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THE ENFORCEABILITY OF INVESTOR EXIT RIGHTS IN SAUDI LAW: BALANCING CONTRACTUAL AUTONOMY AND MINORITY PROTECTION IN A COMPARATIVE CONTEXT

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ABSTRACT

Background: *Shareholders' covenants in articles of association or agreements are essential for governing private companies with specific investments. Regulating protective arrangements for smoother share disposal at the investment lifecycle's final stage. Share restrictions in Saudi Arabia are recognised in both regulatory and judicial frameworks, aligning with international corporate law practices and boosting local and foreign direct investment under Vision 2030. This article examines exceptional shareholders' covenants such as drag-along rights and the right of first refusal, which facilitate shareholder exits and enhance a company's appeal to potential purchasers.*

Method: *This study utilises a qualitative, doctrinal, and comparative legal analysis. It critically examines the provisions of the Saudi New Companies Law (2022) alongside a prominent Saudi case and recent legal precedents from the U.K and France. Specifically, the research examines the*

landmark cases of Kulkarni v. Gwent Holdings Ltd, Cunningham v. Resourceful Land Ltd, the ruling from the French Supreme Court (Cour de cassation) in case number 23-10.385 (2024), and the Saudi case number 439245241 (2022) to assess the enforceability of exit rights.

Results and Conclusions: *The research argues that while the Saudi Companies Law offers a solid foundation for exit rights, uncertainties persist. Key among them is the need for regulatory changes to provide immediate remedies, beyond litigation, in cases of non-compliance by uncooperative shareholders. Additionally, in the event of any contest, Saudi courts strictly enforce exit rights, respecting their specific meanings in the context of contract law. Comparative analysis shows that UK and French courts uphold such restrictions when the terms are clear, precise, and negotiated at arm's length. However, the French precedent underscores that a 'promise of sale' (drag-along) must contain a determinable price to be valid. The study concludes that the Saudi legal framework is successfully evolving toward international best practices. To ensure enforceability and enhance access to justice, the article recommends that Saudi companies explicitly incorporate detailed exit clauses, including price valuation methods and the power of majority shareholders to sign transfer forms on behalf of dissenting minorities, directly into their Articles of Association. Such measures are essential for maintaining legal certainty and protecting the interests of both domestic and foreign investors in the Saudi market.*

1 INTRODUCTION

Courts' decisions from Europe, particularly in the U.K. and France, establish authoritative judicial precedents on the practical testing of shareholders' autonomy to agree on exit rights to limit their ability to sell their shareholding openly. In a different context, they may offer a roadmap for interpreting key challenges arising from corporate restrictions on shareholdings after they receive regulatory coverage under the new Companies Law of the Kingdom of Saudi Arabia. On June 28, 2022, the Saudi Council of Ministers set a transformative new Companies Law, marked with the royal decree (A/132)[1] for realising several ambitious goals of the Kingdom's Vision 2030.[2] It endorses the right of shareholders to incorporate co-sale obligations, including 'drag-along' rights, 'tag-along' rights, and the right of first refusal (hereinafter, ROFR) into the articles of association, when establishing joint stock companies (JSCs) and limited liability companies (LLCs), safeguarding the interests of all stakeholders involved. This ensures that shareholders' interests are protected and prioritised. Additionally, this exceptional regulatory coverage highlights Saudi Arabia's

1 Royal Decree No M/132 of 1/12/1443 AH 'Companies Law' (30 June 2022) https://gccbdi.org/sites/default/files/content-files/Resources/Governance%20%26%20Director%20Information/KSA/Company%20Law%202022%20-%20(English).pdf accessed 18 November 2025.

2 Campbell M Steedman et al., 'The New Saudi Companies Law: What Is New?' (*Squire Patton Boggs*, 24 August 2022) https://www.lexology.com/library/detail.aspx?g=1667610c-c5c2-49d4-8936-df0c37ff31ae accessed 18 November 2025.

commitment to progressively improving its business environment progressively in line with international best corporate law practices in relation to exit rights for shareholders, similar to those in the U.K. and other developed countries. Landmark cases such as *Kulkarni v Gwent Holdings Ltd*[3], *Cunningham v Resourceful Land Ltd and others*[4], and the ruling of the French Supreme Court (Cour de cassation) in case number 23-10.385 (2024)[5], along with Saudi case number 439245241 decided in 2022[6], which illustrate these developments.

This study applies a functional comparative method. First, it identifies the regulatory recognition of investor exit rights under Saudi companies' law, critically highlights notable unresolved issues beyond simply describing the law, and proposes an improvement plan. This research questions the legal rules of exit rights in Saudi Arabia's new companies law at face value, put the question why do they exist and what do goals they serve. Second, it selects the U.K and French systems as normative benchmarks due to their historical influence, through which the problems are examined and analysed. Third, it evaluates the transposability of specific mechanisms (e.g., drag-along rights) to the Saudi context. Overall, the research aims to inform judicial decisions, influence policy-making, and improve legal best practices regarding existing rights in Saudi Arabia, and to address the same problems beyond the borders of this country, demonstrating the tangible, real-world relevance and impact of the study.

The U.K. and France were selected as archetypes of both common law and civil law respectively. France is relevant due to the genealogical link between the new Saudi Civil Transactions Law (2023) and the French Civil Code (via the Egyptian Civil Code). The UK serves as the global benchmark for the foreign direct investment (FDI) that Saudi Arabia seeks to attract under Vision 2030, enabling the study to assess whether Saudi law is leaning toward a rigid statutory model (French) or a flexible, equitable model (UK). In support, Saudi Arabia is witnessing an increasing presence of French businesses, as outlined in the Saudi-French Investment Forum, which reported that bilateral trade has exceeded €10 billion, with around €3 billion in French investment inflows in 2023, bringing the total French FDI to approximately €17 billion.[7] Part of this business, including Airbus, which established its new regional headquarters in Riyadh, in which the company is expanding its operations in the country and recently secured a landmark agreement to supply the Saudi

3 *Kulkarni v Gwent Holdings Ltd* [2025] EWCA Civ 1206.

4 *Cunningham v Resourceful Land Limited and others* [2018] EWHC (Ch) 1185.

5 Case No 23-10.385 (Court of Cassation, 27 November 2024) https://www.legifrance.gouv.fr/juri/id/JURITEXT000050704237 accessed 18 November 2025.

6 Case No 439245241 (Commercial Court in Riyadh, 23 November 2022) https://laws.moj.gov.sa/ar/JudicialDecisionsList/0/A9KffbR_0DxwcYPnikA2ruATzf-UvicrMPfSNKXY7AN5YWhVU0af1X89QFI8j8Ij accessed 18 November 2025.

7 'With Improved Bilateral Relations, French Investment in Saudi Arabia has Increased by 180%' (*LPC London Premier Centre*, 26 September 2025) https://www.lpcentre.com/news/french-investment-in-saudi-arabia-soars accessed 18 November 2025.

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government with 105 confirmed new aircraft.[8] This growth is supported by government initiatives and Vision 2030, with expectations for significant development.[9]

2 RESTRICTIONS ON TRANSACTIONS OF SHARES TRANSFERS

A shareholder agreement (SHA) embodies contractual freedom in corporate law, detailing a project's objectives, board roles, capital contributions, and shareholder proportions. SHAs also include protective covenants that restrict share transfers and facilitate smooth exits, through 'drag-along' and 'tag-along' clauses, and the right of first refusal (ROFR). From a historical perspective, restrictions on the transferability of stocks among shareholders can perhaps be inferred indirectly by examining the concept of the 'quasi-partnership' established by the House of Lord in the U.K. in the case of *Ebrahimi v Westbourne Galleries Ltd*[10]. In this landmark case, Lord Wilberforce ordered that the company in question be wound up, and compellingly introduced the approach to identifying situations of quasi-partnership where 'equitable considerations' may have a life alongside strict rules of law applicable to companies.[11] In essence, a quasi-partnership is a company distinguished by a unique set of circumstances that shape the management of its affairs. These situations give rise to equitable expectations for its members that extend beyond the rigid rights and obligations defined by the Companies Act and the articles of association. This creates a dynamic environment where trust and mutual responsibility prevail, fostering stronger relationships among members. Most importantly, a company that is perceived as a quasi-partnership is usually founded on trustworthy concepts such as 'good faith' and 'mutual confidence', which are built on personal relationships, and which are critical in partnership.[12] As such, the founders of these quasi-partnership companies conventionally place restrictions on the transfer of shareholdings among themselves and outside purchasers. The ultimate goal is ensuring business stability

8 'Commercial Aircraft in the Middle East' (Airbus, 2025) https://www.airbus.com/en/about-us/our-worldwide-presence/airbus-in-africa-and-the-middle-east/airbus-in-the-middle-east accessed 18 November 2025. See also, 'Saudia Group and Airbus Sign the Largest Aircraft Deal in Saudi Aviation' (*Saudia*, 20 May 2024) https://www.saudia.com/pages/experience/about-us/corporate-communication/press-releases-and-news/press-releases/press-release-20052024?sc_lang=hi accessed 18 November 2025.

9 Miguel Hadchity Zeina Zbibo, 'Airbus Opens Regional Headquarters in Riyadh' (*Arab News*, 3 December 2024) https://arab.news/yg67n accessed 18 November 2025.

10 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360. See also, Suhaib Zada, 'Redefining Balance: A Fresh Take on Unfair Prejudice Remedy in UK Corporate Law' (2023) 8(3) Journal of Business 4-5, doi:10.18533/2ndwmz93.

11 Lisa Linklater KC, 'Shareholder Disputes: Unfair Prejudice Petitions' (2022) 165 Solicitors Journal 24; Jack Zhou, 'Dissolution of Trusts in Equity's Inherent Jurisdiction' (2025) 31(9) Trusts & Trustees 500, doi:10.1093/tandt/ttaf072.

12 Mohd Rizal Salim, 'Relevance of Partnership Principles in Company Law-Winding-up on the "Just and Equitable" Ground' (2001) 28 Journal of Malaysian and Comparative Law 170; Ziyuan Li, 'An Assessment of the Effectiveness of the Unfair Prejudice Remedy in UK Company Law: How Can We Guarantee Appropriate Judicial Discretion?' (2022) 7(2) Cambridge Law Review 72.

and allowing current shareholders to choose future partners while blocking unaffiliated third parties.[13] This is often due to concerns about the integrity or business judgment of those parties or a belief that doing business with them could be uncomfortable or unappreciated. Additionally, shareholders may seek protection against competitors acquiring stakes that could lead to control or access to sensitive information.[14]

In the context of Saudi Arabia's transformative new Companies Law, Zhao Huiqi observed that this is a landmark moment as as the law acknowledges the rights of 'drag-along' and 'tag-along', which had previously posed significant enforcement challenges in Saudi Arabia.[15] However, Zhao did not delve into why these important contractual terms were difficult to uphold in the past. Perhaps, in special circumstances, she considered the perspective that the right of 'drag-along' may primarily prioritise the interests of majority shareholder(s) in a company, often at the expense of minority shareholder(s); accordingly, this disproportionate focus could undermine the protection afforded to minority shareholder(s), rendering these rights unenforceable and compromising their position. This raises the question: what are the current 'share restrictions' available to investors in Saudi Arabia, why do they exist, and how can Saudi companies leverage them in case of disputes?

