structuring the relationships between shareholders and establishing corporate governance standards. In addition to, and not conflicting with the applicable company laws as well as the articles of incorporation and bylaws (if any), SHAs may further define shareholders' rights and obligations, establish protective mechanisms, and provide clear options for dispute resolution. The U.S., particularly the State of Delaware, being the path-setter in reams of corporate matters, offers a flexible and business-friendly environment. Such an environment has made SHAs an important tool of corporate governance, especially in closely held corporations.

By contrast, Georgia represents a transitional economy with a rapidly evolving legal system that lacks a comprehensive regulatory framework and specific laws directly applicable to SHAs. Furthermore, as corporate governance is still a relatively new concept in Georgia, many businesses have little awareness of its importance or of pertaining best practices. As a result, hundreds, if not thousands, of small businesses either fail or are abandoned due to poor governance structures and unclear rules. As a result, it is crucial to improve and spread knowledge about how to strengthen corporate governance to help Georgian businesses thrive and grow, and contribute to a stronger economy that way. The lack of well-defined corporate governance regulations in Georgia presents both a challenge and an opportunity - an opportunity to strengthen governance by adopting best practices from developed jurisdictions such as the U.S.

The research question is interesting because it aims to compare the jurisdictions of well-developed and developing countries. It will focus on the best practices from the U.S. that could strengthen the use of SHAs in Georgia. It will suggest policy and legislative recommendations to enhance governance frameworks in Georgia. Moreover, special attention will be devoted to the role of SHAs in improving shareholder protection, promoting business stability, and overcoming enforcement challenges. The research will use a comparative and doctrinal analysis of U.S. and Georgian laws. Case studies, relevant legal precedents, and law articles will be explored to identify key insights, while qualitative data from legal professionals will be used to complement the analysis.

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List of Abbreviations

CCG	-	Civil Code of Georgia
DGCL	-	Delaware General Corporation Law
LGE	-	Law of Georgia on Entrepreneurs
LLC	-	Limited Liability Company
NSA	-	Nonanimous Shareholders' Agreement
RMBCA	-	Revised Model Business Corporation Act
SHA	-	Shareholders' Agreement
SHAs	-	Shareholders' Agreements
SMEs	-	Small and Medium Enterprises
The U.S.	-	The United States
VSAs	-	Voting Shareholder Agreements

Introduction

1.1 The Increasing Importance of SHAs

The thesis aims to examine the role of Shareholders' Agreements as an effective tool to enhance corporate governance mechanisms. As stated in the legal literature, *"A shareholders' agreement represents a set of various arrangements which establish, modify, and amend corporate governance and control in the company. It enables the shareholders to regulate their rights and obligations if the statutory regulation does not provide sufficient solutions or the regulatory framework is not suitable for the company."*[2] Well-drafted agreements have a crucial importance for protecting shareholders' interests, for structuring and enhancing corporate governance mechanisms, and ensuring business continuity. Nowadays, the usage and importance of the SHAs are increasing significantly. Though *"[s]hareholder agreements are more frequent in companies which have shareholders that are actively interested in the running of the company (shareholder activism)."*[3]

The motives for entering into SHAs differ. The confidentiality guarantees, limited public disclosure, higher degree of flexibility, widely available contractual instruments, as well as the opportunity to determine certain shareholders' relationships differently from the relations towards other shareholders, are the main advantages that motivate and attract shareholders to conduct agreements among themselves.[4] As it is correctly noted, *"Shareholder disputes are not unlike matrimonial disputes. They can be intensely bitter and normal commercial*

[2] Gilles Chemla, Michel A Habib and Alexander Ljungqvist, *'An Analysis of Shareholder Agreements'* (2007) 5(1) Journal of the European Economic Association 93, quoted in Sebastian Mock, Martin Csach and Peter Havel (eds), *International Handbook on Shareholders' Agreements: Regulation, Practice and Comparative Analysis* (De Gruyter 2018), 62-63.
[3] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 63.
[4] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 8.

considerations often take a back seat to the desire to "get even" or to prove a point. In fact, a dispute amongst the shareholders can lead to the demise of the business itself". [5]

The topic of SHAs is highly relevant for Georgia's legal and economic development at this critical stage. Analyzing and adapting key elements of the more developed U.S. framework will provide meaningful guidance for Georgia in its path to advance and modernize its corporate governance system. Strengthening corporate governance through SHAs has particular importance for Georgia's developing market economy, as it seeks to support the growth of private enterprises, attract more foreign investment, and align its business practices with international standards.

The thesis will analyze the key elements as well as the advantages and disadvantages of SHAs to enhance the protection of shareholders' rights, minimize the risks of disputes, increase the chances of successful operation of the corporations themselves, and foster sustainable economic growth.

1.2. The Jurisdictions Covered

The thesis will compare leading U.S. corporate law practices, particularly Delaware law, to the Georgian legal framework. Unlike many other countries, the U.S. does not have a centralized federal company law. Instead, company formation and corporate governance are governed by individual state laws. However, as recognized in the Santa Fe case,[6] federal securities laws can overlap with aspects of corporate governance. Even though securities law does not generally create substantive corporate governance rules, it can still influence the conduct of corporate actors at some level.[7] In the U.S., there are two main models of corporate

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[5] Ricky W Ewasiuk, *Drafting Shareholders Agreements: A Guide* (Carswell-Thomson Canada 1998), 1-2.
[6] Santa Fe Industries, Inc. v. Green, 430 U.S. 462 (1977), https://supreme.justia.com/cases/federal/us/430/462/, accessed: 26.04.2025.
[7] Ibid.

governance frameworks among the states: the first is Delaware corporate law, which is a real, binding body of law created by the state of Delaware that heavily relies on case law.[8] The majority of U.S. states have incorporated provisions in their corporate laws that address key provisions of SHAs. Although these agreements are subject to statutory requirements, their interpretation is primarily guided by general principles of contract law and contractual freedom.[9] The second model is the Model Business Corporation Act (MBCA, updated as the RMBCA). The MBCA is a model statute created by the American Bar Association to guide states in writing their corporate laws. It was adopted by 36 states' legislatures since being first introduction in 1950.[10] However, as it does not contain mandatory requirements, states can adopt it fully, partially, or modify it. Section 7.32(a) validates a wide range of such agreements as long as they are not against public policy.[11] Moreover, A well-developed case law and precedents also influence the development of SHAs in the U.S. legal system.

While this thesis will primarily focus on the Delaware corporate law model, it will not be confined exclusively to it. Relevant precedents and corporate governance practices from other states will also be examined to provide a broader and more comparative analysis.

Compared to the U.S., Georgia lacks a comprehensive regulatory framework and specific laws directly applicable to SHAs. Based on the recent corporate law reforms, a new edition of the *Law on Georgian Entrepreneurs* (LGE) came into force in 2022. Article 1 of the LGE establishes the principle of disposition, which grants broad powers to shareholders.[12] The new legal framework obliges entrepreneurs to specify in the company's charter the fact of

[8] See Salamone v. Gorman, 106 A.3d 354, 367 (Del. 2014), quoted in in Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 646.
[9] Ibid.
[10] Model Business Corporation Act Resource Center https://www.canadianlawyermag.com/news/international/american-bar-association-unveils-new-resource-center-for-model-business-corporation-act/385902, accessed: 26.04.2025.
[11]MBCA official text with official comment on Article 7.32 https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/mbca-202404.pdf, accessed: 26.04.2025.
[12] Georgian Law on the *on Entrepreneurs,* Article 1, https://matsne.gov.ge/ka/document/view/5230186?publication=12, accessed: 13.04.2025.

existing SHAs if such an agreement exists, without disclosing its content.[13] However, the only limitation is that SHAs must not violate the mandatory norms of the law. This regulation is very broad and challenging. It does not clearly differentiate SHAs from company's charter and grants shareholders broad discretion to form agreements without providing any guidelines or minimal statutory requirements. This creates uncertainties about how to draw a line between the coexistence of seemingly conflicting contracts.

The thesis aims to narrow the gap by highlighting best practices and key lessons that Georgia's developing system can adopt from the more advanced U.S. framework.

1.3 Research and Methodology Issues

As mentioned above, Georgia does not have a comprehensive regulatory framework or specific laws that directly govern SHAs. Unfortunately, there is hardly any legal literature or scientific articles covering the topic. Moreover, case law regarding SHAs is at an early stage of development, and it lacks the ability to influence the interpretation and fill the legislative gaps. As modern corporate governance systems develop rapidly, there is an urgent need for more concrete regulations to enhance corporate governance mechanisms and, therefore, responsible business practices in Georgia.

This thesis adopts a comparative approach with the caveat that the analysis will be primarily focused on US law and practices aimed at seeing what lessons could be drawn from that to the Georgian lawmaker. Furthermore, as the U.S. operates under a common law system and Georgia follows a continental European legal framework, this circumstance makes the comparison particularly relevant for understanding how different legal traditions can shape corporate governance standards. Apart from analyzing the legal frameworks in different jurisdictions, special attention will be devoted to legal literature, case studies, and the practical

[13] Ibid Article 6.1.d.

components of the regulations to deeply assess how they function in practice, as well as their advantages and drawbacks.

1.3 The Roadmap

The thesis will be divided into three main chapters, each subdivided into sections. Chapter I aims to examine SHAs in the U.S., their scope, nature, legal foundations, and relations with other corporate documents. Chapter II will refer to types, key provisions, enforcement challenges, together with effective remedies and case law of U.S. SHAs. Chapter III will analyze Georgia's SHA framework. It will highlight legal gaps, enforcement challenges, and practical issues. Chapter IV will be devoted to a comparative analysis, identifying governance problems in Georgia and lessons to be learned from the U.S. experience. The Thesis will be concluded with policy recommendations to enhance SHA enforcement and strengthen corporate governance in Georgia.

Chapter I - Shareholder Agreements in the U.S.

