IBA Guide on Shareholders' Agreements

France

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1. Are shareholders' agreements frequent in France?

Yes, shareholders' agreements (known as *pacte d'associés* or *pacte d'actionnaires*) are common in France.

2. What formalities must shareholders' agreements comply with in France?

In France, shareholders' agreements are usually entered into in writing through private deeds. Under French law, it is not necessary to comply with any specific formalities (eg, filing, registration or notarisation, etc) for the execution of such an agreement or to ensure the validity of shareholders' agreement. However, shareholders' agreements governing listed companies must be communicated to the French financial markets regulator (Autorité des Marchés Financiers) in some specific cases (for instance, shareholders' agreements providing for the transfer of shares according to preferential conditions or providing for specific voting agreements).

3. Can shareholders' agreements be brought to bear against third parties such as purchasers of shares or successors?

As a matter of principle, shareholders' agreements are binding only upon the parties having signed such agreements in accordance with French contract law, which provides that a contract only creates obligations and duties for the relevant parties to the agreement.

Therefore, shareholders' agreements cannot be brought to bear against third parties. However, it is quite common in shareholders' agreements to provide that any transfer of shares is subject to the adherence of the purchaser to the shareholders' agreement.

4. Can a shareholders' agreement regulate non-company contents?

Shareholders' agreements are generally entered into to regulate company-related content (governance, transfer of shares, etc).

5. Are there limits on the term of shareholders' agreements under the law of France?

Shareholders' agreements are generally entered into for a limited term, in practice between ten to 15 years, which can be renewable.

Until recently, shareholders' agreement entered into for the duration of the company (usually 99 years in France) used to qualify as perpetual commitments, which are prohibited under French law. The French Supreme Court (Cour de Cassation) overruled this principle in 2023: the duration of a shareholders' agreement can now match the duration of the company it relates to.

6. Are shareholders' agreements related to actions by directors valid in France?

Shareholders' agreements generally contain provisions relating to the corporate office of directors (appointment, term of office, scope of powers, etc). It is very common to provide for a pre-agreed limitation of powers in shareholders' agreements, even if such limitations are not binding on the directors (who are generally not signatories to the shareholders' agreement), unless such limitations are duplicated in the articles of association of the concerned company or during the appointment decision related to such directors.

7. Does the law of France permit restrictions on the transfer of shares?

In some specific cases, French law provides for mandatory restrictions on the transfer of shares: for instance, this is the case for *sociétés civiles* (civil/non-commercial company), *sociétés à responsabilité limitée* (a form of private company) and *sociétés en nom collectif* (partnership), where any transfer of shares is subject to the prior approval of the majority or all of the shareholders, as the case may be. In other cases, French law expressly provides for the possibility to impose restrictions on the transfer of shares:

- Article L228-23 of the French Commercial Code states that the articles of association of joint stock companies *(sociétés anonymes)* can include a prior approval procedure applicable to any transfer of shares; and
- Article L227-13 of the French Commercial Code provides that the articles of association of a simplified joint stock company (*société par actions simplifiée*) can contain a lock-up undertaking, provided that this lock-up does not exceed a ten-year period.

Beyond these statutory rules, the contractual freedom of the parties governs the possibility to impose restrictions on the transfer of shares. It is very common in shareholders' agreements to limit the possibility for shareholders to transfer their shares (through pre-emption rights, rights of first refusal, rights of first offer, tag-along rights, drag-along rights, put options, call options, etc).

8. What mechanisms does the law of France permit for regulating share transfers?

As explained above, in addition to mandatory provisions regulating share transfers, several contractual mechanisms are generally implemented in France to restrict share transfers, such as prior approval, pre-emption rights, rights of first refusal, rights of first offer, lock-up periods, put options, call options, tag-along rights and drag-along rights.

9. In France, do by-laws tend to be tailor-drafted, or do they tend to use standard formats?

In France, the drafting of articles of association highly depends on the corporate form of the concerned company. The articles of association of joint stock companies are relatively standard, as the mandatory legal regime applicable to such companies is rather extensive.