In a striking coincidence of events with no apparent causal connection, the enforceability of 'exists' rights, restrictions on the sale of shares, is well established in the U.K., supported by judicial reviews that were conducted in 2018 and 2025. This issue was also thoroughly examined under French law by 2024, which recognised the contractual freedom of the parties involved to restrict themselves in the event that they wish to transfer their stockholdings to outside invetors However, this raises an important question: can companies in Saudi Arabia adopt these rights in a similar legal fashion found in the U.K and France? This paper delves into the evolving regulatory and judicial trends regarding the enforceability of clauses that control the transfer of shares in Saudi companies under control, employing a comparative lens. The author argues that both the new Saudi Companies Law, which addresses the rights of 'drag-along' and 'tag-along,' and the right of

13 Kimball L Chapman and others, 'Investor Relations, Engagement, and Shareholder Activism' (2022) 97(1) Accounting Review 77, doi:10.2308/TAR-2018-0361; Weliswa Matekenya and Clement Moyo, 'Foreign Divestment, Economic Growth and Development in South Africa: An Empirical Analysis' (2023) 16(1) *Journal of Chinese Economic and Foreign Trade Studies* 4, doi:10.1108/JCEFTS-01-2022-0006. See also, Benjamin Bathke, 'China's Shopping Spree For German Firms Continues' (*DW*, 7 September 2017) https://www.dw.com/en/chinas-unsatisfied-hunger-for-german-companies/a-39658363 accessed 18 November 2025; 'CID, Germany's Gelita to set up EGP 1 bn Gelatin Factory in Egypt's Roubiki City' (*EnterpriseAM*, 28 January 2020) https://enterprise.press/stories/2020/01/28/cid-germanys-gelita-to-set-up-egp-1-bn-gelatin-factory-in-egypts-roubiki-city-10646/ accessed 18 November 2025.

14 F Hodge O'Neal, 'Restrictions on Transfer of Stock in Closely Held Corporations: Planning and Drafting' (1952) 65(5) Harvard Law Review 773, doi:10.2307/1337124; J Thomas and Jr Andre, 'Restrictions on the Transfer of Shares: A Search for a Public Policy' (1978) 53(3) Tulane Law Reviev 776.

15 Wang Jihong and Zhao Huiqi, 'Saudi Arabia Promotes Investment with New Companies Law' [2022] China Business Law Journal https://law.asia/saudi-arabia-new-companies-law/ accessed 18 November 2025.

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first refusal (ROFR), as well as relevant case law from the U.K. and France, support the idea that contractual restrictions on mandatory stock transfers are enforceable against shareholders that breach these terms. This perspective emphasises the importance of respecting the contractual autonomy of the parties involved.

2.1. FDI and Its Relationship to Restrictions on Share Transfers in Saudi Arabia

Jean Abboud noted that the regulatory recognition of share sale restrictions enhances the feasibility of both establishing and managing companies in Saudi Arabia. This aims to ease the challenges previously encountered by both domestic and foreign investors in protecting their business interests in the the Saudi financial market . Furthermore, Zhao Huiqi and Wang Jihong urged Chinese investors to adhere to recent changes in case they wish to conduct business in Saudi Arabia.[16] Following this analysis, as announced by the Saudi Capital Market Authority (CMA) the new Companies Law of 2022, including the introduction of these new restrictions, came as a response to achieve Saudi Vision 2030's pillar (a thriving economy) to stimulate business, attract domestic and foreign investments, support entrepreneurship, enhance competitiveness, boost the growth of small and medium enterprises (SMEs), and eventually to become a recognised global trade hub.[17] Therefore, Saudi Arabia significantly enhanced its regulatory frameworks to boost the flow of foreign direct investment (FDI) in the Kingdom and through maintaining workable customary corporate law practices, which are in place globally.[18] Indeed, FDI owns many strategic entry points to establish business relations within a host country and enter new foreign markets, such as Saudi Arabia, in which each offers distinct advantages.[19] For these issues, it common practice for both foreign investors and local governments to enter into joint ventures in the form a new commercial entity, through mergers and acquisitions, to work jointly on a particular project for a specific period, which is advantageous for both the host country and foreign investors, than if entirely held by a foreign company, as observed by both Jill Gauntlett and Megan Skipper.[20]

16 Jean Abboud, 'The New Companies Law in the Kingdom of Saudi Arabia: What to Expect' (*BSA Law*, 7 June 2023) https://www.bsalaw.com/insight/the-new-companies-law-in-the-kingdom-of-saudi-arabia-what-to-expect/ accessed 18 November 2025.

17 Wang and Zhao (n 15).

18 Cherif Elhilali, 'The General Budget in the Kingdom of Saudi Arabia: Between the Governance Requirements and Financial Sustainability' (2023) 6(Spec) Access to Justice in Eastern Europe 59, doi:10.33327/AJEE-18-6S006. See also, 'Ministry of Commerce and Capital Market Authority Clarify the Mechanism of Implementing the New Companies Law' (*Captial Marked Authority*, 4 January 2023) https://cma.gov.sa/en/MediaCenter/PR/Pages/-New-Companies-Law.aspx accessed 18 November 2025.

19 Shahad Al-Qahtani and Mohamad Albakjaji, 'The Role of the Leal Frameworks in Attracting Foreign Investments: The Case of Saudi Arabia' (2023) 6(Spec) Access to Justice in Eastern Europe 85, doi:10.33327/AJEE-18-6S001.

20 Per Botolf Maurseth, Jaan Masso and Rasmus Bøgh Holmen, 'FDI and Trade for Foreign Market Entry: Theory and Evidence from Estonia' (2025) 25(1) Baltic Journal of Economics 39-40, doi:10.1080/1406099X.2025.2463863.

In this strategic partnership, the host country can access new technological spillovers from contemporary equipment and production machinery introduced by FDI, with a corresponding positive influence on the host country's overall modernisation.[21] Foreign investors perceive significant benefits in establishing joint ventures with local entities within host countries. This approach enables them to form alliances that promote growth, which is essential for meeting the increasing demand for specific products. Additionally, investors can take advantage of competitive fiscal incentives, including reduced tax rates, preferential treatment on export profits, and various financial incentives. These incentives may include subsidised production infrastructure, favourable market conditions, regulatory concessions, and lower land prices.[22]

On the numbers, the General Authority for Statistics in Saudi Arabia has released a report on FDI for the first quarter of 2025, showcasing impressive economic growth. Net FDI inflows soared to SAR 22.2 billion, a 44% increase from the same quarter last year. While this figure represents a slight decline of 7% from the fourth quarter of 2024.[23] The Saudi report stated that inflows of FDI totalled approximately SAR 24.0 billion in Q1 2025, marking a 24% increase from Q1 2024, which were approximately SAR 15.7 billion, as observed by UNCTAD.[24]

Critically, during the first quarter of 2025, total outflows amounted to approximately SAR 1.8 billion. This represents a 54% decrease from the first quarter of 2024, when outflows

21 Jill Gauntlett and Megan Skipper, 'Joint Ventures: An Overview' (*Norton Rose Fulbright*, 2025) https://www.nortonrosefulbright.com/en/knowledge/publications/dbff2f61/joint-ventures-an-overview accessed 20 May 2025. See also, Jongpil Park and Woojin Yoon, 'A Foreign Subsidiary's Largest Shareholder, Entry Mode, and Divestitures: The Moderating Role of Foreign Investment Inducement Policies' (2022) 28(3) European Research on Management and Business Economics 100197, doi:10.1016/j.iedeen.2022.100197'; Hyun-Soo Woo and others, 'How Increased Foreign Competition Motivates Domestic Firms to Do Good: An Examination of Foreign Entry Mode and Domestic CSR Response' (2022) 15(4) Journal of Strategy and Management 538, doi:10.1108/JSMA-05-2021-0118.

22 Tareq Mahbub and others, 'Factors Encouraging Foreign Direct Investment (FDI) in the Wind and Solar Energy Sector in an Emerging Country' (2022) 41 Energy Strategy Reviews 100865, doi:10.1016/j.esr.2022.100865. See also, Alaa Swilam and Yousef Saba, 'Saudi Wealth Fund Sets Up Electric Car Joint Venture With Foxconn' (*Reuters*, 3 November 2022) https://www.reuters.com/business/autos-transportation/saudi-crown-prince-launches-ceer-first-saudi-electric-vehicle-brand-2022-11-03/ accessed 18 November 2025.

23 Fergus Cass, 'Attracting FDI to Transition Countries: The Use of Incentives and Promotion Agencies' (2007) 16(2) Transnational Corporations 80-1; Alvaro Cuervo-Cazurra, Bernardo Silva-Rêgo and Ariane Figueira, 'Financial and Fiscal Incentives and Inward Foreign Direct Investment: When Quality Institutions Substitute Incentives' (2022) 5 Journal of International Business Policy 417, doi:10.1057/s42214-021-00130-9. See also, 'Joint Ventures in Romania and India: Into the Future With a Global Network for Innovative Software, Solutions by the BMW GROUP' (*BMW Group*, 12 April 2024) https://www.bmwgroup.com/en/news/general/2024/joint-ventures.html accessed 18 November 2025; UNCTAD, *Tax Incentives and Foreign Direct Investment: A Global Survey* (ASIT Advisory Studies no 16, UN 2000).

24 'Net FDI Inflows Amount to SAR 22.2 billion for Q1 of 2025' (*Saudi General Authority for Statistics*, 29 June 2025) https://stats.gov.sa/en/w/news/57 accessed 5 December 2025.

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reached SAR 3.9 billion. However, growth was 7% compared to the fourth quarter of 2024, which recorded outflows of SAR 1.7 billion. The report described FDI outflows as the funds and investments flowing *out of* Saudi companies to other economies, which can happen through actions such as the payment of dividends, repayment of loans, or when a direct foreign investor withdraws their investment (exits rights) with the purpose to invest back into the home country.

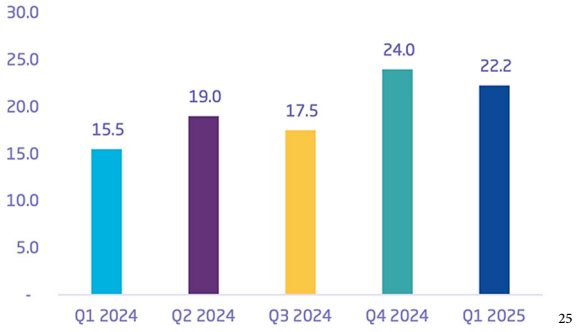

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Figure 1. FDI net inflows of Q1 (2025) (Billion SAR)

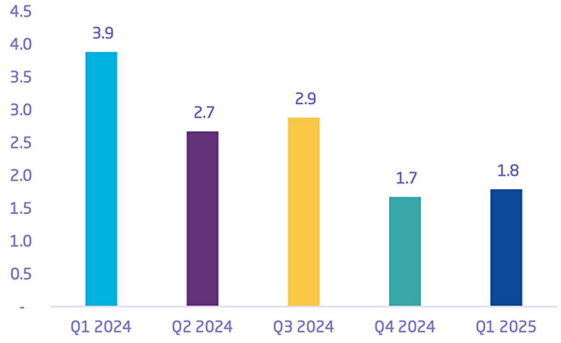

Figure 2. FDI outflows in the Kingdom of Q1 (2025) (Billion SAR)

25 UN Trade and Development, 'General Profile: Saudi Arabia' (*UN Trade and Development Data Hub*, 2 December 2025) https://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/682/index.html accessed 5 December 2025.