1.1 Overview of the History, Regulation, Essence, and Nature of SHAs in the U.S.

SHAs were not welcome by courts in the U.S. at the time when statutes and common law rules primarily addressed corporations with publicly traded shares. During that period, judges demonstrated hostility towards close corporations and contracting shareholders.[14] There was the perception that *"every corporation must be managed by or under the control of directors. Historically, directors were heavily involved in managing the daily affairs of the corporation".*[15]

Under Delaware law, a close corporation is a specific type of a corporation that should satisfy three main conditions: first, all shares must be held by no more than 30 persons, second, shares must be subject to transfer restrictions to maintain a closely held nature, and third, the corporation is not allowed to engage in a public offering of its stock to remain private.[16] This structure includes a diverse range of businesses, such as family-owned enterprises, high-tech startups, small firms, or even publicly held corporations.[17] One of the main characteristics of closely held corporations is concentrated ownership. In case of concentrated ownership, a small group of individuals, such as family members or a few investors, own most or all of the company's shares. As a result, shareholders enter into different types of agreements to regulate the most important relations of the corporation.[18] As close corporations became increasingly common, U.S. courts began reconsidering their position on SHAs.[19] As the Second Circuit

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[14] Gage v. Fisher, 65 N.W. 809 (N.D., 1895), quoted in Rainer Kulms, *A Shareholder's Freedom of Contract in Close Corporations - Shareholder Agreements in the USA and Germany*, 686.
[15] LM Fairfax, *Business Organizations: An Integrated Approach* (2nd edn, Foundation Press 2024, chapter 7, 185.
[16] Delaware General Corporation Law, § 342 (2023), https://delcode.delaware.gov/title8/c001/sc14/index.html, accessed: 3.06.2025.
[17] Ricardo Molano-León, *Shareholders' Agreements in Close Corporations and Their Enforcement in the United States of America* (2008) 117 *Vniversitas* (Bogotá) 131. http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0041-90602008000300009&lng=en&nrm=iso&tlng=en#num4, accessed:15.03.2025.
[18] Ibid.
[19] Brightman v. Bates, 55 N.E. 809 (Mass., 1900), quoted in Rainer Kulms, *A Shareholder's Freedom of Contract in Close Corporations - Shareholder Agreements in the USA and Germany,* 688.

correctly stated: *"There is little logical reason why individuals cannot be 'partners inter sese and a corporation as to the rest of the world,' so long as the rights of third parties such as creditors are not involved."*[20] So, it is clear that one of the main advantages of SHAs is that it ensures a balance between internal autonomy and external compliance with corporate law.

Compared to the U.S., Georgia has no exact legal equivalent to the Delaware close corporations. However, a Limited Liability Company (LLC) has a functionally similar role as it allows the existence of a small number of shareholders, share transfer restrictions without the consent of other members, and is not publicly traded.[21]

The nature of SHAs is debatable. As it is correctly mentioned in legal literature, *"Shareholders' agreements represent an interface between the contractual and corporate law."*[22] There are significant differences between these two paradigms. Contracts are self-defining, which means that they create their own boundaries. Contracts specify the terms, duration, as well as how they can be modified.[23] By contrast, corporate law defines the main participants in a corporation and assigns rights and duties among them according to statutes, not an agreement.[24] Even though many aspects of the relationship among a corporation's participants can be altered through contractual agreements, certain elements remain unchangeable.[25]

In conclusion, SHAs, especially in closely held corporations, give shareholders flexibility to structure their relationships, benefits, duties, and obligations without being strictly bound by default corporate rules. Even though SHAs allow shareholders to customize their agreements and get rid of the rigid statutory framework, some legal provisions still remain

[20] Arditi v. Dubitzky, 354 F.2d 483, 486 (2d Cir. 1965)., quoted in Rainer Kulms, *A Shareholder's Freedom of Contract in Close Corporations - Shareholder Agreements in the USA and Germany,* 688.
[21] Articles 123 and 137 of Law of Georgia on Entrepreneurs, https://matsne.gov.ge/ka/document/view/5230186?publication=12, accessed: 03.06.2025.
[22] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 120.
[23] Pinto Tech, 526 S.W.3d at 443, quoted in *Jill E Fisch, Stealth Governance: Shareholder Agreements and Private Ordering* (ECGI Law Working Paper No 538/2020, November 2022)*,* 941.
[24] Ibid 941.
[25] Ibid 943.

binding and unchangeable. Ultimately, SHAs create a balance between contractual freedom and corporate law compliance as they offer both flexibility and structure.

1.2 Shareholders' Agreements and Their Relations with other Corporate Documents

This chapter will analyze why shareholders prefer to use SHAs for private ordering rather than other corporate documents, such as statutes, articles of incorporation, and bylaws.

In the modern era, corporate law increasingly supports the idea of private ordering that allows companies to customize their governance structures to suit their specific needs. More and more corporations are implementing various governance mechanisms tailored to their unique characteristics.[26] However, mandatory rules in traditional corporate documents might limit the scope of private ordering. A more effective tool to implement private ordering is to sign the SHA, as it allows parties to customize their relationships and governance beyond the constraints of statutory requirements.[27] Even though shareholders initially define the purpose of the organization, once it is established, the company operates autonomously and limits shareholders' ability to directly influence its activities.[28] Since shareholders don't have direct control over the company's assets, SHAs allow them to address their limited control on the company's operation ex-ante by setting contractual terms in advance.[29] The following analysis will examine the distinction between separate corporate documents and the rationale for using SHAs for controlling and making meaningful decisions within corporations, especially in areas that fall outside the limited scope of statutory regulation.

[26] Ibid 912.
[27] Ibid 927.
[28] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 9.
[29] Ibid.

Articles of Incorporation are fundamental corporate documents that contain main information about the company and serve as the foundational framework that guides the company's future structure and operational activities. It is legally binding for the company and its shareholders and is subject to mandatory registration with the state authority. As a result, it is harder to amend.[30] If we compare Articles of Incorporation with SHAs, both of them have a contractual basis because shareholders' consent is necessary for their establishment, however, they function differently. *"To put it simply, these are two parallel worlds, each having its own rules that are not directly related, although they might cross each other."*[31]

Bylaws serve as internal acts of the company that govern the company's day-to-day operations. As it is a private document, there is no mandatory requirement to file it with the state authority, and the corporation stays mostly out of the public eye.[32] Sometimes, the articles of incorporation and the bylaws are even a single document. Moreover, even though bylaws are binding rules, they are easier to modify.[33]

SHAs serve as internal acts of the company that address issues that are not typically covered in the articles of incorporation or bylaws. They can contain everything that is not prohibited by documents with a higher hierarchy.[34] Furthermore, SHAs become binding for only the shareholders who are parties to the agreement, and an amendment requires the consent of the contracting parties.[35] Beyond the analysis provided above, there are several compelling reasons why SHAs are often favored over other corporate documents:

1. SHAs offer flexibility. They can be implemented and modified without following the formal procedures that are required to amend articles of association or bylaws;[36]

[30] Clarkson, Miller, Jents and Cross, *West's Business Law* (Thomson, 9th ed., 2004), 738.
[31] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 12.
[32] Clarkson, Miller, Jents and Cross, *West's Business Law* (Thonsom, 9th ed., 2004), 1070.
[33] Ibid.
[34] Ibid 1075.
[35] Ibid 1075.
[36] See Rauterberg, supra note 10, at 1147, quoted in Jill E Fisch, *Stealth Governance: Shareholder Agreements and Private Ordering* (ECGI Law Working Paper No 538/2020, November 2022), 932.

2. SHAs operate privately. Articles of association, even those for private corporations, are publicly accessible documents. By contrast, SHAs are treated as contracts and do not need to be filed with state authorities or made publicly available. This characteristic qualifies SHAs as a type of stealth corporate governance;[37]
3. SHAs expand private ordering because they have at least the potential to extend beyond other corporate documents and modify provisions of corporate law that would otherwise be compulsory.[38]
4. SHAs have a less binding nature. The articles of association are legally binding on both the company and all of its shareholders, including those who did not vote for this amendment, if the required quorum is met. By contrast, SHAs only bind parties who have explicitly demonstrated consent to those terms.[39] This difference demonstrates the broader applicability of the articles of association versus the limited, contractual scope of SHAs.
5. SHAs can be terminated at any time, no matter of the duration of the company or the shareholder's percentage of ownership. Termination can occur either by mutual agreement, by unilateral act, or on its own after the voting event's occurrence.[40] Interestingly, recent case law demonstrates that SHAs can be effective in binding shareholders to agreed terms, even beyond the life of the agreement itself. In Manti Holdings v. Authentix,[41] minority shareholders signed a SHA and waived their right to seek appraisal if the company was sold with the majority's approval. After the sale occurred, they still tried to exercise the appraisal rights regardless of the SHA, arguing that the termination clause nullified their prior agreement to refrain from doing so. The Delaware Supreme Court rejected this argument

[37] See Rauterberg, supra note 10, at 1148 , quoted in Ibid.
[38] See Rauterberg, supra note 10, at 1167, quoted in Ibid 933.
[39] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 15.
[40] Ibid 20.
[41] *Manti Holdings, LLC v Authentix Acquisition Co, Inc*, 261 A.3d 1199, 1215 (Del, 2021), https://courts.delaware.gov/Opinions/Download.aspx?id=324310&utm_source=chatgpt.com, accessed: 26.04.2025.

and ruled that the waiver survived the agreement's termination because the parties clearly intended to apply even after the sale.[42] By contrast, shareholders can only withdraw from the articles of association in exceptional circumstances. Typically, it can happen through the transfer of shares or by exiting the company in another manner.[43] This distinction highlights the better flexibility of shareholders' agreements compared to the more rigid and complex nature of the articles of association.

One widespread problem is related to whether contract or corporate law has priority, and which trumps the other. Corporate law establishes a clear hierarchy - statutes are supreme, the articles of incorporation must comply with statutes, just as bylaws cannot contradict the articles of incorporation. SHAs, however, are at the bottom-most place in this hierarchy and therefore must not conflict with any of these higher-ranking sources of law. Under this view, a SHA that conflicts with this hierarchy may be considered invalid.[44] On the other hand, SHAs are contracts, and contracts are outside of the scope of corporate law. Courts generally uphold the principle that individuals can waive statutory or even constitutional protections through contracts. This creates tension, as SHAs could potentially override individual rights established under corporate law, but not the fundamental corporate hierarchy itself.[45] Based on the prevailing approach, conflicts in the U.S. are resolved based on the specific legal framework of a state and the intent of the shareholders.[46] As demonstrated in one Delaware case,[47] the Supreme Court validated the provision in a SHA where shareholders waived their appraisal rights. In that decision court emphasized the enforceability of previously agreed contractual

[42] Ibid.
[43] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 20.
[44] Gaskill v. Gladys Belle Oil Co., 16 Del. Ch. 289, 296 (1929), quoted in Jill E Fisch, *Stealth Governance: Shareholder Agreements and Private Ordering* (ECGI Law Working Paper No 538/2020, November 2022), 936.
[45] See G. Richard Shell, Contracts in the Modern Supreme Court, 81 CAL. L. REv. 431, 475-80 (1993), quoted in Jill E Fisch, *Stealth Governance: Shareholder Agreements and Private Ordering* (ECGI Law Working Paper No 538/2020, November 2022), 936.
[46] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 25-28.
[47] *Manti Holdings, LLC v Authentix Acquisition Co, Inc*, No 354, 2020 (Del Sup Ct, 13 September 2021), 13-14, https://courts.delaware.gov/Opinions/Download.aspx?id=324310, accessed: 04.06.2025.

terms.[48] Conversely, in another case, the Delaware Court of Chancery invalidated some SHA provisions that violated the board's statutory authority and highlighted the primacy of corporate statutes over conflicting contractual provisions.[49] These cases demonstrate that U.S. courts carefully resolve the tension between upholding SHAs and, at the same time, maintain the foundational principles of corporate governance based on specific characteristics of each case.