Conversely, the legal regime and corporate structure of simplified joint stock companies is very flexible. Thus, there are few legal prescriptions, and the articles of association of a simplified joint stock company may freely determine the organisation/corporate governance rules of the company (management, shareholders' meetings, transfers of shares and the admission of new shareholders, etc), which may range from the most basic to the most sophisticated structure. Accordingly, the articles of association of simplified joint stock companies tend to be tailor-drafted.

10. What are the motives in France for executing shareholders' agreements?

Given the fact that articles of association are publicly available in France, the principal motive for executing shareholders' agreements is the confidentiality attached to the provisions in such agreements. It is sometimes less burdensome to include certain provisions in shareholders' agreements than in articles of association. For instance, in the event that special advantages are granted to a shareholder or a category of shareholders, the provision of such advantages in the articles of association will require the appointment of a special auditor (whereas it is not the case when such advantages are only provided for in a shareholders' agreement). Shareholders' agreements also offer more flexibility: it is easier to amend a shareholders' agreement (through an amendment agreement) rather than the articles of association (which require a shareholders' meeting and corporate formalities involving the clerk of a commercial court).

11. What contents tend to be included in shareholders' agreements in France?

In general, shareholders' agreements in France tend to include the following items:

corporate governance: a description and details on the operation of the management bodies;

- financial matters: profits distribution policy, distribution at exit, etc;
- commercial matters: business plan, funding, development strategy, etc;
- shareholders rights: information, reporting, audit, etc;
- share transfers: applicable restrictions (lock-up, prior approval, right of first offer,

tag-along rights, drag-along rights), transfer mechanisms, etc;
- liquidity mechanisms: put options and call options, initial public offerings (IPOs);
- anti-dilution; and
- covenants: non-compete, non-solicit, confidentiality, etc.

12. What determines the contents included in shareholders' agreements in France?

The contents included in shareholders' agreements differ depending on several considerations, such as:

- the identity of the shareholders (ie, institutional, financial, investment fund, etc);
- the corporate form of the company and whether it is listed or not;
- whether the shareholders' agreement is executed by a limited group of company shareholders or all of them; and
- the portion of the share capital and voting rights held by the shareholders.

13. What are the most common types of clause in shareholders' agreements in France?

See the answer to Question 11 above.

14. What mechanisms does the law of France permit to ensure the participation of minorities on the board of directors and its control?

Under the law of France, there is no legal mechanism to ensure the participation of minorities on the board of directors (such as the appointment of a director representing the minority shareholders or the right to attend meetings of the board of directors).

However, it is always possible for minorities to negotiate with majority shareholders the right to be represented at the level of the board of directors, such right would typically be provided for in a shareholders' agreement.

15. Is it possible in France to ensure minority shareholder control by means of a shareholders' agreement?

Shareholders' agreements are frequently used to ensure that minority shareholders' rights (and the value of the investment made by minority shareholders) are protected by specifically providing for certain clauses, such as:

- a veto right at the level of the shareholders' meetings and/or at the level of the board of directors;
- a right to appoint one or several board members; and
- information rights, etc.

16. What are the usual valuation mechanisms in connection with rights of first refusal or share transfer regulations?

Valuation mechanisms are mainly based on the comparable market value, book or asset value, the value based on a multiple of earnings before interest, taxes, depreciation and amortisation (EBITDA) or the earnings before interest and taxes (EBIT), or the share

price on the stock exchange market for listed companies.

As a matter of principle, the parties are generally in charge of the determination of the share price, but they can also appoint an independent expert (pre-agreed or not) to determine such price.

17. Is it admissible for a shareholders' agreement clause to refer dispute resolution to courts other than those of France and/or under a law other than that of France?

It is admissible, but uncommon, for a shareholders' agreement clause to refer dispute resolution to courts outside of France and/or under a law other than that of France.

In practice, shareholders' agreements relating to French companies are usually governed by the laws of France. Also, it is advisable to align competent jurisdictions for dispute resolutions with the applicable law.

18. Is it admissible for a shareholders' agreement to include an arbitration clause with its seat outside France and/or under a law other than that of France?

It is admissible for a shareholders' agreement to include an arbitration clause with its seat outside France and/or under a law other than that of France.