According to the most recent official Saudi report, FDI is recognised as a strategic investment made by individuals or corporations in one country to establish business ties or acquire assets in the Saudi financial market. This typically occurs when an individual foreign investor or a group of foreign investors owns 10% or more of the voting rights associated with shareholder power. Such foreign shareholding enables them to exert a degree of control over the decision-making processes within the invested entity, aligning those decisions with their own interests. In practice, FDI in Saudi Arabia can be illustrated by the SATORP's joint venture between TotalEnergies, a French multinational integrated energy and petroleum company, and the Saudi Arabian Oil Company, which was concluded in December 2022, with the aim of developing a modern, efficient refining and petrochemicals station.[26] Both partners made their final investment decisions to construct a petrochemical complex integrated with the SATORP refinery, totalling $11 billion. The Amiral project, a joint venture between Saudi Aramco (62.5%) and TotalEnergies (37.5%), involves an $11 billion investment to integrate a petrochemical complex with the SATORP refinery. This initiative aligns with TotalEnergies' strategy to maximize synergies within integrated platforms in growth markets. [27] In refrence to Lord Wilberforce's concept of "quasi-partnership" in *Ebrahimi v Westbourne Galleries Ltd***,** "Amiral," in Saudi Arabia, is indeed a true application of the "quasi-partnership" because it is a specific corporate structure or relationship that exhibits characteristics of a traditional, personal partnership between the Saudi Aramco (62.5%) and TotalEnergies (37.5%) that is built on equitable considerations, even though it is legally a separate entity. It is not a formal, defined category of FDI in an international statistical sense, but rather a description which is used in a legal context

This collaborative approach between TotalEnergies and the Saudi Arabian Oil Company, as founding shareholders, will usually create binding joint ventures SHA , with "equitable considerations" according to Lord Wilberforce and, therefore, a desire for maintaining a control over stockholdings by setting up the project "Amiral", with various mandatory restrictions on the transferability of the company's shares, meaning a member cannot easily "take out his stake and go elsewhere" if confidence is lost or they are removed from management, as the investments made are co-specific and attain their highest value when the stakeholders are doing the business jointly, as contended by Isabel Sáez and Nuria Gutiérrez.[28] In joint ventures, partners create binding SHA with governments or local

26 Saudi General Authority for Statistics, 'Foreign Direct Investment, Quarter 1 2025' (*Official government website of the Government of the Kingdom of Saudi Arabia*, 29 June 2025) https://www.stats.gov.sa/documents/20117/2435267/Foreign+Direct+Investment%2C+Quarter+1+2025++EN.pdf/f70a4db5-540c-98f2-6de5-960742cd0247?t=1751142724127 accessed 5 December 2025.

27 'Aramco and TotalEnergies Award Contracts for $11 billion Amiral Project' (*Aramco*, 24 June 2023) https://www.aramco.com/en/news-media/news/2023/aramco-and-totalenergies-award-contracts-for-$11-billion-amiral-project accessed 5 December 2025.

28 Isabel Sáez Lacave and Nuria Bermejo Gutierrez, 'Specific Investments, Opportunism and Corporate Contracts: A Theory of Tag-along and Drag-along Clauses' (2010) 11 European Business Organization Law Review 427, doi:10.1017/S1566752910300061.

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companies, outlining the rights and responsibilities of the shareholders involved in the project. They also clarify the governance structure of the commercial entity and establish exit strategies outside of the already-established business framework.[29] Some of these rights are significant for creating a target level of confidence in management for shareholders/partners engaged in the FDI projects. Upholding the identity of shareholders is not just important; it is a cornerstone of the business's success.[30] Attila Pintér contended that investors forming 'the dragging investors' typically retain specific rights regarding the disposal of their shares, for an assurance that the sale of their stockholdings is more attractive to potential future buyers of the venture capital transactions.[31] These buyers often prefer to acquire nearly 100% of the shares in the target company to gain complete control or to facilitate a smooth exit for FDI, especially when the investors are minority shareholders 'tagging investors', with a limited number of shares. This trend has led legal jurisdictions to interpret clauses that restrict share sales, raising questions about their enforceability, forming a complex issue that has been convincingly articulated by Bohuslava Horáková, highlighting the nuanced interplay between legal frameworks and financial dealings.[32]

2.2. Drag-along and Tag-along Rights

In this context, structural corporate changes broadly refer to major business activities of changes to a company's legal structure, ownership, assets, or financial strategy. The Saudi corporate law utilises three types of rights that entitle one stockholder to participate compulsorily in another's sale to outside investors, addressing the diverse needs of both majority and minority shareholder(s).[33] One strategic right is referred to as 'drag-along'.[34] This particular right requires each shareholder to agree to grant the majority shareholder(s) a right to request a compulsory co-sell and transfer all of their shares in the target company to a proposed buyer who wishes to purchase all of the shares in the company pursuant to a bona fide purchase offer ('drag-along event'). This right is granted in the event that the majority shareholder(s) wish to transfer all of its shares in the company ('drag along shares')

29 *Goode v Ryan* 489 NE 2d 1001, 1004 (Mass 1986). See also, Tom Matthews, 'Drag Along and Tag Along—Fundamentals' (*LexisNexis*, 5 June 2025) https://www.lexisnexis.co.uk/legal/guidance/drag-along-tag-along-fundamentals accessed 5 December 2025.

30 Kimball L Chapman and others, 'Investor Relations, Engagement, and Shareholder Activism' (2022) 97(1) Accounting Review 77, doi:10.2308/TAR-2018-0361.

31 Attila Pintér, 'Drag Along Right in Hungarian Venture Capital Contracts' (2020) ELTE Law Journal 190.

32 Bohuslava Horáková, 'Drag-along and Tag-along Clauses in Shareholder Agreements - Czech Law Perspective' in Nicole Grmelová (ed), *Perspectives of Law in Business and Finance* (ADJURIS 2023) 29.

33 US Securities and Exchange Commission, 'Stockholders' Agreement Among Dave & Buster's Parent, Inc and the Stockholders Party Hereto' (1 June 2010) s 4.01 Tag-Along Rights https://www.sec.gov/Archives/edgar/data/1525769/000119312511189452/dex46.htm accessed 5 December 2025.

34 Carsten Bienz and Uwe Walz, 'Venture Capital Exit Rights' (2010) 19(4) Journal of Economics & Management Strategy 1071, doi:10.1111/j.1530-9134.2010.00278.x.

in one or a series of related transactions.[35] A valid claim for 'drag-along' occurs when the majority shareholder(s) already accept to sell their shares, whereas the minority shareholder(s) oppose the bid, and do not want to sell their shares, then the majority shareholder(s) by the virtue of 'drag-along' can force all other shareholders in the company to sell their shares at the same price.

Therefore, the right of 'drag-along' inherently eliminates the need to initiate separate conversations with each stakeholder in the target company regarding the sale of their shareholding. Furthermore, this exceptional right effectively shifts decision-making authority away from the board, safeguarding the target 'sale' from potential conflicts of interest that directors may have. In this way, the right of 'drag-along' not only enhances transactions efficiency but also ensures that the interests of the majority shareholder(s) prevail in pivotal moments for the company.

However, 'drag-along' may jeopardize the rights of minority shareholder(s). To protect against this, they are typically granted another critical right: the right to participate, or 'tag-along', in the bid for shares by the other controlling shareholder(s). A typical 'tag-along' right requires that if a majority shareholder(s) elects to transfer its shares to a third party with or without exercising the right of 'drag-along', they grant to each of the other shareholder(s) a right to co-sell their shares in the company together with the majority to such a prospective buyer, on the condition that the deal is subject to the same consideration per-share and otherwise on the same terms and conditions as applicable to the selling majority shareholder(s) upon the occurrence of a 'tag-along' event.[36] This arrangement not only safeguards their interests but also grants minority shareholder(s) a valuable opportunity to participate in control premiums that might otherwise be reserved exclusively for the controlling majority shareholder(s).

Both rights, i.e., 'drag-along' and 'tag-along', are included in the new Saudi Companies Law. Articles 113 & 181 outline both rights under the heading 'Obligation to Sell' for both joint stock companies (JSCs) and limited liability companies (LLCs) in 2022. More particularly, Article 113 states that the company's articles of incorporation may allow majority shareholders, based on the consent of shareholder(s) who hold at least 90% of the company's voting shares, to request minority shareholder(s) to sell their minority shares, directed toward a bona fide purchaser, who is willing to acquire all of the company's shares on the condition that the target sale is executed at the same price and under the same terms agreed

35 US Securities and Exchange Commission, 'Second Amended and Restated Shareholders' Agreement between Northshore Holdings Limited and the Shareholders Named Herein' (23 December 2015) s 3.03 Drag-along Rights https://www.sec.gov/Archives/edgar/data/1363829/000119312515417672/d115754dex102.htm accessed 5 December 2025.

36 US Securities and Exchange Commission, 'Shareholders Agreement by and Among Offshore Group Investment Limited and the Shareholders (As Defined Herein)' (10 February 2016) s 4.5 Provisions Applicable to Tag-Along and Drag-Along Sales https://www.sec.gov/Archives/edgar/data/1465872/000119312516467281/d136951dex101.htm accessed 5 December 2025.

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upon for purchasing the majority shareholdings.[37] Under Article 113, minority shareholder(s) are granted the right to request the majority shareholder(s) to sell shareholdings of the minority shareholder(s) to the new buyer at the same price and terms proposed to the majority shareholder(s). This fair-game safeguard protects against being saddled with new owners or being left behind if a majority stake is sold, ensuring fairness in business transactions. Still, it is critical to note that if the 'tag-along' right is not exercised within a designated period of time, the majority shareholder(s) are deemed to have the liberty to transfer the relevant shares to the proposed acquirer, adhering to the terms outlined in the notice of tag-along provided to the other shareholder(s). In practice, the governance of the Saudi Electricity Company (SEC) under Article 16 of its articles of association, which outlines 'Share Capital and Shares,' explicitly grants 'drag-along' and 'tag-along' rights to both classes of shareholders. It also establishes the necessary guidelines for processing transactions when these rights are invoked.[38] The major shareholder(s) of the SEC include the Saudi Arabian Public Investment Fund (PIF), which owns 74.3% of the shares, and Saudi Aramco, holding 6.9%. In addition, foreign investors own 7.4% of the company, showcasing a diverse ownership structure, yet showing another true application of the "quasi-partnership" in the Saudi financial market.[39] A careful reading of Article 16 of this strategic partnership and the diverse composition of the founding shareholders, it appears that it is the minority foreign shareholders who are authorised to exercise the tag-along rights should a triggering event occur. This would permit them to participate in any sale if the majority shareholders, particularly the governmental entities, decide to sell their stakes in the SEC, effectively transferring the entire business to a new owner. This closely-knit partnership reinforces the concept of business specificity, which drives the inclusion of 'sale transfer restrictions' among the shareholders involved.