1.3 The Validity and Enforceability of Unanimous and Non-Unanimous Shareholder Agreements in the U.S.

The previous chapter highlighted that courts were historically hostile toward SHAs, however, this is no longer the case with unanimous SHAs. Unanimous SHAs are generally upheld by U.S. courts because they include all shareholders as parties. Therefore, there are no nonparty minority shareholders who could potentially get harmed.[50]

Zion v. Kurtz [51] is one of the precedential cases in the U.S. that refers to only two people involved in a closely held corporation and demonstrates the court's willingness to enforce unanimous SHAs even though they may deviate from statutory norms as long as no third party suffers actual harm. The dispute related to a unanimous SHA that required the plaintiff's consent for almost all corporate actions. The agreement was enforceable under common law, but it failed to meet statutory notice requirements in the articles of incorporation. An agreement was upheld by the majority of court because they considered that no third party was harmed

[48] Ibid.
[49] *West Palm Beach Firefighters' Pension Fund v Moelis & Co*, C.A. No. 2023-0309-JTL (Del Ch, 23 February 2024), 66-70, https://courts.delaware.gov/Opinions/Download.aspx?id=360460, accessed: 04.06.2025.
[50] See, e.g., Long Park, Inc. v. Trenton-New Brunswick Theatres Co., 297 N.Y. 174, 77 N.E.2d 633 (1948); quoted in Steven N. Bulloch, *Shareholder Agreements in Closely Held Corporations: Is Sterilization an Issue* (1986), 73.
[51] Steven N. Bulloch, *Shareholder Agreements in Closely Held Corporations: Is Sterilization an Issue* (1986), 74-78.

and that allowing the defendant to escape his contractual obligations would have been unfair. This decision strengthened the effectiveness of unanimous SHAs in closely held corporations.[52]

By contrast, nonunanimous SHAs (NSAs) are agreements that are entered into by only some of the shareholders. The validity of NSAs is a more controversial issue.[53] Traditionally, courts in the U.S. considered NSAs invalid, especially if they limit the discretion of the board of directors. Courts argued that directors have fiduciary duties to act independently in the corporation's best interests. Another concern with the NSA was that it may have a negative effect on nonparty minority shareholders.[54]

Nowadays, the approach has changed. Based on the modifications in 2024, section 122(18) represents one of the most significant updates to the Delaware General Corporation Law (DGCL) in many years.[55] It modifies the framework established by Section 141(a), that traditionally emphasized Delaware's director-centric model of corporate governance.[56] Initially, section 141 (a) required any modification to the board's authority to occur through an amendment to the corporate charter. It was a process that demanded a firm-wide approval.[57] However, section 122 (18) introduced an important shift as it permitted the board to alter its power through private contracts with one or more shareholders.[58] Based on the current approach, section 122(18) permits boards to delegate all or nearly all of their authority to specific shareholders through private contracts. So, there is no longer a necessity for approval or for participation from the broader shareholder body.[59] The effectiveness of section 122 (18) raises questions among legal scholars. Supporters of that section consider that fiduciary duties,

52 Ibid.
53 Ibid 78-79.
54 Ibid.
55 Gabriel V Rauterberg and Sarath Sanga, *'Altering Rules: The New Frontier for Corporate Governance'* (2025) 42 Yale Journal on Regulation 291, U of Michigan Law & Economics Research Paper No 24-040, Yale Law & Economics Research Paper, SSRN, 299, https://ssrn.com/abstract=5083439, accessed: 27.04.2025.
56 Ibid.
57 Ibid.
58 Ibid.
59 Ibid 322.

such as the duty of loyalty and care, will protect remaining shareholders.[60] However, critics point out that fiduciary duties will not be a real safeguard if they cannot be enforced properly. For example, a problem will arise if the people who should bring the claim, like directors or controlling shareholders, are conflicted.[61]

In conclusion, the analysis demonstrated that unanimous SHAs coordinate all shareholders' interests and reduce internal disputes. Courts generally uphold them and recognize their value unless the agreement has a negative impact on third parties. On the other hand Even though courts often considered NSAs invalid, nowadays the approach has changed. Section 122(18) allows Delaware corporations to sign agreements with certain shareholders to restrict or reshape corporate decision-making without requiring input from the remaining shareholders.

[60] Ibid 324.
[61] Ibid.

Chapter II - Key Provisions in the U.S. Shareholders' Agreements

2.1 Limiting the Powers and Discretion of the Board

In Delaware Corporate Law, it is important to differentiate corporate governance from management authority. Corporate governance is based on DGCL Section 141(a), which states that, unless the charter says otherwise, the board of directors governs the corporation's business and affairs.[62] Directors have fiduciary duties, and the business judgment rule presumes that they make decisions with due care and in the company's best interests.[63] So, directors are the ones who govern the company and make long-term strategic decisions.

By contrast, Management refers to the daily operations of the company and is carried out by officers like the CEO and CFO, whose function is to implement the board of directors' strategies and supervise routine business activities.[64] Importantly, in Gantler v Stephens, [65] the Delaware Supreme Court recognized that officers, as well as directors, owe fiduciary duties, especially when their actions significantly affect the corporate outcomes.[66]

Historically, courts invalidated SHAs concerning director decisions.[67] The main reasons were that they conflicted with statutory provisions, especially those that assigned corporate governance decisions exclusively to the board of directors.[68]Another argument was that SHAs created a risk to undermine directors' fiduciary duties, such as the duty to exercise independent judgment in the best interests of the corporation.[69] For example, if the director is obliged to

[62] Willem J L Calkoen (ed), *The Corporate Governance Review*, 7th edn (Law Business Research Ltd 2017), 473.
[63] Ibid 475.
[64] Don Mayer et al., 'Chapter 25: *Corporate Powers and Management' in The Legal Environment and Foundations of Business Law* (Saylor Academy 2012), 979.
[65] Gantler v. Stephens, 965 A.2d 695, 709 (Del. 2009), https://caselaw.findlaw.com/court/de-supreme-court/1129452.html, accessed: 04.06.2025.
[66] Ibid.
[67] Ricardo Molano-León, *Shareholders' Agreements in Close Corporations and Their Enforcement in the United States of America* (2008) 117 *Vniversitas* (Bogotá) 131, (n 17).
[68] Ibid.
[69] Ibid.

constantly follow shareholder instructions, he may not be able to act objectively and adapt to the corporation's evolving needs. Moreover, courts were concerned that these agreements could be unfair to non-party shareholders.[70] However, over time, courts recognized that such practice led to harsh results, and the approach to shareholder authority developed time by time.[71]

Nowadays, the U.S. corporate law provides specific tools for shareholders to legally limit or reshape the powers of the board of directors**.** DGCL contains important provisions that allow to limit the power and the discretion of the board through SHAs that are signed by the majority of voting shareholders.[72] These provisions allow shareholders to directly govern the corporation instead of a board, to set special voting rules for major transactions, as well as to take corporate actions without meetings by unanimous consent.[73]

2.2 Inter-Generational Transfer of Wealth and Allocation of Control

The problem of control is essential not only to large corporations with numerous shareholders but also to closely held firms and SMEs. A key challenge is how to transfer control and ownership across generations.[74] Corporate law must respond to this challenge by offering flexible and practical solutions. In this regard, this subchapter will analyze how SHAs can serve as a mechanism to manage control, prevent disputes, and ensure continuity of the business. The U.S. legal system provides an illustrative example of how SHAs can be structured to solve the above-mentioned problems. The Galler v. Galler[75] case was a big precedent that gave a green light to innovations. *"Galler v. Galler was the first case in which a court recognized the peculiarities of a closely held corporation in determining the validity of a shareholder*

[70] Ibid.
[71] LM Fairfax, *Business Organizations: An Integrated Approach* (2nd edn, Foundation Press 2024), 196.
[72] The Delaware General Corporation Code §351-353, https://delcode.delaware.gov/title8/c001/sc14/index.html, accessed: 27.04.2025.
[73] Ibid.
[74] Tajti, T. (2022). *Berle and Means' Control and Contemporary Problems*. Bratislava Law Review, 6(2), 70-71, https://doi.org/10.46282/blr.2022.6.2.309, accessed: 28.04.2025.
[75] *Galler v. Galler*, 32 III. 2d 16 https://www.courtlistener.com/opinion/2199251/galler-v-galler/?utm_source=chatgpt.com, accessed: 05.04.2025.

agreement".[76] In many family-owned or closely held businesses, problems appear either when the company starts making real money or when other serious challenges arise. Without clear agreements, these situations can lead to intense conflicts between founders or family members.[77] *"Under such circumstances, old friends or family members quickly became fierce enemies over disputes concerning the share in the profits they were entitled to".* [78]

As discussed in the legal literature, the Galler v. Galler case has special importance for at least three reasons:[79] First, it confirmed that SHAs are valid. Second, it recognized that SMEs have unique needs that differ from traditional large corporations and as a result, they require more specific governance rules and finally, this case demonstrated how a well-structured SHA can ensure not only financial support for family members after a founder's death but also keep the business running under family control.[80]

Based on the facts of the case, brothers Benjamin and Isadore Galler were co-owners of the family-run Galler Drug Company, where they possessed equal shares. In 1955, they signed the SHA, which aimed to secure financial protection for their families and preserve their shared control of the business in case one of them passed away. After Benjamin died in 1957, his widow, Pearl, tried to enforce the agreement, however, Isadore's family, particularly his son, who served as a director, refused to honor it and claimed that the agreement was legally invalid. The legal issue was whether the agreement was enforceable or whether it unlawfully limited the board's powers.[81]

To analyze the enforceability of the SHA, it is important to first discuss its content. The agreement was unique as it contained a mechanism to ensure financial support for family members of shareholders even after their death. The first tool was the requirement for the

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[76] Steven N. Bulloch, *Shareholder Agreements in Closely Held Corporations: Is Sterilization an Issue* (1986), 68.
[77] Tajti, T. (2022). *Berle and Means' Control and Contemporary Problems,* (n 74), 71.
[78] Ibid.
[79] Ibid.
[80] Ibid.
[81] *Galler v. Galler*, 32 III. 2d 16 (n75).

corporation to continue paying a deceased shareholder's widow a sum equivalent to twice the deceased's annual salary for a period of five years.[82] Such continuation payments were critical to provide consistent financial support to the widows and ensure that their well-being was not affected even in the case of the shareholder's death. The second tool mandated the payment of a fixed annual dividend of $50,000, in case the corporation maintained an earned surplus of at least $500,000.[83] Generally, dividends function otherwise. They are discretionary and are based on board decisions, however, this provision guaranteed the consistent profit distribution to family members. As a result, they were offered financial security and predictability. The third tool allowed the company to buy back shares from a deceased shareholder's estate to cover taxes and other expenses.[84] It was an important provision that ensured the family wouldn't be obliged to pay inheritance costs, even if the company wasn't performing well at the time.

