

A Comparative Study of Enforcement of Shareholders' Agreements in the Iranian and British Legal Systems

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Abstract

In order to complete provisions of Articles of association and corporate bylaws, shareholders set up a series of ancillary agreements on the structure and operation of joint stock company, such as agreements on management of the company, voting methods in general meetings, share transfer methods and the like. In comparison with corporate documents, shareholders side agreements own different characteristics and status in Joint Stock Companies. However, relevance and reciprocity of these documents in practice is undeniable.

According to the general rule of Article 975 of Civil Code, in order for the agreements of the shareholders to be enforceable, their provisions must not violate mandatory rules relating contracts and commercial companies. Shareholders parties to the agreement or the joint stock company, if is a party to the agreement, can request fulfillment of the obligations arising from the agreements form the obligator. In addition to legal sanctions provided for breach of contractual obligations, shareholders may provide for additional contractual sanctions such as penalty clauses and liquidated damages,

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suspension of voting rights, or expulsion from the company. Due to the lack legal provisions in Iranian laws, shareholders are not obliged to disclose shareholder agreements before Company Registrar Office. Moreover, shareholder agreements cannot be invoked to the detriment of third parties such as non-agreement shareholders, company creditors or the government.

Keywords: Shareholders; Agreements; Enforcement; Mandatory Rules; Third Parties.

Bibliography

A) Books and Articles

- Andenas, Mads – Junko, Ueda (2007). “Shareholders’ Agreements, Some EU and English Law Perspectives”, *TSUKUBA Law Journal*, pp. 135-154.
- Birkmose, Hanne S., Sergakis, Konstantinos (2019). *Enforcing Shareholders’ Duties*, Cheltenham: Edward Elgar Publishing.
- DeMott, Deborah A. (2008). “Irrevocable Proxies”, *Australian Law Journal*, Vol.82, Duke Law School Legal Studies Paper, Paper No. 206, pp. 516-520.
- Duffy, Micheal J. (2008). “Shareholders Agreements and Shareholders’ Remedies: Contract versus Statutes”, *Bond Law Review*, Vol. 20, No.2. pp. 1-27.
- Issaei Tafreshi-Mohammad (2016). *Analytical Studies on Company law*, Vol.1, Second Edition, Tehran: Tarbiat Modares University Press.
- Katuzian- Nasser (2001). *General Principles of Contracts*, Vol. 3, Third Edition, Tehran: Sherkat e Sahami e Enteshar in cooperatin with Bahman e Borna.
- Katuzian- Nasser (2009). *General Principles of Contracts*, Vol. 2, 8th Edition, Tehran: Sherkat-e Sahami-e Enteshar.
- Katuzian- Nasser (2012). *Defined Contracts (Partnerships, Settlement)*, Vol. 2, 9th Edition, Tehran: Ganj-e Danesh.
- Katuzian- Nasser (2017). *Civil Law (General Theory of Obligations)*, 8th Edition, Tehran: Mizan.
- Katuzian- Nasser (2017). *Introduction to Law and Study in Iranian Legal System*, First Edition, Tehran: Ganj-e Danesh.
- Lando, Ole & Hugh Beale (2000). *The Principles of European Contract Law, Part 1: Performance, Non-Performance and Remedies*, Netherlands: Martinus Nijhoff Publishers.
- Mattei, Ugo (1995). “The Comparative Law and Economics of Penalty Clauses in Contracts”, *The American Journal of Comparative Law*, Vol. 43, Issue No. 3, Summer 1995, pp. 427-444.
- Miliauskas, Paulius (2013). “Shareholders’ Agreements as a Tool to Mitigate Corporate Conflicts of Interests”, *International Journal of Private Law*, Vol. 6, No. 2, pp. 109- 131.
- Mok, Sebastian, Csach, Kristian and Havel, Bohumil (2018). *International Handbook on Shareholders’ agreements: De Gruyter Handbook*, Berlin/Boston: Walter de Gruyter GmbH.
- Molano-León, Ricardo (2008). “Shareholders’ Agreements in Close Corporations and their Enforcement in the United States of America”, *Vniversitas. Bogotá (Colombia)*, Vol. 117, pp. 219-252.

- Pasban-Mohammad Reza (2014). "Effects of Legal acts of Managers and Managing Directors of Joint-stock Companies after Termination of Term of Their Management", *Judicial Law Views Quarterly*, autumn 2014, No. 67, pp. 19-54.
- Payne, Jennifer (Hanne Birkmose, ed) (2016). *Contractual Aspects of Shareholders' Duties: Shareholders' duties*, Netherland: Kluwer.
- Peel, Edwin, (2007). *Treitel on the Law of Contract*, London: Sweet & Maxwell.
- Sadeghi e Neshat, Amir (2016). "Validity of limitation of Power of Managers and Managing Directors in Joint Stock Companies: "Critique of Judicial Procedure", *Journal of Business Research Quarterly*, autumn 2016, Vol. 20, No. 80, pp. 45-73.
- Seghari-Mohammad (2014). *Commercial law of Companies*, Vol. 1&2, First Edition, Tehran: Sherkat e Sahami e Enteshar.
- Shahidi-Mehdi (2016). *Civil Law, Effects of Contracts and Obligations*, 7th Edition, Tehran: Majd
- Siems, Mathias M. (2008). *Convergence in Shareholder Law*, Cambridge: Cambridge University Press.
- Sotoudeh Tehrani, Hassan (2009). *Commercial Law*, Vol. 1, 28th Edition, Tehran: Dadgostar.
- Sotoudeh Tehrani, Hassan (2011). *Commercial Law*, Vol. 2, 28th Edition, Tehran: Dadgostar.
- B) Dissertations**
- Gomtsian, Suren, (2012). The Enforcement of Shareholders' Agreements: Comparative Analysis of English and Russian Law, Master's Thesis, Tilburg University.
- Gruodyté, Ingrida (2015). Can Shareholders' Agreement be one of the Measures to Avoid Conflicts of Interests between Minority and Majority Shareholders?, Master's Thesis, Vytauto Didžiojo universiteta.
- Khamidullina, Yekaterina (2016). Application of Shareholders' Agreements: What Lessons Can be Learned by Kazakhstan from US, LL.M Short Thesis for Course of Legal Aspects of Corporate Finance, Central European University.
- Molano-León, Ricardo (2006). Shareholders' Agreements in Close Corporations and their Enforcement, LL.M Thesis and Essays.89, University of Georgia School of Law.