37 Royal Decree No M/132 of 1/12/1443 AH (n 1) arts 113, 181. See for example, 'Article 113: Drag-along and Tag-along Rights : Without prejudice to the Capital Market Law, the company's articles of association may, upon the approval of shareholders representing at least 90% of the company's voting shares, provide for the following: a) A. That the majority shareholders shall have the right to compel the minority shareholders to accept an offer from a bona fide buyer for purchasing all of the Company's shares at the same price and under the same terms and conditions of purchasing the majority shareholders' shares.'

38 Saudi Electricity Company (SEC), 'Articles of Association' (2022) https://www.se.com.sa/en/Whoweare/Column3/About-Company/Bylaws accessed 20 June 2025. 'Article (16) Drag-along and Tag-along Rights: 1. Majority shareholders shall have the right to obligate minority shareholders to accept an offer from a bona fide buyer to purchase the entire shares of the Company for the same price and under the same terms and conditions applicable to the purchase of majority shares; 2. In cases where the majority sell their shares, minority shareholders shall have the right to obligate majority shareholders to guarantee the sale of minority shares for the same price and under the same terms and conditions applicable to the sale of majority shares.'

39 Saudi Electricity Company (SEC), 'Shareholder Structure' (last updated 17 December 2025) https://www.se.com.sa/en/Investors/Column1/Share-and-Financial-Information/Shareholder-Structure accessed 20 December 2025.

Several key uncertainties warrant further research. The new Companies Law in Saudi Arabia does not specify which types of share sales can trigger 'drag-along' rights. This lack of clarity creates a potentially unrestricted situation. Majority shareholders may activate a 'drag-along' provision during transactions such as mergers, significant asset sales, or acquisitions. These situations often involve a 'change of control' or a major disposition, like an exclusive license.

Secondly, the new Saudi Companies Law leaves open the question: what is the minimum percentage of ownership in the company that must be sold to trigger the right of 'drag-along'? Robert B. Little and others argue that selling at least 50% of a company is common from their perspective. However, the exact percentage may vary depending on the ownership structure of the company's shares and the relative negotiating powers of the shareholder(s).[40] Still, Saudi law stipulates a minimum ownership percentage required to initiate a right of 'drag-along'. Specifically, Article 113 states that, without prejudice to the Capital Market Law, the company's articles of association may allow a right of 'drag-along' with the approval of shareholders representing at least 90% of the company's voting shares. Therefore, a shareholder who holds a slight majority, such as 51% of the target company shares, cannot typically force fellow minority shareholder(s) to sell their shares to a new buyer, which gives significant power to the larger shareholder(s). The requirement in Saudi law to hold 90% of a company's voting shares for a drag-along provision aims to ensure that transactions are fair to both majority and minority shareholders. This is because what is considered a fair price, the market value of the company, and a favourable bid for the majority shareholders, who own nearly 90% of the company's shares, will inherently also benefit the minority shareholders, making it a best-suited deal for everyone involved. This argument is further supported by James J. Greenberger's presumption that a balanced SHA should ensure that the economic interests of majority shareholders are typically aligned with those of minority shareholders.[41] In his perspective, astute minority shareholders should leverage their negotiating power to draft a more favourable SHA.

Surprisingly, the offer made by RCBC BidCo Pty Ltd ('BidCo') is a significant example of the sale process of an entire company, using a similar right to 'drag-along' referred to as 'compulsory acquisition', triggered by majority shareholders representing at least 90% of the company's voting shares, and is similar to Saudi law. In its letter, 'BidCo' submitted an offer in late 2024 or early 2025 to acquire Parnell Pharmaceuticals Holdings Ltd, at U.S. $0.4628 per Parnell share. BidCo is an Australian company owned by two funds managed and advised by DW Healthcare Partners, which offered to purchase all ordinary

40 Robert B Little and Joseph A Orien, 'Issues and Best Practices in Drafting Drag-Along Provisions' (*Harvard Law School Forum on Corporate Governance, 14 December 2016*) https://corpgov.law.harvard.edu/2016/12/14/issues-and-best-practices-in-drafting-drag-along-provisions/ accessed 5 December 2025.

41 James J Greenberger, 'Minority Investor Rights in Private Equity Transactions' (2001) 4(2) The Journal of Private Equity 47.

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shares in Parnell Pharmaceuticals Holdings Ltd at the same price of U.S. $0.4628 per share (the 'cash consideration').[42] This offer is referenced as the compulsory acquisition governing Parnell, which states that if the offer for the sale of the whole company is accepted by shareholders holding at least 90% of the issued shares of Parnell to a third-party purchaser, any remaining shareholders may be required to sell their shares under the same terms. It is worth noting that BidCo mentioned in its booklet to Parnell's shareholders that: 'BidCo intends to compulsorily acquire all the outstanding shares of Parnell's shareholders that have not accepted the Offer. If BidCo is entitled to acquire the remaining Parnell shares under this regime compulsorily, the Parnell shareholders who have not accepted the offer will receive the cash consideration as consideration for the acquisition of their Parnell Shares'.[43] By achieving full ownership, BidCo will regain the authority to steer the business within Parnell, without the complications posed by holdout investors, enabling a seamless transition out of the enterprise for all original shareholders of Parnell Pharmaceuticals Holdings Ltd.

Furthermore, under Saudi law, it is essential that the right of 'drag-along' be explicitly included in the articles of association (AOA) rather than merely referenced in a lower-tier shareholder document, such as a SHA. In this regard, the AOA holds significant value within the intricate framework of corporate law, as prescribed by Article 113 of the new Saudi Companies Law. In this regard, a company is fundamentally guided by three essential types of documents: 1. national or regional laws, which establish the legal framework. 2. The memorandum of association (MoA) and the AoA outline the company's mission and operational guidelines. 3. Several agreements and contracts, including SHAs. Saudi Arabia Companies Law specifically requires that any changes with regards to the 'co-sale obligations' should be set into the articles of association rather than in the shareholders' agreement. This is likely because the enforcement of such agreements is generally presumed to be weaker than that of clauses incorporated in the AoA.[44] In principle, if one party fails to fulfil their obligations, it is less relevant to the company itself, which means that shareholders' interests may not be adequately protected.

A negative view of SHA can be described as follows: if one party violates a 'drag-along' provision stipulated in the SHA, the affected shareholder cannot compel the company to refuse to acknowledge the transfer. The sale contradicts an agreement the company is not bound by (under the principle of privity of contract). In this case, the aggrieved shareholder(s) can at most recover monetary compensation for the injury caused by the sale. Similarly, if a right of 'drag-along' exists in a SHA, a shareholder may choose to

42 Morgan Stanley, 'Offer for Your Shares in Parnell Pharmaceuticals Holdings Ltd' (29 November 2024) https://www.morganstanley.com/content/dam/msdotcom/en/assets/pdfs/Parnell_Pharmaceuticals_Holdings.pdf accessed 5 December 2025.

43 ibid 21.

44 Sunidhi Agrahari, 'Share Transfer Restrictions: Enforceability of the Provisions of a Shareholder Agreement vis-à-vis the Articles of Association' (2022) 5(1) International Journal of Law Management & Humanities 2174, doi:10.10000/IJLMH.112765.

disregard their commitment and refuse to sell their stake. Since such a breach falls outside typical corporate activities no corporate remedy, such as the excluding the non-performing shareholder, would be available. The aggrieved shareholder's only options would be to demand specific performance of the agreement or, more likely, to seek monetary compensation for the damage incurred. By this point, the opportunity to sell the company would have disappeared. To effectively address the enforceability shortcomings often associated with SHAs, the new Saudi Companies Law proposes elevating these agreements to the status of bylaws. While shareholders can outline exit restrictions in a SHA, it is crucial to incorporate these terms into the company's bylaws (articles of association) and officially register them with the relevant government registry.[45] By doing so, the inclusion of a 'drag-along' clause transforms them into foundational elements of the company's organisational architecture.

Moreover, once registered, these provisions are recognised as legitimate and can be confidently enforced against third parties. This elevation to bylaw status not only bestows credibility on these agreements as key corporate tools but also provides an authoritative framework for their enforcement.

The question arises: why does the right of 'drag-along ' receive regulatory approval in Saudi Arabia, amid growing concerns that it could coerce minority shareholders and undermine their rights within the company? At its core, the 'drag-along right' empowers majority shareholder(s) to compel minority shareholders to sell their shares during a company sale, effectively eliminating the possibility of minority holdouts. While this power might evoke feelings of coercion, it is essential to establish robust safeguards, such as minimum price guarantees, fair valuations, and supermajority triggers, to protect minority shareholders from unjust treatment. These safeguards ensure that minority stakeholders receive the same equitable terms as the majority, striking a delicate balance between majority control and minority rights. In response to this regulatory apprehension, Article 113 clarifies that requests for a right of 'drag-along' must be directed toward a 'bona fide purchaser(s)' who is willing to acquire all of the company's shares at the same price and under the same terms as those negotiated for the majority shares. Thus, in this framework, majority shareholder(s) can 'drag' minority shareholder(s) into the deal on the same favourable conditions, thereby harmonising the interests of all parties involved. For minority shareholder(s), the responsibility of negotiating the terms of the sale transaction typically falls on the selling majority shareholder(s). Minority shareholder(s) may not have the same bargaining power as their larger counterparts, which can limit their ability to influence the negotiations significantly. However, this raises an important question: what are the potential consequences if the right under the 'drag-along' clause fails to specify a price determination in the articles of association, as mandated by Article 113 of the new Saudi

45 Jidesh Kumar and Richa Mehra, 'Beware Rights of Shareholders' (2006) 25(10) International Financial Law Review 40.

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Companies Law? Understanding this could be crucial for ensuring compliance and protecting stakeholder(s)' interests, for the acquisition of shares in a company against the wishes of the shareholder(s) is often a controversial topic for obvious reasons. Shares are considered property belonging to the shareholder(s), and a fundamental principle of property law stipulates that any non-consensual interference with an owner's rights must be justified by clear legal authority. Typically, an explicit statutory power to acquire shares is required, as seen in the mandatory 'squeeze-out' provisions in the company laws of many countries. To prevent misuse of these provisions, statutory procedures are usually applicable only in narrowly defined circumstances and must be strictly followed. Thus, a 'drag-along' clause in the articles of association shall be deemed invalid if the price is not specified.