The brothers also designed SHA in a way to guarantee that control of the business would remain within their two families. They used technical but quite reasonable tools to reach their goal. The initial technical rules addressed the composition of the board of directors. The bylaws of the corporation should have been revised to establish a four-member board of directors with a required quorum of three.[85] This provision ensured that both families maintained the representation on the board and were thus in the position to decide about corporate governance and other major issues. The second set of rules required at least ten days' notice before conducting directors' meetings.[86] This rule ensured that one of the family representatives could not take advantage of their role by suddenly calling a board meeting, knowing the other side might not have enough time to prepare for the discussion or attend the meeting. Furthermore, it guaranteed informed and transparent decision-making. Moreover, they included a provision

[82] *Galler v. Galler*, 32 III. 2d 16, discussed in Tajti, T. (2022). *Berle and Means' Control and Contemporary Problems* (n 75), 73.
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Ibid 74.

that enabled the deceased brother's wife the right to appoint a descendant to replace her deceased husband on the board.[87] Such regulation had a crucial importance as it excluded outsiders from acquiring ownership. Galler brothers correctly predicted that it is important to determine who you let into the company to avoid years of litigation.

The Illinois Supreme Court found the agreement to be legitimate and enforceable between equal shareholders in a closely held company. The agreement was not considered to be an improper corrupt scheme. The court highlighted that the deal involved no fraud, did not harm third parties, and did not violate any statutes.[88]

To conclude, the Galler v. Galler case is a clear demonstration that SHAs can play a key role in improving corporate governance, including in family businesses. SHAs can reduce conflict, protect family interests, and ensure business continuity by allowing owners to regulate issues such as board structure, profit distribution, and succession in advance. The case is precedential because it shows a shift from rigid rules to a more flexible approach, where private agreements can guide how a company is managed. Moreover, this decision illustrated that SHAs are not just contracts, they are valuable corporate governance tools in closely held corporations.

2.3 Voting Agreements

Shareholder disagreements can slow down or even hinder important decisions in a corporation. To avoid a stalemate, it is highly beneficial to conclude shareholder voting agreements that outline in advance how shareholders will vote on certain matters. According to DGCL, shareholders are allowed to make written agreements on how to vote their shares, and as long as these agreements comply with other applicable provisions of law, they will be valid

[87] Ibid 74.
[88] *Galler v. Galler*, 32 III. 2d 16 (n75).

and enforceable.[89] This subchapter aims to explore the main types of shareholder voting agreements, along with their advantages, practical applications, and potential limitations.

2.3.1 Pooling Agreements

As per DGCL, a written and signed agreement between shareholders can set out how they will vote their shares. Moreover, it can also include a proxy to carry out those votes.[90] Shareholder pooling agreements allow shareholders to coordinate their votes and influence on important corporate decisions. Goals that may be difficult to achieve individually become easier through coordinated pooling agreements.[91] Normally, pooling agreements cover: I) agreement to vote shares in favor of certain directors; II) agreement to structure voting power in a way that gives certain shareholders more influence than their ownership percentage would normally allow, and III) agreement to vote in favor of a particular business strategy or corporate policy.[92] Even though these agreements give shareholders more control over corporate decisions, they can raise legal concerns if they interfere with the board's authority or if they harm minority shareholders or creditors. Because of this, courts have to review them very carefully and may refuse to enforce conflicting agreements.[93] Ringling Bros. v. Ringling [94] is an important case that confirmed the validity and enforceability of shareholders' pooling agreements. In this case, the Delaware Supreme Court enforced a shareholder pooling agreement and disregarded votes cast that violated it. Even though the court upheld the shareholders' right to make binding

[89] The Delaware General Corporation Code § 218 (c), https://delcode.delaware.gov/title8/c001/sc07/index.html, accessed: 28.04.2025.
[90] Ibid Articles § 218(c), (d).
[91] Tilden P. Wright III, *Shareholder Pooling Agreements - Validity, Legality and Enforcement* (1971) 24 Ark L Rev, 501.
[92] Ricardo Molano-León, *Shareholders' Agreements in Close Corporations and Their Enforcement in the United States of America* (2008) 117 *Vniversitas* (Bogotá) 131, (n 17).
[93] Tilden P. Wright III, *Shareholder Pooling Agreements - Validity, Legality and Enforcement* (1971) 24 Ark L Rev, 501.
[94] *Ringling Bros-Barnum & Bailey Combined Shows Inc v Ringling* (1947) 29 Del Ch 610, 53 A2d 441 (Del Ch), https://law.justia.com/cases/delaware/supreme-court/1947/29-del-ch-610-53-a-2d-441-1947.html, accessed: 28.04.2025.

agreements about how they vote, it made clear that it would not interfere with the corporation's internal election process beyond enforcing private agreements.[95]

2.3.2 Proxy Agreements

In a corporate law context, the proxy is a written authorization by a shareholder allowing another person to vote the shareholder's shares at a shareholder meeting. A proxy is also considered to be a person who is authorized to vote on behalf of the shareholder.[96] The proxy agreements allow voting or pooling agreements to go one step further by not only determining how shareholders will vote but also by granting one or more individuals the irrevocable authority to vote for those shares.[97] This extra layer has a function to enhance governance mechanisms by ensuring that previously agreed voting decisions will be actually carried out without delays, uncertainties, or noncompliance among shareholders.[98]

As per DGCL, shareholders are allowed to vote either in person or by proxy**,** provided the proxy is authorized in writing or by electronic transmission.[99] In Hawkins v. Daniel,[100] the Delaware Court of Chancery ruled that shareholder proxy agreements can be made irrevocable if they are clearly stated and tied to a real interest. However, they will not automatically bind future shareholders unless the agreement explicitly says so.[101] SHAs can clearly outline how voting power will be exercised, including who will receive the proxy and under what terms. Therefore, it can strengthen consistency and predictability in corporate decision-making.

[95] Ibid.
[96] Black's Law Dictionary (Bryan A Garner ed, 11th edn, Thomson Reuters 2019) s.v. "proxy".
[97] Ricardo Molano-León, *Shareholders' Agreements in Close Corporations and Their Enforcement in the United States of America* (2008) 117 *Vniversitas* (Bogotá) 131, (n 17).
[98] Ibid.
[99] The Delaware General Corporation Code § 212 (b) https://delcode.delaware.gov/title8/c001/sc07/, accessed: 08.04.2025.
[100] *Hawkins v Daniel* C.A. No. 2021-0453-JTL (Del Ch 4 April 2022), https://courts.delaware.gov/Opinions/Download.aspx?id=331590, accessed: 28.04.2025.
[101] Ibid.

2.3.3 Voting Trust

In U.S. corporate law, voting trusts can be used to consolidate shareholder power for a common purpose. DGCL allows shareholders to create a voting trust. In this case, shareholders transfer their shares to a trustee who will vote on their behalf. The agreement must be in writing, and the maximum statutory duration is 10 years. After agreeing, parties are obliged to file a copy with the corporation's main office.[102] So, everyone is informed about the existence of the voting trust. In case of a voting trust, while trustee gains control of voting rights, the original shareholders retain the economic benefit of the ownership that is usually represented through voting trust certificates. The certificates can be used to prove shareholders' rights to dividends.[103] Voting trusts were created after realizing the limits of other methods, such as proxy agreements. A proxy is just an agency relationship, that does not transfer ownership and is usually revocable at any time and ends automatically if the shareholder or the proxy holder dies. As a result, they were not reliable to control voting power over a certain future period.[104] *"Faced with the problems of using proxies, stockholders who wanted long-term, unified voting control chose to use voting trusts instead"*.[105]

To summarize, voting trusts can be very beneficial, especially in family businesses and for longer-lasting projects. In this regard, SHAs can play a crucial role in the creation and execution of voting trusts and in enhancing predictability even from the very beginning.

[102] The Delaware General Corporation Code § 218 (a) https://delcode.delaware.gov/title8/c001/sc07/, accessed: 08.04.2025.
[103] Ricardo Molano-León, *Shareholders' Agreements in Close Corporations and Their Enforcement in the United States of America* (2008) 117 *Vniversitas* (Bogotá) 131, (n 17).
[104] J Gordon Gose, *Legal Characteristics and Consequences of Voting Trusts* (1945) 20 Washington Law Review 253, page 129.
[105] Ibid 130.

2.3.4 Veto Power

Voting agreements may also grant shareholders contractual veto power over certain decisions. A shareholder who holds veto power can effectively block decisions.[106] Regulating veto power through SHAs can serve as a protective mechanism for minority shareholders, too. For example, minority shareholders may decline to contribute capital unless they are granted veto rights over critical corporate decisions such as asset sales, mergers, or liquidation.[107]

2.3.4 Voting Agreement Limitations

Voting Agreements are generally permissible and enforceable under corporate law, however, they are not without limitations. A clear example of this limitation was illustrated in *Abercrombie v. Davies*.[108] In this case, the Delaware Court held the validity of shareholder voting trust agreements under DGCL § 218 and allowed shareholders to coordinate votes to elect directors. However, the court clarified that voting agreements cannot restrict how directors will vote once they are elected because directors must exercise independent judgment under DGCL § 141(a).[109] This decision drew a clear line between shareholder influence and responsible corporate governance and demonstrated that shareholders cannot use voting agreements as a tool to control the decision-making of directors once they are elected.

2.4 Close Corporation-Specific Shareholder Protections

The following subchapter will analyze the protective mechanisms that can strengthen corporate governance in closely held corporations by offering shareholders practical solutions

[106] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 314.
[107] Ibid 654.
[108] *Abercrombie v. Davies* 130 A.2d 338 (1957) https://law.justia.com/cases/delaware/supreme-court/1957/130-a-2d-338-3.html, accessed: 09.04.2025.
[109] Ibid.

before disputes threaten the company's future. These protections include the right of first refusal, tag-along, and drag-along provisions, together with shoot-out clauses that aim to resolve deadlocks.

2.4.1 The Right of First Refusal

The logic behind the Right of First Refusal is that the shareholders who desire to sell their shares are required to first offer shares to the corporation, afterwards to the remaining shareholders, and only after they have rejected the purchase, to outside third parties. This provision protects the remaining shareholders by giving them the first opportunity to purchase shares.[110] *"Generally, the right of first refusal is used to allow the remaining shareholders full control and notice as to who their new "partners" will be in the enterprise"*.[111] It is beneficial to include a similar provision in the SHA as it protects not only shareholders' interests but also preserves the company's internal balance, accountability, and is an effective mechanism against stock watering.

2.4.2 The Tag-Along (or Co-Sale) Rights

Including Tag-along rights in SHAs offers a strong protective mechanism for minority shareholders by giving them an opportunity to sell their shares together with majority shareholders under the same conditions and at the same price.[112] This mechanism ensures that minority shareholders are not left behind with undesirable or new controlling parties. Moreover, it ensures fairness by allowing all shareholders to benefit from sales proportionally. This

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[110] Kerry M. Lavelle, *Drafting Shareholder Agreements for the Closely-Held Business* (1991), 112.
[111] See *Affiliated Ute Citizens v. United States,* 406 U.S. 128 (1972); B & H Warehouse,
Inc. v. Atlas Van Lines Inc., 348 F. Supp. 517, 520 (N.D. Tex. 1972), rev'd, 490 F.2d 818 (5th Cir. 1974), quoted in Ibid.
[112] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 657.

protective function was tested in *Khan v. Warburg Pincus,*[113] where minority shareholders lost their tag-along rights. Even though those rights were originally granted, the agreement allowed changes by majority vote and explicitly disclaimed fiduciary duties among members. The Delaware Court of Chancery upheld the amendment as its role was limited to enforcing the written agreement.[114] This case demonstrated that tag-along rights are meaningful if SHAs not only include them but also protect them from being amended by the majority.