2.2.1. Testing the enforceability of the 'drag-along' right in the English and French courts

The exploration of various legal systems has revealed a fascinating area of research, especially concerning shareholders' autonomy to include a 'drag-along' right in their SHA. This aspect may be beneficial for judges in Saudi courts, as it offers valuable insights into interpreting the legal issues related to exercising this shareholders' power. On November 27, 2024, the French Supreme Court (Cour de Cassation) issued a significant ruling in case number 23-10.385 regarding a claimed 'drag-along' clause in SHA. The court determined that when this clause was explicitly labelled as a 'promise of sale', it became invalid for the lack of any provision establishing a price determination in this event.[46] This decision underscores the necessity for clarity and precision in contractual obligations, reaffirming the significance of specifying terms to ensure enforceability. An interesting and concerning ruling has emerged for those who draft agreements. This decision is especially relevant for individuals involved in drafting partnership and SHAs, as it may raise concerns regarding the enforceability of the 'drag-along' clause. In practice, referring to the price offered by the third-party buyer (as is commonly done) should minimise the risk of lacking a specified or ascertainable price. Now, according to the contested judgment issued in the Paris Court of Appeal (Division 5, Chamber 9) and amended on July 9, 2020, a SHA was established between Messrs. [A] and [B] and Ms. [J], who were partners in a simplified joint stock company, Cadres et Dirigeants Interactive (referred to as the CDI company). Article 6 of the SHA in question stated that if there is a firm offer to acquire all of the company's shares, whether from a partner or a third party, the other partners are obligated to sell their shares to the buyer, and each of the shareholders acknowledges that this obligation constitutes 'a promise to sell their shares'.[47] Subsequently, on May 3, 2013, Mr. [B] offered to buy all of

46 Case No 23-10.385 (n 5).

47 Article (6) of the SHA provided that *'In the event of a firm offer to acquire no less than all of the company's shares representing 100% of the company's share capital and voting rights addressed by a third party (or third parties) and/or a shareholder (or shareholders) (…) all the parties to this agreement irrevocably undertake to transfer all their shares to the purchaser (...) Each of the shareholders acknowledges that the foregoing provisions constitute a promise to sell their shares'.*

Mr. [] and Ms. [J]'s shares for €2,000 each. Following Mr. [A]'s refusal, Mr. [B] invoked the clause stipulated in Article 6 of the SHA. Mr. [A] filed a lawsuit against CDI, Mr. [B], and Ms. [J], seeking a declaration that the forced sale of his shares was null and void. He argued that the SHA of CDI did not specify the determination process of the 'sale price' in the event of a forced sale of his shares. Mr. [A] contended that Article 6 merely represented a commitment to sell rather than mandating a compulsory sale of his stockholdings. Afterwards, both the trial judges and the Paris Court of Appeal rejected the plaintiff's claims regarding the nullity of the share transfer and his subsequent requests, considering that the disputed Article 6 did not constitute 'a promise to sell', but simply was practically an 'obligation to sell at the price described in the offer'.

Interestingly, the contested judgment noted that: ' in a promise of sale, the price must be either determined or determinable'; therefore, precisely the absence of a specific provision regarding the determination of price did not affect the validity of the whole clause. However, the Court of Appeal misinterpreted this agreement, concluding that it did not constitute 'a promise to sell 'but rather an obligation to transfer the shares at the price set by the offer, and most importantly, the lack of a determined price did not affect the validity of the sale contract in question. In its ruling, the French Supreme Court (*Cour de cassation*) found that the Court of Appeal expressly misinterpreted the clear and precise wordings of Article 6 of the SHA, determining that the Article in question did indeed constitute 'a promise to sell', whereas to be considered a 'drag-along clause', it had to contain the essential elements of a contract of sale under the common law, which is a provision showing 'a fixed or determinable sale price mechanism, and consequently, the absence of a price determination impacted its validity, violating Article 6 as being a classical 'drag-along' clause.[48] This ruling is significant for the first judicial experience with drag-along provisions in France, for several reasons. The Supreme Court reversed the decision issued by the Court of Appeal, emphasising that shareholders should exercise caution when drafting drag-along provisions, that French courts should adopt a strict interpretation of the SHA, and that they should not amend or re-draft defective clauses within the SHA, giving them new unwritten outlines that are not specifically included in the contract, such as how shareholders should evaluate the sale price in a drag-along event. Most importantly, the French Supreme Court did not reject upholding a clause that allows a party to a SHA to 'step into' the rights of a third party, making an offer to acquire the shares directly or forcing existing shareholders to sell their shares to an outsider bidder.

What would the Saudi courts' judgment be under the new Companies Law, particularly Article 113, considering the arguments in case number 23-10.385? Considering the mandatory nature of every prerequisite outlined in Article 113, Article 6 of the SHA lacked

48 Karine Khau Castelle, 'La Promesse De Vente Dans Les Clauses De Drag Along (Cass Com, 27 Novembre 2024)' (*Alerion Avocats*, 31 March 2025) https://Www.Alerionavocats.Com/La-Promesse-De-Vente-Dans-Les-Clauses-De-Drag-Along-Cass-Com-27-Novembre-2024-N23-10-385/accessed 5 December 2025.

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a key pricing mechanism; however, the lack of a pricing mechanism will not invalidate the whole drag-along right, as the result is uncertain. Nevertheless, the literal strict interpretation of the 'a promise to sell their shares' is a mere promise that is considered a moral obligation, but it is not always a legal obligation or strictly obligatory in all circumstances. The binding nature of a promise depends heavily on the context, such as legal considerations. In other words, 'a promise to sell their shares' does not amount to an official right for compulsory transfer based on the classical right of 'drag-along' by virtue of Article 113 of the Saudi New Companies Law.

From the UK's perspective, in 2018 the English *High Court of Justice* in *Cunningham v Resourceful Land Ltd and others,* established a legal precedent that illuminated the intricacies of the right of 'drag-along' and the proper interpretation of a 'bona fide purchaser(s)' who wanted to purchase all the shares in the disputed company in question, in which it compellingly underscores the necessity for shareholders to strictly adhere to the defined terms for invoking the 'drag-along' right. This significant decision is a one - of - the kind by the U.K. High Court, which affirmed that a meticulously crafted right of a 'drag-along' in SHA is enforceableConsequently, majority shareholder(s) legally possess the contractual statutory power to compel minority shareholders to divest their shares to an arm's-length buyer, regardless of any dissent from the minority. In *Cunningham v Resourceful Land Limited and others,* the English court was asked by the claimants to decide whether a minority shareholder could abstain from acting under an agreed 'drag-along' clause, because the minority shareholders believed the clause had 'uncertain' terms. In April 2013, five individuals founded Resourceful Land Ltd (RLL) with a shareholder agreement that included a 'drag-along' clause, allowing majority shareholders to compel minority shareholders to sell their shares and to sign share transfer forms on their behalf if necessary. In a remarkable turn of events, A lender to RLL, Privilege Project Finance Limited, expressed interest in purchasing all the shares in RLL by activating the 'drag-along' clause. However, Privilege proposed exchanging the shares for new shares in its subsidiary rather than offering cash. Only three RLL shareholders agreed to sell their shares under Privilege's plan, while two minority shareholders opposed it. The selling shareholders issued a notice compelling the minority shareholders to sell their shares, and the transaction with Privilege was completed in October 2017 in accordance with the 'drag-along' clause. The minority shareholders who were forced to sell challenged the 'drag-along' provision for several reasons. Firstly, the term 'sale' in the drag-along clause of the SHA refers specifically to a cash sale. Since the Privilege's purchase was made in shares instead of cash, the drag-along provision did not apply. Secondly, the sale cannot be deemed 'in good faith' due to the need for further funding and the 'collateral benefit' gained by selling shareholders. Additionally, a minority shareholder argued that selling the company to a new entity, where majority shareholders retained shares, breached the duty of 'good faith' as it was not conducted at 'arm's length.'

The English High Court held that the majority shareholders properly exercised their rights under the agreement, allowing them to sign transfer forms for the refusing minority shareholders, and to enforce the drag-along provision.[49] Overwhelmingly, the court rejected all the claimant's arguments, ruling that 'sale' includes both cash and non-cash sale prices, as stated in the 'drag-along' clause, as it reads: 'or any other consideration' in exchange for completing the sale transaction, and thus was deliberately wide to include any return as a sale price.[50]

Furthermore, the High Court determined that the share transaction was executed in good faith, despite the absence of an explicit duty of 'good faith' from shareholders. Privilege was deemed a bona fide purchaser intending to buy all the shares from RLL's shareholders under the same 'drag-along' terms, treating both minority and majority shareholders equally. The transaction was conducted at arm's length, with no prior connection between the new bidder and the selling shareholders. Overall, the High Court embraced the principle of shareholder autonomy, affirming their right to establish 'drag-along' provisions as a meaningful restriction on the open transfer of shares, underscoring the importance of collective agreements in shaping ownership dynamics. Furthermore, the court adopted a traditional approach by interpreting the parties' intentions in relation to the share-for-share exchange, which constituted a valid transfer under the broad wording of the clause, which included 'any other consideration'. Thus, the court aimed to uphold the spirit of the agreement fairly by considering what a reasonable person, armed with full background knowledge, would glean from 'any other consideration' found in SHA, as claimed by both John Dodsworth and Dominic Sedghi.[51]

In a different context and perhaps the most practically problematic issue, this English legal decision is crucial for the new Saudi Companies Law and possibly beyond the borders of this country, because the Saudi law does not adequately addresses remedies outside of litigation for situations where majority or minority shareholders refuse to sell their shares despite the valid application of the 'drag-along' or 'tag-along' rights in the event of a favourable bid made by a third person. Compensation for harm or contractual penalties cannot compel obligated shareholders to sell their shares to a bona fide purchaser alongside the majority shareholders. If the 'drag-along' clause is viewed as an innominate contract, the primary remedy for a breach by minority shareholders is for majority shareholders to seek

49 John Dodsworth and Dominic Sedghi, 'Court Upholds Drag-along Provision' (*Lexology*, 10 August 2018) https://www.lexology.com/library/detail.aspx?g=b46dbdd8-ecbc-44b1-8ecc-3e973d879fd8 accessed 5 December 2025.

50 *Cunningham v Resourceful Land Ltd and others* (n 4). See, Clause 8.6 of the shareholder agreement provided that 'if the Called Shareholders fail to execute the transfers, then upon the Company receiving the purchase monies or any other consideration payable for the shares the Syndicate Shareholders may execute the transfers on their behalf. An objective reading of the Shareholder Agreement leads to the conclusion that the Syndicate Shareholders through clauses 3 and 8 would have control of RLL's direction and ultimate sale or transfer'.

51 Dodsworth and Sedghi (n 50).

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damages. However, quantifying damage from a failure to fulfil 'drag-along' or 'tag-along' obligations is challenging. This raises the question: how can majority shareholders manage uncooperative minority shareholders during 'drag-sale' procedures?