2.4.3 Drag Along (or Bring-Along) Rights

Those rights aim to protect the majority shareholders' interests by giving them the power to influence minority shareholders to sell their shares in the same transaction. This provision ensures that minority shareholders cannot block or delay a transaction that involves the sale of the majority's stake.[115] Similar provisions in SHAs ensure that sales can happen smoothly and make the corporation more marketable to potential buyers who prefer full ownership and control.

In *Halpin v. Riverstone National, Inc.*,[116], the Delaware Court of Chancery ruled that minority shareholders maintain their appraisal rights when the company fails to properly exercise the drag-along provisions in a SHA. (such as properly notifying minority shareholders or invoking the drag-along clause beforehand). Even though the agreement required support for the merger, the failure to follow the necessary steps made it unenforceable.[117]

[113] *Khan v Warburg Pincus LLC*, C.A. No. 2022-1031-LWW (Del Ch 10 April 2025) https://courts.delaware.gov/Opinions/Download.aspx?id=378770, accessed: 04.06.2025.
[114] Ibid
[115] Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 657.
[116] *Halpin v Riverstone National Inc*, C.A. No. 9796-VCG (Del Ch 26 February 2015) https://courts.delaware.gov/Opinions/Download.aspx?id=360610, accessed: 04.06.2025.
[117] Ibid.

2.4.4 Shoot Out Clauses and Deadlock Resolution

The operation of a business is often connected with trouble and turmoil. Disagreements among shareholders can have a negative impact on a close corporation, where shareholders generally have more of their personal wealth and income tied to the business.[118] As a result, exiting from a close corporation rarely happens without suffering certain financial losses.[119] Disagreements between shareholders in close corporations often result in deadlocks. A common example of a deadlock is when share ownership is distributed in a way that allows a 50-50 split on a given issue.[120] Parties can incorporate different provisions in SHAs to resolve deadlocks. One of the most common deadlock provisions in SHAs requires appointing an arbitrator to step in and resolve disputes between parties.[121] The second common solution is to assign a springing vote. Springing vote means that a predetermined individual (such as a particular director or corporate counsel) will be granted the authority for final decision when deadlock arises.[122]

Incorporating shoot-out clauses in SHAs can be another mechanism to resolve deadlocks between shareholders. Based on this mechanism, if one shareholder initiates to end the deadlock, she can offer to buy shares of the other shareholder at a set price. The other shareholder then has two choices: a) to accept an offer, and b) to refuse an offer but instead buy the initiating shareholder's shares at the same price.[123] Based on the above-discussed examples, it is obvious that the deadlock resolution clauses in SHAs enhance corporate governance by protecting shareholders' interests and by offering structured mechanisms to resolve conflicts and ensure business continuity.

[118] Kerry M. Lavelle, *Drafting Shareholder Agreements for the Closely-Held Business* (1991), 127.
[119] Ibid.
[120] Ibid.
[121] Ibid.
[122] Ibid 128.
[123] *Why you should consider a shotgun, tag-along or drag-along clause within your shareholder agreements* - Article By Caravel Law, February 10, 2023, https://caravellaw.com/shotgun-tag-along-drag-along-clause/, accessed: 10.04.2025.

2.5 Enforcement Challenges and Remedies in Case of Breach

Breaching SHAs can have negative consequences not only for the parties themselves but also for the company's operations and overall performance because a breach can damage trust and confidence in the company's governance and even harm its reputation. As a result, it is beneficial for the non-breaching party to have a protective agreement that specifies the solutions available.[124] However, when it comes to remedies in case of a breach, SHAs do not follow the same path as contracts generally do.[125] The main distinction is that *"Shareholder agreement suits are more likely to result in specific performance rather than awarding damages"*.[126] The first most commonly used remedy is to void corporate actions that violate an agreement.[127] The second remedy can be to reform the agreement in a way to incorporate the previously agreed conditions.[128] Another type of remedy can request the transfer of shares as well as provide compensation and punitive damages.[129]

When it comes to enforcement challenges, it is worth mentioning that *"The terms of a Shareholder Agreement are only as effective as their enforcement"*.[130] Effective enforcement guarantees of the agreed terms have crucial importance in maintaining the stability and the success of the business because they aim to prevent costly and long-lasting disputes.[131]

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[124] Business Law Article - Aaron Hall, *Legal Implications of Breaching Shareholder Agreements* https://aaronhall.com/legal-implications-of-breaching-shareholder-agreements/, accessed: 11.04.2025.

[125] O'Neal/Thompson Close Corporations and LLCs: Law and Practice § 4:42 (citing e. g., Blount v. Taft, 295 N.C. 472, 246 S. E.2d 763, 771 (1978), noted 15 Wake Forest L. Rev 531 (1979), 68 Ky. L.J. 520 to 523 (1980)], quoted in Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 663.

[126] Ibid.

[127] Zion v. Kurtz, 50 N.Y .2d 92, 428 N. Y.S.2d 199, 405 N.E.2d 681, 15 A.L.R.4th 1061 (1980), noted 33 Syracuse L. Rev 15 to 17 (1982) (court issued an injunction declaring valid a shareholders' agreement providing that no business or activities of a closely held corporation could be conducted without the consent of the minority shareholder; certain corporate actions taken without the consent of the minority shareholder were void), quoted in Ibid.

[128] In re Farm Industries, Inc., 41 Del. Ch. 379, 196 A.2d 582 (1963) (court reformed a voting trust agreement to include voting rights inadvertently omitted by an attorney, and ordering specific enforcement of the agreement as reformed if that would not harm anyone not a party), quoted in Ibid 664.

[129] Sankin v. 5410 Connecticut Ave. Corp., 281 F. Supp. 524 (D. D.C. 1968), judgment aff'd, 410 F.2d 1060 (D.C. Cir. 1969) (punitive and injunctive relief, as well as compensatory damages awarded against the breaching shareholder and the corporation), quoted in Ibid.

[130] Aaron Hall, *Legal Implications of Breaching Shareholder Agreements* (n 124).

[131] Ibid.

Nowadays, many statutes allow the enforcement of SHAs through specific performance. For example, Article MBCA 7.31(b), expressly provides that voting agreements are enforceable.[132] SHAs may also allow shareholders to include in the agreement provisions regarding enforcement mechanisms, such as including options like derivative actions when shareholders sue on behalf of the company that was harmed, arbitration or specific remedies such as dissolution or a buyout.[133] To conclude, while SHAs may provide remedies, enforcement requires careful attention, as breaches can harm both shareholder relations and corporate governance standards.

[132] MBCA 7.31(b), https://shorturl.at/tdGtr, accessed 11.04.2025.
[133] See Close Corp and LLCs: Law and Practice § 4:10, quoted in Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 666.

Chapter III - Shareholder Agreements in Georgia

3.1 Legal Framework for Shareholders' Agreements in Georgia

After the dissolution of the Soviet Union in the 1990s, Georgia regained independence and started implementing legal reforms to encourage the establishment of the capitalist economic system.[134] In this new reality, Georgian private law stood at a crossroads, either to preserve traditional norms or to align with the path of European development, and Georgia chose the latter.[135] In this regard, corporate law was expected to serve as the regulatory framework for newly emerging economic relations, as it represented a fundamental shift from Georgia's socialist past, where even the concepts of shares and shareholders were absent.[136]

Historically, Georgia has followed the continental European legal tradition, which is a characteristic Georgia shares with the broader Central and Eastern European region.[137] Due to the strong cooperation between the Georgian political leadership and German officials, the reception of corporate law primarily focused on German law. However, this approach was influenced not just by political or personal motives, but also by underlying legal and cultural factors.[138] Therefore, after reception, Georgian corporate law was grounded on liberal principles.[139]

Given that Georgia follows a traditional continental European legal system, the state plays a central role in creating the law. Laws are passed by Parliament or other authorized

[134] Irakli Burduli, *'Reception as a Milestone for Creation of Legal System (the Example of Corporate Law of Post-Soviet Georgia)'* (2021) 2(36), 112-113, https://prawoiwiez.edu.pl/piw/article/download/284/131, accessed: 04.06.2025.
[135] Mikheil Bichia, *'Some Features of the Development of Georgian Private Law from the 90s to the Present Day'* (2022) 8(24) *Law and World,* 76, https://lawandworld.ge/index.php/law/article/view/335, accessed: 04.06.2025.
[136] Irakli Burduli, *'Reception as a Milestone for Creation of Legal System (the Example of Corporate Law of Post-Soviet Georgia)'* (2021) 2(36), 112-113, (n134).
[137] Besarion Zoidze, *Reception of European Private Law in Georgia,* Teaching Center for Publishing 2005, 5.
[138] Gianmaria Ajani, *'By Chance and Prestige: Legal Transplants in Russia and Eastern Europe',* 1995, 43(1) American Journal of Comparative Law, 94.
[139] Irakli Burduli, *'Modern Georgian Corporate Law in the Mirror of European Integration'* (2023) 2 Journal of the History of the State and Law, 105, https://revistes.uab.cat/jhsgl/article/view/v2-burduli, accessed: 04.06.2025.

government institutions in accordance with the principle of statutory supremacy.[140] The judiciary in Georgia does not have the authority to create the law. Instead, courts adhere to the legal provisions that were established by legislative authorities, and they must operate strictly within the boundaries set by these laws.[141] Unlike in the U.S., court decisions in Georgia do not establish binding precedents, however, judicial interpretation still plays an important role.[142]

Over the last decades, Georgia's legal and economic frameworks have been restructured to advance the country's integration in the global economy.[143] Various reforms were introduced in Georgian legal system to strengthen the country's ability to attract foreign investment and enhance adequate protection and safety standards within the corporations.[144] Currently, Georgia's legal framework governing SHAs is built on a two-tier structure: the Civil Code of Georgia, (hereinafter "CCG"), which outlines the general contractual principles that apply to SHAs, and the Law of Georgia on Entrepreneurs (hereinafter "LGE"), especially after the 2022 amendments. LGE sets forth detailed rules regarding corporate governance and shareholder relations. In fact, the rules governing SHAs in Georgia are notably broad and imprecise, which often leads to practical complexities and legal uncertainty. The following chapter will examine the legal framework governing SHAs in Georgia, it will evaluate its effectiveness, identify gaps, and explore potential areas for improvement.

3.1.1 Analysis of the Georgian Civil Code

Georgian private law is primarily based on the Civil Code, which is the major legal act that governs civil transactions nationwide and affects the corporate life of Georgian

[140] A Borroni (ed), *Doing Business in Georgia: A Comprehensive Guide to Investors* (Meridiani Publishing Ltd 2015), 25.
[141] F. Schauer, *Has Precedent Ever Really Mattered In The Supreme Court*?, Georgia State University Law Review 381, (2007), 386.
[142] Ibid.
[143] A Borroni (ed), *Doing Business in Georgia: A Comprehensive Guide to Investors* (Meridiani Publishing Ltd 2015), XXII.
[144] Ibid XVIII.

companies.[145] CCG entered into force in 1997. It was fundamentally derived from the German model, specifically, the Civil Code of the Federal Republic of Germany, which itself is based on the pandectist legal tradition.[146] Civil law is based on the principle of private autonomy, which allows participants in civil relationships to undertake any action not prohibited by law, including those not expressly provided for by legislation.[147] This fundamental principle of private autonomy is achieved through the use of default norms. In this regard, civil law favors the will of parties and steps back to allow them to regulate their own affairs.[148] In addition to default norms, civil law also contains provisions that parties cannot alter. These provisions are called mandatory (imperative) norms.[149] The question of high importance is what distinguishes SHAs from traditional contracts, and whether the provisions of the CCG apply to them similarly. As it is correctly explained in the legal literature, *"In the typical contractual setting, process and scope are one and the same: only the contract parties decide, and only the contract parties are bound. Shareholder contracts, however, are different. They can change governance rules that apply even to non-signatory insiders".*[150] So, while SHAs may differ from traditional contracts in terms of their potential impact on corporate governance and non-signatory insiders, by their legal nature, they are considered to be private-law contracts, and, as a result, the relevant default and mandatory civil code provisions apply to them as well.

As SHAs fall under the scope of the freedom of contract provision described in the civil code, they are subject to the general validity provisions outlined in Articles 53-59 of the CCG. In Georgian civil law, a contract is a legal expression of intent by one or more parties who aim

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[145] A Borroni (ed), *Doing Business in Georgia: A Comprehensive Guide to Investors* (Meridiani Publishing Ltd 2015), 27.
[146] Lado Chanturia (ed), *Commentary on the Civil Code of Georgia, Book I: General Provisions of the Civil Code* (Tbilisi, 2017), VIII.
[147] Art 10 (2) of the *Civil Code of Georgia,* Book One: General Provisions of Civil Law, https://matsne.gov.ge/ka/document/view/31702?publication=133, accessed: 01.05.2025.
[148] Lado Chanturia, *General Part of Civil Law: A Textbook* (Samartali Publishing 2011), 49.
[149] Ibid 50.
[150] Gabriel V Rauterberg and Sarath Sanga, *'Altering Rules: The New Frontier for Corporate Governance'* (2025) 42 Yale Journal on Regulation 291, U of Michigan Law & Economics Research Paper No 24-040, Yale Law & Economics Research Paper, SSRN, https://ssrn.com/abstract=5083439, accessed: 27.04.2025.

to create, modify, or terminate a legal relationship.[151] For a contract to be valid, its content must be clear and legally permissible.[152] A contract is considered invalid if it violates laws, public order, or moral standards.[153] This includes contracts formed under duress, deception, or abuse of influence (especially in relationships of trust).[154] Agreements made merely for appearance's sake are also void.[155] Similarly, contracts made without serious intent are not legally binding if the other party reasonably believed the offer to be genuine.[156] Furthermore, legal capacity plays a central role in contract validity under CCG. Contracts entered into by minors or individuals unable to understand the nature of their actions are also typically void.[157] Moreover, Article 8 of the CCG obliges parties to exercise their rights and fulfill their duties in good faith.[158] It is a general requirement that spreads to all types of contractual relationships.

Finally, based on the principle of private autonomy and the existence of default norms in the CCG, parties are free to enter into any agreements not prohibited by law, including SHAs. This contractual flexibility gives shareholders an opportunity to define the structure of their internal relationships in a way that suits their best interests. However, their freedom can be limited and should remain within the boundaries of mandatory norms that aim to protect public interest and the rights of third parties.

3.1.2 Analysis of the Law of Georgia on Entrepreneurs

To foster the quick economic development of the country, the Georgian legal system seeks to provide a corporate environment that will allow smooth entry of new businesses to the local markets from different parts of the world. As a result, the Georgian government focused

[151] Article 350 of the Civil Code of Georgia (n 147).
[152] Ibid Article 353.
[153] Ibid Article 354.
[154] Ibid Article 355.
[155] Ibid Article 356.
[156] Ibid Article 357.
[157] Ibid Article 358.
[158] Ibid Article 8 (3).

on the liberalization of company law.[159] A significant milestone in the history of Georgian entrepreneurial law was on January 1, 2022, when the old 1994 edition was officially replaced by the new Law on Georgian Entrepreneurs (LGE).[160] As soon as the new law entered into force, enterprises were granted a deadline until April 1, 2026, to bring their registration data in compliance with the new legal requirements.[161] Nowadays, entrepreneurial activities in Georgia are primarily governed by the LGE. It is a sole legal act that regulates all types of corporations that are eligible to operate on the Georgian market.[162] The Law outlines mandatory provisions and provides the general legal framework for conducting business in Georgia.

LEG starts with general provisions applicable to all business forms, and is followed by distinct chapters dedicated to each permissible type of entrepreneurial entity in Georgia.[163] LEG provides a legal definition of entrepreneurial activities as "*any legal and multiple activity, carried out independently and in an organized manner with the purpose of making a profit*".[164] In Georgia, an entrepreneurial activity may be carried out either in the form of a sole proprietorship or as an entrepreneurial entity. LEG provides a full list of entrepreneurial entities that are permissible to operate.[165] Based on the recent reform, the current corporate law includes a great number of default norms that offer flexibility and give parties more freedom to structure their internal corporate relationships based on their specific needs and preferences.[166] Mandatory norms are only applied when it is necessary to safeguard and enforce fundamental

[159] A Borroni (ed), *Doing Business in Georgia: A Comprehensive Guide to Investors* (Meridiani Publishing Ltd 2015), 28.
[160] New Law on Entrepreneurs: A Guide to Ensuring Compliance (April 2025), https://fsgroup.ge/მეწარმეთა-შესახებ-ახალი/, accessed: 01.05.2025.
[161] Ibid.
[162] A Borroni (ed), *Doing Business in Georgia: A Comprehensive Guide to Investors* (Meridiani Publishing Ltd 2015), 37.
[163] Ibid.
[164] Article 2 (2) of Law of Georgia on Entrepreneurs, https://matsne.gov.ge/ka/document/view/5230186?publication=12, accessed: 01.05.2025.
[165] Ibid Article 2 (3).
[166] *Corporate Law Reform in Georgia (Key Trends)*, Georgian Bar Association (GBA), https://gba.ge/ka/ჟურნალი-ადვოკატი/ჩემი-ადვოკატი-5/საკორპორაციო-სამართლის-რეფორმა.html, accessed 01.05.2025.

corporate law principles. In all other cases, the freedom of will is upheld.[167] The provision regarding SHAs in the LGE is relatively general and not precise. The only mandatory requirement is that the charter of an entrepreneurial company must include information on the existence of a SHA, if such an agreement exists.[168] Therefore, the interpretation of SHAs in Georgia, their specific subject matter, essential terms, and legal nature are governed by the general principles of corporate law, legal practice, and the relevant provisions of the company law.[169]

So, while the LGE acknowledges the existence of SHAs in Georgia, it provides only a minimal regulatory framework and leaves substantial room for interpretation. This legal ambiguity often leads to practical complexities in the SHA's application and enforcement. The following chapters will explore the growing importance of SHAs in Georgia. Special attention will be devoted to SHAs' relationship with other corporate documents, their legal nature, practical benefits, and existing challenges that need to be improved.

3.2 SHAs vs Traditional Corporate Documents in Georgia

This chapter will analyze the founding agreement, the company charter, and SHAs, which are considered to be the main corporate documents under Georgian law. According to the LGE, it is mandatory to register as an entrepreneur. Registration requires the existence of a founding agreement.[170] The founding agreement must be concluded in written form and signed by all founding partners of the entrepreneurial entity.[171] The agreement sets the legal foundation for creating a company. It must include the company charter and other mandatory

[167] Irakli Burduli and others, *Corporate Law: Institute of Corporate, Banking and Economic Law,* Faculty of Law Textbook, (Jurists' World Publishing, Tbilisi 2022), 51.
[168] Article 6.1 (d) of Law of Georgia on Entrepreneurs (n 164).
[169] Giorgi Ustiashvili and Nino Katamadze, *'Practical Issues of Partnership Agreements'* (2019) NI Sulkhan-Saba Orbeliani University Academic Journal, 12.
[170] New Law on Entrepreneurs: *A Guide to Ensuring Compliance* (April 2025) (n 160).
[171] Article 4 (2) of Law of Georgia on Entrepreneurs (n 164).

information such as the company name, legal address, information about the founders, and how the company will be managed and represented.[172] The company charter itself is considered to be an integral and mandatory part of the founding agreement and is submitted as part of the registration documentation that is publicly available. According to the explanatory note of the new law, the charter should serve as a kind of "constitution" for the company, and it should rarely require amendment.[173] Based on this approach, the mandatory components of the charter are generally limited to issues that do not significantly shape the individuality of the company.[174] A charter may be either standard or customized. Standard charters are approved by the Minister of Justice of Georgia based on the legal form of the entrepreneurial entity.[175] The existence of a model standard company charter allows shareholders to simplify the process of starting a business by enabling them to use a legally balanced document to start entrepreneurial activity without the need for legal assistance.[176] According to the LGE, the company charter must state at least the company's legal structure and define the scope of its business activities. Additionally, if partners have agreed to any restrictions on share ownership, this must also be included. Moreover, the company charter should indicate whether or not a SHA exists among the partners.[177]

It is obvious that under Georgian law, the only explicit requirement regarding SHAs is that it must be indicated in the company's charter whether such an agreement exists. So, the only requirement is to disclose the fact of the existence of such an agreement, however, the content of the SHA remains inaccessible to third parties. Beyond this general disclosure obligation, the legislation is silent regarding its content, enforceability, or legal effects. This

[172] Ibid Article 5.
[173] Giorgi Giguashvili and Giorgi Jugheli, *Commentary on the Law of Georgia on Entrepreneurs* (as of February 2022) (Tbilisi 2022), 25.
[174] Ibid.
[175] New Law on Entrepreneurs: *A Guide to Ensuring Compliance* (April 2025) (n 160).
[176] Giorgi Giguashvili and Giorgi Jugheli, *Commentary on the Law of Georgia on Entrepreneurs,* Tbilisi 2022, 26.
[177] Article 6 of Law of Georgia on Entrepreneurs (n 164).

legislative gap creates both flexibility for shareholders to tailor their agreements according to their needs, but also results in uncertainty because of non-existent statutory guidance.