Some SHAs incorporate an obligation to 'consummation' requesting all parties to fully perform their agreed-upon obligation, in which the other shareholders shall cooperate fully with relevant selling shareholders and the acquirer, and shall undertake all actions as may be necessary or desirable to give full legal effect to and consummate the underlying agreement between selling shareholders and the proposed acquirer, and shall cause the company to procure all corporate approvals necessary to that effect in due time.[52] However, the obligation to consummate complicates assessing quality and timeliness, often depending on how well the sales process is managed and the performance and flexibility of the transaction. If expectations are not met, the affected party may feel entitled to a reduced outcome. Additionally, the 'consummation' is another covenant among shareholders, and if breached, the affected party can only seek damages under contract law principles. Most seriously, the prospective third-party purchaser may withdraw from the transaction if the process becomes too time-consuming.

In support, Robert Little and others have proposed a controversial solution to address the challenges posed by uncooperative minority shareholders. They suggest that the majority shareholders should request an irrevocable proxy from the minority shareholder. This proxy is expected to allow the majority shareholder to exercise drag rights on behalf of the minority shareholder, enabling the majority shareholder to vote by written consent or to implement other necessary legal procedures, including signing documents, to enforce the drag transaction. Negotiating with minority shareholders for an irrevocable proxy can be challenging if they want to retain the right to review documents and participate in the drag-along sale process. Exceptionally, the drafters of the SHA for RLL in *Cunningham v. Resourceful Land Limited* provided a potential quick remedy for the majority against minority shareholders who opposed complying with the 'drag-along' clause by including a provision for the wholesale sale of the company in the SHA. Specifically, the agreement stated that: '…….they could require the other shareholders to sell their shares too and could sign transfers on their behalf if they refused to do so' which essentially is the same solution presented by Robert Little and others in 2016, but not through a direct proxy as in the original proposal. Furthermore, Saudi law may require shareholders to resort to higher authorities to enforce the transfer of the sold shares to the new seller.

Regardless of the remedies outlined in the SHA, careful drafting can help mitigate several critical uncertainties that arise when dealing with uncooperative minority shareholder(s). By using precise language, the agreement can facilitate the necessary actions to execute the drag transaction effectively.

52 See the obligation placed by North Bay on other shareholders in the company, US Securities and Exchange Commission, 'Second Amended and Restated (n 36) s 3.03 (f).

Currently, to what extent the obligation of 'drag-along' is expected to be perceived in the context of *Re Compound Photonics Group Ltd; Faulkner v Vollin Holdings Ltd*[53], which was an earlier case that clarified the scope and interpretation of an express duty of 'good faith' contained in a SHA, in the context of an unfair prejudice petition. While distinct cases, both *Re Compound Photonics Group Ltd; Faulkner v Vollin Holdings Ltd* and *Cunningham v. Resourceful Land Limited* deal with related principles of contract and company law. In *Re Compound Photonics Group Ltd,* the court enforced a contract that contained precise, unambiguous, and detailed terms, obligations, and performance standards aimed at eliminating ambiguity, reducing disputes, and ensuring enforceability. The Court of Appeal took a narrow interpretation of 'good faith', historically stating that the parties must interact 'fairly and openly'. In relation to the specific facts of the case, the court determined that the majority shareholders did not have any procedural obligations regarding the removal of directors beyond those outlined in Sections 168 and 169 of the Companies Act 2006.[54]

There are several key issues here. Snowden LJ, in the Court of Appeal, embraced a refined interpretation of 'good faith', emphasising that the parties must remain 'faithful to their mutually agreed common purpose'. It concluded that **no automatic standards**, such as duties of 'open and fair dealing' or taking into account the interests of other parties, shall be included in a 'good faith' clause, unless a shareholders' agreement expressly states otherwise.[55] In application, the court ruled that the majority shareholders were not required by a duty of 'good faith' to prioritise the interests of the minority shareholders in any unspecified manner, beyond the obligations that all shareholders have to consider the interests of the company. In other words, the duty of 'good faith' embodies a spectrum of important principles: acting with honesty and integrity, committing to cooperation and transparent communication, restraining a party from taking particular actions, and sometimes asking one party to set aside its commercial interests for the benefit of the other. If all shareholders wish to cultivate a relationship characterised by openness and fairness, it would be wise to include a clear stipulation requiring consultation with one party before critical decisions are made.

Why is this important? *Re Compound Photonics Group Ltd* represents a significant change in the court's approach to clauses of 'good faith', and to other provisions in shareholders' agreements. The Court of Appeal in the U.K is now less reliant on a fixed presumed formula and places more emphasis on interpreting these clauses based on the commercial context

53 *Re Compound Photonics Group Ltd; Faulkner v Vollin Holdings Ltd* **[2022] EWCA Civ 1371.**

54 Practical Law Corporate, 'Unfair Prejudice: Express Contractual Duty of Good Faith (Court of Appeal)' (*UK Practical Law*, 21 December 2022), https://uk.practicallaw.thomsonreuters.com/w-037-7474?transitionType=Default&contextData=(sc.Default)&firstPage=true accessed 5 December 2025.

55 Tamar Mepharishvili, 'The Principle of Good Faith in Contractual Relations' (2025) 21(39) European Scientific Journal 168, doi:10.19044/esj.2025.v21n39p162.

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and specific facts of each dispute.[56] As a result, shareholders who wish to invoke a 'good-faith' clause must clearly articulate their intentions. For instance, in this case, the parties needed to explicitly outline in the SHA that they would not vote to remove the directors. As such, it is best to include specific, standalone obligations that reflect the commercial agreement, as this eliminates the uncertainty associated with good-faith duties or other duties, such as a compulsory transfer mechanism, such as a 'drag-along' or 'buy-out'.

The SHA in *Cunningham v. Resourceful Land Limited* did not include an explicit duty of good faith (unlike other cases where such a clause was present). However, the claimant argued that an implied duty of 'good faith' had been breached. The central issue was whether the buyer qualified as a 'bona fide arm's length purchaser'. The Court determined that the transaction satisfied this standard, and the whole proposal was offered in 'good faith'. All shareholders received a pro-rata shareholding in the new buyer company, indicating equal treatment for both minority and majority shareholders. This equal allocation was a strong sign of good faith and the absence of any bad faith. Furthermore, the court focused on the subjective mental state of the party exercising the power; they acted honestly for a legitimate commercial purpose rather than to unfairly prejudice the minority. The court's conclusion in *Cunningham v. Resourceful Land Limited* aligns with the philosophy adopted by the Court of Appeal in *Re Compound Photonics Group Ltd*. The latter emphasised a more refined interpretation of 'good faith', stressing the importance of the parties adhering to their mutually agreed common purpose, which may also serve as the basis for triggering a valid procedure for a 'drag-along' obligation, which was formally agreed in the SHA. *Cunningham v Resourceful Land Ltd* (2018) and *Re Compound Photonics Group Ltd* (2022) are significant cases concerning the scope of 'good faith' obligations in SHAs, indicting that parties must avoid actions that reasonable, honest people consider 'commercially unacceptable' and must not undermine the agreement or the substance of the contractual benefits derived from it. Both rulings emphasise that the meaning of good faith is highly context-dependent and generally centres on honesty and a lack of bad faith.

These legal precedents illustrate how the adjudication, as well as shareholders' inclusion of compulsory restrictions on the sale of shares, demonstrate a valid application of the fundamental principle of access to justice. According the perception of the UN, access to justice is a fundamental principle of the rule of law, in which, people should be able to have their claims as well as arguments being heard, exercise their rights, challenge discrimination or hold decision-makers accountable, challenge discrimination, or hold decision-makers accountable, in pursuit of seeking fair remedies.[57] Furthermore, the

56 Neil Brown and Clare Rooney, 'Meaning of Contractual Duty of Good Faith (*Re Compound Photonics Group Ltd; Faulkner v Vollin Holdings Ltd*)' (*LexisNexis*, 1 November 2022) https://www.lexisnexis.co.uk/legal/news/meaning-of-contractual-duty-of-good-faith-re-compound-photonics-group-ltd-faulkner-v-vollin-holdings accessed 5 December 2025.

57 United Nation and the rule of law, Access To Justice, <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> accessed 30 June 2025

OECD argues that access to justice ensures an appreciation of democratic values and encourages an inclusive recovery of the rights that were subject to breaches.[58] In this context, exit rights are fundamental rights of shareholders that ensure their ability to transfer ownership of shares. These rights provide means for shareholders to realize the value of their investments and exit the company. While shareholders may impose certain restrictions on the sale of shares among themselves, these restrictions are typically established through mutual agreement in consideration of democratic values after they had the opportunity to discuss and negotiate these terms freely and without no force on any shareholder to accept them against their will. A core function of shareholders' rights, including agreed 'drag-along' and 'tag-along' provisions, is to enable shareholders to protect their interests and hold the company's management accountable through the judicial system if there is a breach of these rights due to non-compliance with invalid notices, ensuring a fair treatment and include specific avenues for legal seeking remedies. If shareholders voluntarily agree to 'drag-along' and 'tag-along' provisions and notice that their rights have not been promptly respected by other shareholders, they still have the right to initiate legal proceedings against infringing shareholders or the company itself. This may arise in cases of misconduct, breach of duty, or if they believe their interests are being unfairly prejudiced or oppressed by the company or other shareholders. These rights maintain a balance between the interests of majority and minority shareholders, allowing them to initiate legal actions to prevent unfair enforcement of 'drag-along' and 'tag-along' provisions. Furthermore, under these rights, shareholders have the right to access company documents and to receive a "drag-along or tag-along notice" attached with the proposed offers from potential purchasers. This access allows shareholders to make informed decisions and gather the necessary evidence for legal action or shares sales when shareholders' rights are properly invoked. Ultimately, statifying the UN conceptualisation of access to justice through the exercise of their agreed rights 'drag-along' and 'tag-along' provisions, and challenging any discrimination.

However, if the agreed-upon 'drag-along' and 'tag-along' provisions lack contractual specificity due to vagueness or ambiguity, they can create barriers to justice. In contrast, specific terms promote fairness, predictability, and efficient dispute resolution. The key issue lies in the drafting skills of shareholders regarding what 'drag-along' and 'tag-along' mean to them and how to implement them fairly without jeopardising the interests of others. Additionally, shareholders who believe that 'drag-along' and 'tag-along' provisions may be detrimental to them, forcing them to act in a self-serving manner, are likely to avoid entering into a shareholder agreement or business from the outset, typically due to a conflict of interest, if they recognise that these restrictions will harm their interests.