3.3 The Purpose of SHAs in Georgia

One of the most practical and frequently debated questions for Georgia's corporate governance reality is why partners should enter into an SHA when many of these matters could seemingly be addressed within the company's charter. Under corporate law, the existence of a SHA is not mandatory for the formation of a corporation, as it is not classified as a corporate law document required for registration.[178] As it was discussed above, the company charter reflects partners' agreement on key governance and structural issues that become legally binding for the company and for third parties. Therefore, a SHA must offer added value, extra benefits that cannot be achieved through the charter alone and that have a crucial impact on strengthening corporate governance standards. In the Georgian context, SHAs serve three primary purposes:

1. Confidentiality guarantees: a SHA is not a public document. As mentioned above, under LGE, companies are required to disclose only the fact of the agreement's existence in the company's charter, while the content of the agreement remains confidential.[179] So, unlike a company's charter, SHAs allow partners to regulate sensitive matters privately. These may include dividend distribution policies, financing arrangements, or specific business strategies that founders may prefer to keep out of the public domain. In this regard, SHA is a confidential instrument for internal governance.
2. Circumventing Charter Constraints: certain issues cannot be regulated by the company's charter because the charter primarily defines the company's structure, its rights and

[178] Giorgi Ustiashvili and Nino Katamadze, *'Practical Issues of Partnership Agreements'* (2019) NI Sulkhan-Saba Orbeliani University Academic Journal, 11.
[179] Ibid.

obligations, and is not designed to govern the personal arrangements or mutual obligations of the shareholders themselves. The charter usually grants rights to shareholders only insofar as they can be exercised through or by the company.[180] By contrast, a SHA is a private contract among the founders that determines the rules of the corporate life that will become binding for shareholders only.[181] So, SHAs can cover personal obligations and arrangements that are otherwise impossible to regulate through the charter.

3. SHAs as Instruments of Private Enforcement: Based on the established judiciary practice in Georgia,[182] if an action violates the LGE or the company's charter (such as issuing new shares without proper approval), that action can be invalidated by courts or corporate registry authorities. However, if an action violates the SHA only (such as breaching a voting agreement), the action will remain valid from the company's perspective. However, the remedy will be the contractual claim (such as damages or specific performance) between the shareholders themselves.[183]

As previously noted, LEG affirms the principle of dispositiveness.[184] Therefore, many provisions of the law, including those regulating voting rights, are non-mandatory and may be modified by agreement. As a result, SHAs that refer to the exercise of voting rights appear to be less essential in the Georgian legal context than they are in jurisdictions like the United States, where statutory flexibility may be more limited.

However, in the Georgian context, it is more general practice to sign SHAs regarding the distribution of profits, defining financial responsibilities, stock options, allocation of intellectual property and etc. In addition to these core provisions, SHAs may also regulate rights

[180] A Borroni (ed), *Doing Business in Georgia: A Comprehensive Guide to Investors* (Meridiani Publishing Ltd 2015), 28-29.
[181] Ibid.
[182] Analysis of Articles 317-318 of the Civil Code of Georgia (n 147); Supreme Court of Georgia Judgment No ას-1301-2020.
[183] Ibid.
[184] Article 1 of Law of Georgia on Entrepreneurs (n 164).

of first refusal on share transfers, the right to nominate a representative to the corporation's governing body, dispute resolution mechanisms, limitation on voting rights, and so forth.[185]

The key legal question arises when SHAs and the company charter regulate the same matter in conflicting ways: which of the two documents should prevail? Due to legal uncertainty and a lack of regulation, such overlaps occur frequently in practice.[186] The corporate charter and SHAs are documents of equal legal force and hierarchical status. As a result, in the event of a conflict between them, neither can be granted precedence based on the principle of subordination. In practice, the decision is often a matter of interpretation, and sometimes the time and date of the execution of the respective agreements are taken into account.[187]

To mitigate conflicts, best practice in Georgia suggests that important SHA obligations should also be reflected in the company's charter whenever possible and whenever confidentiality guarantees are not crucial.[188]

3.4 Shareholders' Agreements in Georgian Case Law

In Georgia, judicial decisions are published through separate platforms depending on the court level. To ensure access to decisions, a Unified Registry of Court Decisions has been established. The registry includes final judgments of district, appellate, and the Supreme courts.[189] Furthermore, Decisions of the Supreme Court of Georgia are accessible via a searchable online database hosted on the court's official website.[190] These rulings are usually published in Georgian. English translations are rare, but when they do exist, they are typically

[185] Giorgi Giguashvili and Giorgi Jugheli, *Commentary on the Law of Georgia on Entrepreneurs,* Tbilisi 2022, 13.
[186] Giorgi Ustiashvili and Nino Katamadze, *'Practical Issues of Partnership Agreements'* (2019) *NI* Sulkhan-Saba Orbeliani University Academic Journal*,* 12.
[187] Ibid 13.
[188] Ibid 25.
[189] High Council of Justice of Georgia, Decision on the Procedure for Issuing and Publishing Court Decisions by Common Courts (No 250, 2016), Art 4.
[190] Supreme Court of Georgia, Judicial Acts Search Platform, https://prg.supremecourt.ge, accessed 04.06.2025.

produced with support from international development partners and are often in connection with constitutional law, human rights, or investor-related cases.[191]

This chapter will examine recent interpretations by the Supreme Court of Georgia regarding SHAs and their legal validity. Main focus will be on the Supreme Court's approach to the evolving legal framework, enforceability standards, and practical application of SHAs in Georgian corporate governance.

Case №ას-873-2024 offers a valuable interpretation about the limits of SHAs when they are weighed against statutory provisions. Based on the facts of the case, the plaintiff, M.J., was a 20% shareholder of the company who requested to gain access to a range of company internal documents. However, the company refused to grant such access as this request would be excessive and overly burdensome for them. The Supreme Court of Georgia took a firm stance and explained that basic statutory rights of shareholders cannot be limited by either internal agreements or operational difficulties. LGE allows partners to receive company reports, inspect their accuracy, and access documents either directly or through an auditor. Most importantly, the court further explained that this right does not merely refer to economic interest, but it also safeguards the non-material right to participate in the company's governance. SHAs, no matter how consensual, cannot contractually waive or limit fundamental rights. The court further clarified that SHAs may expand partner rights, but they may never limit them below the statutory minimum.[192] This case is a clear demonstration that even though SHAs play a pivotal role in shaping internal relations, they must operate within the boundaries of the law.

In the following case № ას-1051-2024, the Supreme Court of Georgia addressed another key issue regarding the validity and legal effect of a SHAs in the context of share transfer and

[191] Transparency International Georgia, The State of the Judicial System 2016-2020 (2020) https://www.transparency.ge/en/post/state-judicial-system-2016-2020, accessed 04.06.2025.
[192] Supreme Court of Georgia, Decision №ას-873-2024 (13 March 2025, Tbilisi).

registration. The dispute revolved around a practical question: could G.G. be officially recognized as a shareholder in the company based on a notarized SHA and a sale contract, even though the selling partner, Sh.B., refused to sign the updated company charter. According to the LGE, all companies that were registered prior to its enactment must align their corporate documents with the new legal framework by April 1, 2026.[193] The law now requires certain matters that were previously governed exclusively by SHAs (such as restrictions on share transfers) to be expressly incorporated into the company's charter as well.[194] In this case, the Court emphasized that the notarized SHA between the parties not only documented the share transfer but also contained binding rules that took precedence over conflicting charter provisions. The Court found that the SHA reflected the mutual intentions of both parties. As a result, it was enough on its own to justify registering G.G. as a shareholder. It also concluded that Sh.B.'s refusal to sign the charter was an abuse of rights and couldn't be used to block G.G.'s rightful claim.[195] This decision demonstrates the growing authority of SHAs in Georgian corporate law. Moreover, it confirms that when executed by legal formalities, SHAs can override internal procedural rules and serve as a primary instrument for shareholder rights and obligations.

Another important precedent is case № ას-654-2022. Based on the facts of the case, L.Ch., was an investor in LLC "K" who signed the SHA to deliver and launch a CO_2 processing plant by early 2015. After failing to do so, the parties signed a reinforced SHA with clear penalty clauses. When L. Ch. again failed to perform, co-partner Z.K. decided to seek enforcement of the penalties. The courts found that L.Ch. breached his obligations because he provided inadequate and unusable equipment. The Supreme Court confirmed that the SHA created

[193] Article 254 of Law of Georgia on Entrepreneurs (n 164).
[194] Ibid Article 6.
[195] Supreme Court of Georgia, Decision № ას-1051-2024 (October 21, 2024).

binding legal duties and upheld liability.[196] This case illustrates that when SHAs contain clear and concrete obligations, they are not just internal governance tools, they carry real weight. If the party breaches an agreement, it can result in serious consequences, including financial penalties and even the loss of shareholder rights. So, this decision confirmed that SHAs function as fully enforceable contracts in practice.

[196] Supreme Court of Georgia, Decision № ას-654-2022 (March 2, 2023).

Chapter IV - Comparative Analysis and Lessons to be Learned

4.1 Comparative Overview: US vs. Georgia Shareholder Agreements

The analysis demonstrated that the U.S. and Georgia address SHAs from very different legal and historical perspectives. As it was discussed in Chapter I, the U.S. states' laws and experiences were developed through various statutory reforms and case law that made SHAs a legitimate tool for shaping corporate governance.

Initially, U.S. courts were hostile toward enforcing SHAs.[197] However, as closely held corporations became common, flexible arrangements became crucial, and SHAs became an effective tool to achieve this flexibility.[198] Today, the majority of U.S. states explicitly authorize SHAs under their corporate laws. The thesis mainly focused on Delaware's law, which is known for allowing significant discretion in private arrangements and provides statutory guidance for SHAs' usage.[199] As it was discussed in Subchapter I.2, the U.S. framework facilitates private ordering because it allows SHAs to override default governance rules in closely held corporations as long as third-party rights and public policy are not violated.[200] More importantly, U.S. law not only allows the existence of SHAs but also supports their enforcement through meaningful remedies. Remedies, such as specific performance, derivative actions, arbitration, compensation, or punitive damages, were discussed in Subchapter II.5. Overall, the analysis of Chapters I and II demonstrated that the U.S. approach to SHAs is built on clarity, flexibility, and enforceability.

197 *Gage v. Fisher,* 65 N.W. 809 (N.D., 1895), quoted in Rainer Kulms, *A Shareholder's Freedom of Contract in Close Corporations - Shareholder Agreements in the USA and Germany*, 686.
198 *Brightman v. Bates*, 55 N.E. 809 (Mass., 1900), quoted in Rainer Kulms, *A Shareholder's Freedom of Contract in Close Corporations - Shareholder Agreements in the USA and Germany,* 688.
199 See *Salamone v. Gorman*, 106 A.3d 354, 367 (Del. 2014), quoted in in Mock, Csach and Havel (eds), *International Handbook on Shareholders' Agreements* (n 2), 646.
200 Jill E Fisch, *Stealth Governance: Shareholder Agreements and Private Ordering* (ECGI Law Working Paper No 538/2020, November 2022), 927.