58 The Organisation for Economic Co-operation and Development (OECD), Access to justice, <https://www.oecd.org/en/topics/sub-issues/access-to-justice.html > accessed 30 September 2025

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2.3. The Right of First Refusal (ROFR)

Another recognisable restriction on the transferability of shares that received regulatory inclusion in the new Saudi Companies Law is the right of first refusal (ROFR), also referred to as the "pre-emptive right" by the Companies Law enacted by Royal Decree No. M/3 of 28 November 2015. This statutory recognition was enacted before the right of 'drag-long', and was introduced as a contractual option to purchase or redeem an asset (property, shares, etc.) before it is sold to others, offering control, security, and potential cost savings to the holder while influencing ownership stability for the existing buyer. Its significance spans real estate, startups, and SHAs.[59] Most forms of pre-emptive rights permit any shareholder wishing to transfer their company shares (the 'transferor') to any unaffiliated third party ('transferee') to send a written notice ('transfer notice') to each other shareholders offering them the right to first purchase the shares to be transferred, which may be all or part of such shareholder's shareholding (the 'offered shares') at the same price per-company share and other terms of the proposed unaffiliated new acquirer.[60] The primary justification for (ROFR) is the belief that the current right holder often values the property more than an outside buyer due to sentimental investments or goodwill from a long-term partnership. Furthermore, Jonathan Mitchell noted that a key aim of 'pre-emptive right' covenants is to stop existing shareholders from selling their shares in closely held corporations, to maintain consistent performance and protect the company from disruptions caused by a partner's sudden unilateral departure.[61]

Saudi Companies Law recognises that shareholders forming limited liability companies (LLCs) seek assurance about their partners, especially in closely held businesses with complex knowledge requirements. To address this concern, Article 178, titled 'Assignment of Equity Stakes' sets guidelines as well as specific circumstances for a partner's pre-emptive right to purchase an equity stake before it is sold to a non-partner, allowing for specifying

59 US Securities and Exchange Commission, 'Right of First Refusal and First Offer Agreement' (12 July 2011) https://www.sec.gov/Archives/edgar/data/1299969/000119312511188646/dex105.htm accessed 5 December 2025. See also, UN Trade and Development, 'Introduces State's pre-emption right on acquisition of strategic companies involved in solar' (*UN Trade and Development Investment Policy Hub*, 14 December 2023) https://investmentpolicy.unctad.org/investment-policy-monitor/measures/4518/hungary-introduces-state-s-pre-emption-right-on-acquisition-of-strategic-companies-involved-in-solar accessed 5 December 2025.

60 Oregon Division of Financial Regulation (DFR), 'Right of First Refusal and Co-Sale Agreement' (*Oregon.gov*, 15 October 2018) https://dfr.oregon.gov/business/reg/insurer/mergers/Documents/moda-delta/modahealth-deltadental-exhibit-a6.pdf accessed 5 December 2025; 'Right of First Refusal ('ROFR') FAQ: Explaining ROFR Language in Paragraph 8 of QAP' (*City of New York*, sa) https://www.nyc.gov/assets/hpd/downloads/pdfs/services/rofr-faqs.pdf accessed 5 December 2025. See also, Marco Ventoruzzo, 'Issuing New Shares and Preemptive Rights: A Comparative Analysis' (2012) 12 Richmond Journal of Global Law & Business 520.

61 Jonathan F Mitchell, 'Can a Right of First Refusal be Assigned?' (2001) 68(3) The University of Chicago Law Review 988.

the valuation method for shares and extending the period for other shareholders to exercise their right of first refusal in the articles of association, which must be exercised within thirty days from receiving notification of the agreed price.[62]

2.3.1. Judicial Challenges to ROFR

The ROFR sometimes faces judicial challenges in Saudi courts due to non-compliance with application of the mandatory legal procedures for a valid invocation of that particular right. These failures undermined the enforceability of the ROFR against fellow shareholders in the affected companies. A notable example is case number 439245241, which was adjudicated under both the Commercial Court of first instance and Court of Appeal in Riyadh, the capital of Saudi Arabia, on November 23, 2022.[63] In this dispute, the court of first instance underscored the critical importance of adhering to the precise provisions outlined in the articles of association, and the exact wordings of the Companies Law with respect to the required procedures for invoking a valid ROFR application. It was found that the flawed procedures for redeeming shares were dependent on the partners' agreements regarding external requests. This condition contradicted both the statutory requirements and the terms set forth in the partners' covenants regarding the ROFR application. This ruling serves as a powerful reminder of the necessity of clarity and compliance in both corporate and contract law. More precisely, the plaintiff brought a lawsuit in the Commercial Court in Riyadh in his capacity as a partner against the defendants, who were also partners in Al-Falah Private Schools LLC (the Company) that had issued 600 shares, representing 100% of the capital, which amounts to 300,000 Saudi riyals (£58,941.63), and it had nine partners. This commercial relationship led to the redemption of the shares claimed, totalling 530, following a bid offer from the remaining partners who have expressed their desire to sell their shareholdings. The plaintiff became aware of the partners' collective intention to sell their shares in the company to third parties. On July 13, 2021, he sent a letter to the partners requesting that they allow him to exercise his right to redeem and purchase their shares in full, in accordance with Article 10 of the articles of association and in accordance with Companies Law. This was based on the fair valuation of shares on purchase offers from serious third parties. On July 15, 2021, the defendants sent a letter indicating their intention to sell their shares for 38,000,000 riyals (£7,470,356.31), despite having received a higher offer of 43,500,000 riyals (£8,551,211.80). In response, the plaintiff requested access to important documents to proceed with the sale and conduct due diligence. However, the defendants delayed and ignored the plaintiff's request. Unexpectedly, on December 23, 2021, the plaintiff received a letter from the company director about a formal offer to sell the company and its shares for 40 million riyals (£7,863,707.82) from Al-Manhal Private Schools Company, at which all partners had agreed to sell their shares at the specified price.

62 Royal Decree No M/132 of 1/12/1443 AH (n 1)art 178.

63 Case No 439245241 (n 6).

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In response, the plaintiff requested the company's financial documents and details of the buyer's offer to assess if the sale price represented the fair value for acquiring the company.

The defendants claimed they received a purchase offer, but on 8 January 2022, the plaintiff expressed a desire to redeem his shares. This request included conditions that were not part of the buyer's original offer: a stipulation to adopt the purchase offer price as the initial price, and a requirement for partners to approve an amendment to the memorandum of association and the appointment of a new executive director, and most importantly, all partners must sign an attached commitment draft. This draft was created at the bank's request and does not mention the bank's name. It grants a 'blanket lien' or 'all-asset collateral', allowing the pledging of all company assets in exchange for a secured loan from any bank to finance the redemption of shares owned by other partners. These conditions exceeded the original contract terms. Despite the issues, the defendants contacted the plaintiff after the redemption period expired on February 9, 2022, offering him an additional 15 days to redeem his shares. They requested a certified cheque for the share value, but he failed to provide it by the deadline. Consequently, his right to redeem under the Companies Law lapsed. The plaintiff sought a court order to recover 530 shares from the defendants at fair value, citing compliance with Saudi Companies Law.

On November 23, 2022, the Commercial Court dismissed the case, rejecting all of the plaintiff's claims. Based on the foregoing observations, the court ruled that the plaintiff's method of redeeming shares owned by other partners was contrary to the law and any other governing documents of the company. The court partially examined the conditional relationship between the redemption of shares and the granting of a 'blanket lien' to finance the purchase of other partners' shares. The plaintiff requested a due diligence study of the company before finalising the purchase and reiterated this request in subsequent communications. He also asked for the completion of other procedures, such as appointing a new company director. However, these conditional requests contradicted the valid application of ROFR, as the other partners in the company were not obligated to comply with the plaintiff's demands for redemption. Furthermore, the plaintiff failed to meet the statutory deadline outlined in the Companies Law. Therefore, the court dismissed the case, rejecting all the plaintiff's requests.

The plaintiff was dissatisfied with the court of first instance's decision and appealed, arguing that his bid offer was contingent on completing sale procedures, including an assessment of the company's financial position. The court rejected this based on a friendly email between the plaintiff and his brother, misinterpreting it as the plaintiff setting conditions. In reality, the email outlined the buyer's conditions, and the plaintiff did not make his repayment request conditional on any new terms. Instead, he referred to the same conditions set by the buyer and accepted by the defendants. Despite these various claims, on Monday, May 8, 2023, the court of appeals in case number 4430309327 confidently affirmed that the earlier

ruling was not only correct but also firmly grounded in sufficient rationale.[64] As a result, the case was compellingly rejected, underscoring the strength of the original decision.

Remarkably, these different courts' rulings show in practice that Saudi judges, in interpreting a clear contract clause, primarily apply the 'plain meaning' rule, which holds that the language should be given its natural, ordinary meaning, with the objective to determine the parties' intent as expressed in the written agreement, not their private or subjective intentions. The approach is objective, focusing on what a 'reasonable person' with all the available background knowledge would have understood the terms to mean at the time of contracting. Most importantly, the court will not rewrite or correct a bad or invalid application of an explicit clause relating to exit rights, so long as that application is not expressly set out in the contract itself and agreed by the shareholders. Ultimately, the purpose of interpretation is to identify what the parties agreed to, not what the court thinks they should have agreed to.

Similar to Saudi Arabia, ROFR have few judicial challenges in the U.K.; nevertheless, courts have underscored the critical importance of precise drafting and unwavering adherence to the requirements of notice in the triggering event, ensuring that clarity in these areas not only fosters understanding but also safeguards the integrity of the whole process of ROFR. The English High Court of Justice notably provided this observation in the case of *Kulkarni v Gwent Holdings Ltd.*[65] The subject matter in this particular, most recent UK precedent was a contractual dispute included in the SHA, in which the court delved into critical issues surrounding an accurate construction of the concept of 'repudiatory breach capable of remedy' from a practical perspective in pursuit of a deemed transfer clause in the SHA. The decision provides insights into the interpretation of contractual clauses that allow for termination or a mandatory transfer of shares from one shareholder to another in cases of 'material or persistent' breaches and or repudiatory breaches. This decision also thoughtfully examined whether such repudiatory breaches were inherently incapable of being remedied?[66] In a surprising turn, the court ruled in favour of the defendant, even though she committed several confirmed breaches, emphasising the crucial feature of contractual notices, particularly in SHAs, in relation to a compulsory transfer mechanism, including a 'drag-along' or 'buy-out', because the necessary notice to remedy the breach was not issued. In other words, when a non-infringing shareholder identifies a breach by other shareholders, it is their duty to promptly inform the board, which must then send a notice to the infringing shareholder, urging them to rectify the issues.

64 The KSA court of appeal in case number 4430309327 , May 8, 2023 , https://laws.moj.gov.sa/ar/JudicialDecisionsList/0/A9KffbR_0DxwcYPnikA2ruATzf-UvicrMPfSNKXY7AN5YWhVU0af1X89QFI8j8Ij accessed 20 May 2025

65 *Kulkarni v Gwent Holdings Ltd* (n 3).

66 Practical Law Commercial, 'Contract Breach Capable of Remedy Despite Being Repudiatory (Court of Appeal)' (*UK Practical Law*, 29 September 2025) https://uk.practicallaw.thomsonreuters.com/w-048-3039?transitionType=Default&contextData=(sc.Default)&firstPage=true accessed 5 December 2025.

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In *Kulkarni v Gwent Holdings Ltd*, the English High Court and the Court of Appeal provided significant clarity on the interpretation of "material breaches" and their remediability under SHAs. The dispute arose between the majority shareholder, Gwent Holdings Ltd, and a minority shareholder, Kulkarni, following the acquisition of a hospital. Kulkarni alleged that Gwent committed several material and repudiatory breaches, including the improper allocation of shares and the wrongful termination of the SHA.