By contrast, Georgia is a civil law jurisdiction where courts play a limited role in spreading the knowledge on SHAs and their possible uses for tackling corporate governance issues.[201] Compared to the U.S., Georgia is at an early stage of incorporating SHAs into its corporate governance landscape, and consequently, Georgian businesspeople and their counsels are only in the process of learning about the possible uses of SHAs. As it was outlined in Chapter III, Georgia's primary corporate statute is the Law on Entrepreneurs, which acknowledges SHAs only minimally. The LGE's main requirement is that if a SHA exists, its existence must be noted in the company's charter.[202] Beyond this disclosure requirement, Georgia's legislation is silent on SHAs' content, scope, or enforcement. Thus, the regulation of SHAs in Georgia is primarily governed by the general principles of contract law that are established in the Civil Code. This two-tier framework in Georgia gives shareholders basic freedom to agree, but does not differentiate SHAs from traditional contracts, nor provides any specific statutory safe harbors and clarity that U.S. shareholders enjoy.

4.2 Key Provisions and Enforcement of SHAs: U.S. vs. Georgia Approaches

Chapter II provided a detailed analysis of the most frequently used provisions in the U.S. SHAs, such as using SHAs as a mechanism to limit the power and the discretion of the board, to regulate inter-generational transfer of wealth, and allocation of control. Significant attention was devoted to using SHAs as a tool to structure voting agreements and their various alternatives, such as pooling agreements, proxy agreements, and voting trusts. Chapter II also analyzed the usage of SHAs to regulate veto power provisions, the right of first refusal, the tag-along, drag-along, and shoot-out clauses, as well as deadlock resolution provisions. These mechanisms allow participants in the close corporations to operate with flexibility. Such a

[201] F. Schauer, *Has Precedent Ever Really Mattered In The Supreme Court?, Georgia State University Law Review 381,* (2007), 386.
[202] Article 6.1 (d) of Law of Georgia on Entrepreneurs (n 164).

variety of provisions demonstrates that U.S. shareholders use SHAs as a private ordering mechanism that fills the gaps and expands their governance rights beyond what is allowed by default corporate laws.[203]

In Georgia, the 2022 LGE reform introduced many default rules that increased the degree of flexibility for shareholders. Three key functions of SHAs that were analyzed in chapter III are: SHAs provide confidentiality guarantees because, unlike a company charter, they are not public documents filed with authorities.[204] Moreover, SHAs create an opportunity to circumvent charter constraints and address matters that the charter cannot cover or that would be too inconvenient to change frequently.[205] Furthermore, SHAs can be used as an instrument of private ordering.[206] These approaches demonstrate the role of SHAs as important corporate governance tools. However, as Georgia's corporate practice evolves, stronger enforcement tools of SHAs will be needed to enhance trust, predictability, and stability in closely held companies. Furthermore, recent Georgian case law demonstrates a growing acceptance of SHAs as key governance tools and gets closer to the U.S. approach. This development shows a shift in Georgian jurisprudence, namely, it supports the enforceability of SHAs while maintaining essential legal protections.

4.3 Lessons for Georgia from the U.S

Analysis of Chapter III demonstrated that in Georgia, SHAs lack a clear regulatory framework, which makes their enforceability uncertain, especially when SHA provisions conflict with company charter or statutory norms. This gap creates legal uncertainty for

[203] Jill E Fisch, *Stealth Governance: Shareholder Agreements and Private Ordering* (ECGI Law Working Paper No 538/2020, November 2022), 927.
[204] Giorgi Ustiashvili and Nino Katamadze, *'Practical Issues of Partnership Agreements'* (2019) NI Sulkhan-Saba Orbeliani University Academic Journal, 11.
[205] A Borroni (ed), *Doing Business in Georgia: A Comprehensive Guide to Investors* (Meridiani Publishing Ltd 2015), 28-29.
[206] Jill E Fisch, *Stealth Governance: Shareholder Agreements and Private Ordering* (ECGI Law Working Paper No 538/2020, November 2022), 933.

investors and shareholders. To address this problem, it will be beneficial for Georgian regulators to amend the LEG and include a dedicated chapter on SHAs, modeled including also based on Delaware Corporate Law. This chapter should provide a clear definition of a SHA that will distinguish it from other corporate documents. Special provisions should clarify permissible content and dispute resolution mechanisms. Moreover, it is important to establish concrete boundaries to guarantee that SHAs can modify but not override mandatory corporate norms. This reform will bring legal certainty and align Georgian corporate law with international best practices.

Furthermore, Georgian SMEs frequently encounter similar problems that were discussed in the Galler v Galler case in subchapter II.3, such as inter-generational transfer of wealth, family control over the board, as well as compensation issues.[207] A properly drafted SHA can avoid years of litigation and provide effective dispute resolution mechanisms. If Georgia develops a model SHA framework, either as soft law or in regulatory form, it will provide enforceable templates, especially for SMEs and family businesses, regarding commonly disputed clauses such as tag-along and drag-along rights, preemptive rights, veto arrangements, buy-sell clauses, or compensation mechanisms. Even though such a model framework will not be mandatory to implement, it will offer significant advantages by reducing costs and disputes, because it will promote legal certainty, and support the long-term governance of SMEs and family-owned businesses.

Another regulatory gap in Georgia, which was outlined in subchapter III.3, is that the coexistence of SHAs and company charters creates hierarchical ambiguities. Under U.S. law, if a SHA conflicts with statutory norms or charter-based rights, it is either unenforceable or is binding only among the signatories, not against the corporation.[208] for Georgia, it is crucial that

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[207] *Galler v. Galler*, 32 III. 2d 16 (n 75)
[208] The Delaware General Corporation Code § 122 (18), https://delcode.delaware.gov/title8/c001/sc02/index.html#122, accessed: 23.05.2025.

the LGE should be amended to explicitly define the legal relationship between these instruments.

Another problem faced in Georgian reality is the lack of enforcement tools for SHAs. Even though Georgian courts have accepted SHA-based damage claims,[209] they have not yet applied remedies such as specific performance or derivative actions that are frequently used in the U.S. Georgia should amend the applicable laws to include stronger enforcement mechanisms and the effectiveness of SHAs.

It is also essential that courts acknowledge the growing significance of SHAs and support their evolving functions. A partial solution will be to promote judicial training in corporate governance that will mainly focus on implementing best practices from Delaware's approach. Although Georgia's civil law system does not create binding precedents, a set of uniform decisions would be persuasive to both judges and lawmakers because it would help establish SHAs as a trusted tool in corporate governance.

Additionally, many Georgian lawyers and entrepreneurs remain unfamiliar with the full range of SHA benefits. Therefore, it would be beneficial to integrate these topics into training programs and academic curricula to normalize their use and enhance the quality of drafting SHAs in practice. Together, these efforts would strengthen the legal framework and practice for SHAs, reduce ambiguity, and promote more effective corporate governance in Georgia.

[209] See Supreme Court of Georgia, Decision № ას-654-2022.

Conclusion

The thesis examined whether SHAs, shaped by U.S. practice, especially under Delaware law, can serve as an effective instrument to enhance corporate governance in Georgia. The comparative analysis demonstrated that while these two jurisdictions differ significantly in structure and developing history, the U.S. experience can offer valuable insights for jurisdictions like Georgia, where statutory recognition and judicial practice around SHAs are at an early stage of development.

In the U.S., there is a common understanding that a corporation is not merely a set of articles and statutes, but it is a dynamic entity of people who are trying to collaborate, address conflicts, and prepare for an unpredictable future. Shareholders in corporations seek stability, predictability, and trust. The thesis demonstrated that in the U.S., especially in the state of Delaware, SHAs have evolved in a way to demonstrate that understanding. The law not only allows such agreements, but it also encourages their enforcement. Furthermore, courts and legislatures in the U.S. increasingly recognize that in certain corporate areas, such as SMEs, family-owned businesses, or start-ups, shareholders require more flexibility to modify default rules based on their needs.

Delaware's statutory regime and case law provide a compelling model that allows shareholders to use SHAs for allocating control rights, safeguarding minority interests, resolving disputes ex ante, and facilitating long-term corporate planning. Such an approach improves the overall business environment because it boosts investor confidence, encourages efficient dispute prevention, and allows private ordering. From the broad scene, this adaptability makes Delaware especially attractive for SMEs, startups, or international investment. The main U.S. lesson is simple but powerful: when shareholders can contract with confidence and when courts uphold those contracts consistently, corporate governance becomes more stable, equitable, and adaptable.

By contrast, the analysis demonstrated that Georgia is still in the early stages of integrating SHAs into its corporate governance framework. Even though the CCG recognizes the principle of private autonomy, the LGE includes minimal requirements for SHAs, and Georgian courts have taken positive steps towards enforcing SHAs, there is still a lack of statutory clarity and interpretive guidance.

The research concentrated on the main deficiencies within the Georgian corporate legal structure and identified several key areas where Georgia could improve. Notably, ambiguity remains regarding the legal power of SHAs when they conflict with company charters or statutory norms. Furthermore, Georgian legislation does not differentiate SHAs from mere contracts, which limits their efficiency. Another significant problem remains the lack of existing remedies in case of violating SHAs, which are commonly available in the U.S. The abovementioned obstacles limit the practical impact of SHAs in Georgian reality.

Integrating the Delaware approach can be important because well-structured SHAs have significant potential to enhance Georgia's corporate governance landscape for several reasons:

firstly, many Georgian companies are family-owned or controlled by a small number of shareholders. Internal disagreements among shareholders often paralyze business operations. Effectively structured SHAs have a huge potential to pre-emptively manage these situations by various provisions analyzed in Chapter II.

Secondly, Georgian courts do not have the power to create binding precedents, and the existing legislation provides little guidance on the scope and limits of SHA enforceability. In this reality, shareholders are often unsure how to effectively protect and enforce their rights. A codified SHA framework modeled on including Delaware law would compensate for this lack of predictability and offer clear guidance and legal boundaries for judges, lawyers, and entrepreneurs.

Thirdly, legal unpredictability creates barriers for local or foreign investors for long-term investment. SHA reforms would eliminate such risks because they would function as a signal for investors that Georgia is a jurisdiction where internal governance risks can be managed contractually.

Furthermore, SHA reform would reduce judicial caseload because when their terms are drafted clearly and recognized by statutes, disputes can be resolved without involving courts at all. Finally, a properly drafted SHA can turn crisis moments, such as the death of controlling shareholders, withdrawal, disagreement, etc, into practical solutions.

In conclusion, the thesis confirms that SHAs have the potential to significantly enhance corporate governance in Georgia. However, turning this potential into reality takes more than just permitting private agreements. It demands a continuous effort to integrate SHAs into the broader legal and institutional framework. Georgia should not incorporate the U.S. experience blindly, it has to adapt its core principles to the local context and needs. With thoughtful reform and practical support, SHAs can play a central role in building stronger, more accountable, and more resilient corporate governance in Georgia.

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