Kulkarni contended that these breaches triggered a "deemed transfer notice" under clause 7.1(d) of the SHA, compelling Gwent to sell its shares to him. He argued that a repudiatory breach is, by its legal nature, "incapable of remedy" and thus required no notice period for rectification.

The Court of Appeal rejected this interpretation, establishing several key academic and practical precedents:

1) The court held that "remedying a breach" means curing the situation so matters are set right for the future, rather than purely compensating for past damage.

2) Legally, a repudiatory breach is not inherently irremediable; if parties intend for specific breaches to be irreversible, such terms must be explicitly stated in the contract.

3) Under clause 7.1(d), a transfer notice is not automatically deemed served upon a breach; it only occurs if the breach remains unremedied after the formal notice period (e.g., ten business days) has expired.

4) The court affirmed the principle of shareholder autonomy, strictly adhering to the agreed wording of the SHA rather than re-drafting terms to create harsher consequences than intended by the parties.

The court found that Gwent's actions, such as returning shares to the treasury and accepting director appointments, had effectively remedied the breaches. This ruling underscores that innocent parties seeking to enforce compulsory transfer mechanisms must strictly follow contractual notice provisions to avoid losing their right to such remedies.

Hypothetically, what would the Saudi courts' judgment be under the new Companies Law, considering the arguments in *Kulkarni v Gwent Holdings Ltd*? Indeed, the Saudi courts' judgment is expected to have divergent views in this respect. First, According to Article 11 of the new Companies Law under the heading “Partners’ Agreement and Family Charter”, the founders, partners or shareholders may, whether during the incorporation period of the company or after the completion of the incorporation procedures, enter into an agreement that regulates their relationship with each other or with the company, including the mechanism for the engagement of legal heirs, whether in person or through a company to be established among themselves for such a purpose. Most significantly, the agreement or family charter shall be binding, unless anything goes against the provisions of the Law, or the company’s Memorandum of Incorporation or Articles of Association. In the case of *Kulkarni v. Gwent Holdings Ltd*, Clause 7(d) states that "a notice to remedy the breach must

be served by the Board (with Shareholder Consent)". Since Kulkarni did not comply with this notice requirement, it is expected that a Saudi court would find Kulkarni ineligible for the compulsory transfer of Gwent's shares. This is due to his failure to meet the binding notice requirement under Article 11 of the new Companies Law.

Second, the Saudi courts are expected to consider Clause 7.1 of the Gwent Holdings SHA to be partially void, as it directly contradicts Articles 178 and 11 of the new Companies Law. More precisely, Article 178 specifically lists when the exercise of ROFR is permitted, whereas under section (4) 'shall not apply to the transfer of ownership of equity stakes by inheritance or bequest or by virtue of a judgment from the Competent Judicial Body'. Inherently, this prohibition is considered to be mandatory, which must be obeyed and cannot be changed, waived, or avoided by agreement between private parties, even if they explicitly try to do so, to protect public interest, uphold essential morals against discrimination between decedents and offspring. These rules contrast with supplementary/non-mandatory rules, where ROFR in the case of transfer of ownership of shares by inheritance, does not fall within this category. Now, in reference to Clause 7.1 in the Gwent Holdings SHA, the compulsory transfers, which mention that "A Shareholder is deemed to have served a transfer notice under clause 6.4 immediately before any of the following events: (a) the Shareholder's death;", Kulkarni and other shareholders have the right to exercise the Right of First Refusal (ROFR) if shares belonging to a deceased shareholder are transferred to their offspring. In such cases, mandatory transfers will occur to the other living shareholders. However, this particular event is prohibited by the mandatory section (4) of Article 178 of the new Saudi Companies Law, which by its non-supplementary nature, prevents shareholders such as Kulkarni and Gwent from agreeing to terms contrary to this law.

Moreover, since Article 11 mentions that any SHA shall be binding, unless anything is contrary to the provisions of the Law, clause 7.1 (a) of the SHA is considered to be void. On the other hand, Article 178 does not prevent shareholders from proposing reasons for compulsory share transfers to other existing shareholders, provided they align with regulatory restrictions.

3 CONCLISIONS

Foreign or local shareholders looking to establish business partnerships, whether through the formation of joint ventures or a corporation, may express an interest in incorporating mandatory restrictions on share sales, a practice several legal jurisdictions are now encountering, potentially exposing such clauses to challenge in national courts. This prompts an investigation into legal precedents that demonstrate how far courts allow shareholders to agree to restrictions on the free sale of shares. It also raises questions about potential court rulings if shareholder(s) fail to apply these restrictions validly and on a sound legal basis. Saudi Arabia implemented statutory amendments to its new Companies

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Law in 2022, adopting a profound systemic philosophy that holds that shares in a corporation are not merely property to be openly transferred at will; instead, they may forge personal relationships akin to those of the business founders, especially where the business is specific. This perspective emphasises the life-saving issue of selecting one's associates within a corporation, much like one would in a partnership, which invites no more substantial objection. This set of reasons is well-supported by the English courts' tradition of upholding share transfer restrictions, provided they are rooted in fundamental principles of contract law, as Lord Wilberforce observed in *Ebrahimi v Westbourne Galleries Ltd.*

Compulsory restrictions on the sale of shares are vital to ensure smooth corporate exits and to prioritise shareholder interests. To make their stockholdings more appealing, sellers should consider offering 100% of the company's shares, creating an irresistible opportunity for buyers. Most critically, since exit rights are now officially recognised by law in Saudi Arabia, shareholders must strictly comply with all prerequisites for their valid exercise. Most importantly, the legal articles governing share sale transactions are mandatory, and shareholders are required to fully adhere to the specific guidelines set out in these laws. If shareholders fail to comply, any compulsory transfers of shares will be considered null and void. Therefore, shareholders cannot agree to terms that contradict these legal requirements.

A comparison with leading legal precedents reveals that courts in the UK, France, and Saudi Arabia encourage and enforce both validly drafted and applied compulsory restrictions on the sale of shares, placed in either the articles of association or shareholders' agreements, based on the contractual freedom of the parties. Ultimately, the purpose of their interpretation is to identify what the parties agreed to, not what the courts think they should have agreed to. Leading legal precedents discussed in this research study show without a doubt that whenever these compulsory restrictions and obligations were challenged in court, they were strictly interpreted, requiring literal compliance with triggering events and fair valuation to avoid unfair prejudice to the interests of innocent shareholders. Additionally, courts will not broaden the compulsory transfer provisions beyond what is clearly stated in the articles of association or any agreement. In simpler terms, courts will not intervene in the wording of the intended contract to re-draft it on behalf of the shareholders.

Yet, while the rights of 'drag-along' particularly can lead to the expropriation of shares, this exceptional right is not generally considered unfairly prejudicial to the interests of minority shareholders, if the minority receives the same price and terms offered to buy the shares of the majority shareholders. Nevertheless, some courts believe that mandatory restrictions on share sale transactions must be drafted in good faith for the company's benefit, enabling access to justice for all shareholders.

The new Companies Law, or at least companies that are doing business in Saudi Arabia, in which their businesses are specifically designed for applying the concept of a quasi-partnership, need to adopt more sensible and practical solutions for addressing the

evident failures of both majority and minority shareholders in share sales restrictions, rather than relying solely on litigation. One possible approach could be to require compliant shareholders to request an order for specific performance to be issued from higher authorities, such as the Ministry of Commerce, to act for and on their behalf to perform their obligations under the articles of association, or a 'power of attorney' to execute the compulsory sale transaction on behalf of dissenting shareholders who oppose significant corporate sales.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЗАБЕЗПЕЧЕННЯ РЕАЛІЗАЦІЇ ПРАВ ІНВЕСТОРІВ НА ВИХІД У ЗАКОНОДАВСТВІ САУДІВСЬКОЇ АРАВІЇ: БАЛАНСУВАННЯ ДОГОВІРНОЇ АВТОНОМІЇ ТА ЗАХИСТУ ПРАВ МІНОРИТАРНИХ АКЦІОНЕРІВ У ПОРІВНЯЛЬНОМУ КОНТЕКСТІ

Ахмед Мансур

АНОТАЦІЯ

Передумови. *Зобов'язання акціонерів, закріплені у статутах або акціонерних угодах, є ключовими для управління приватними компаніями зі специфічними інвестиціями. Регулювання захисних механізмів забезпечує більш плавне розпорядження акціями на завершальному етапі життєвого циклу інвестицій. Обмеження щодо обігу акцій у Саудівській Аравії визнаються як регуляторними, так і судовими органами, що відповідає міжнародній практиці корпоративного права та стимулює внутрішні й прямі іноземні інвестиції відповідно до програми «Vision 2030». У цій статті досліджуються специфічні зобов'язання акціонерів, такі як право на примусовий продаж (drag-along) та переважне право купівлі (right of first refusal), які сприяють виходу акціонерів та підвищують інвестиційну привабливість компаній.*

Методи. *У дослідженні використано якісний, доктринальний та порівняльно-правовий методи. Критично розглянуто положення нового Закону Саудівської Аравії про компанії (2022) у поєднанні з прецедентною практикою Саудівської Аравії, а також нещодавніми юридичними прецедентами Великої Британії та Франції. Зокрема, проаналізовано знакові справи Kulkarni проти Gwent Holdings Ltd, Cunningham проти Resourceful Land Ltd, рішення Касаційного суду Франції (Cour de cassation) у справі № 23-10.385 (2024) та справу Саудівської Аравії № 439245241 (2022) для оцінки можливості примусового виконання прав на вихід.*

Результати та висновки. *Доведено, що хоча Закон Саудівської Аравії про компанії забезпечує основу для реалізації прав на вихід, певна невизначеність зберігається. Ключовою проблемою є необхідність регуляторних змін для впровадження механізмів негайного правового захисту (поза межами судових проваджень) у випадках невиконання зобов'язань недобросовісними акціонерами. Встановлено, що суди Саудівської Аравії суворо дотримуються положень про права на вихід, поважаючи свободу договору. Порівняльний аналіз свідчить, що суди Великої Британії та Франції загалом підтримують такі обмеження, якщо їхні умови є чіткими, точними та узгодженими на ринкових умовах. Однак французький прецедент підкреслює, що «обіцянка продажу» (drag-along) має містити визначену ціну для визнання її дійсною. Зроблено висновок, що*

правова база Саудівської Аравії успішно розвивається у напрямку найкращих світових практик. Але для посилення правової визначеності саудівським компаніям рекомендується безпосередньо включати до статутів детальні положення про вихід, зокрема методи оцінки вартості часток та повноваження мажоритарних акціонерів підписувати документи про передачу акцій від імені незгодних міноритаріїв.

Ключові слова: *Прямі іноземні інвестиції, Саудівська Аравія, право на примусовий продаж, переважне право купівлі, захист міноритарних акціонерів, Закон про компанії Саудівської Аравії 2022 року, судове виконання, порівняльне правознавство, Сполучене Королівство, Франція*

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