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Recent Developments in Spanish Case Law regarding Shareholder's Agreements: a Comparative Perspective

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Abstract

One of the key instruments in Corporate law is the shareholders' agreement, defined as an agreement signed by all or some of the shareholders of a corporation that governs certain aspects of their relationship with the corporation. These are contracts that are effective only among the signatories but do not bind the corporation itself: they have inter alia effect. In this study, we seek to determine whether, in light of the latest judicial rulings by the Spanish Supreme Court, anything has changed in this regard and whether a similar situation exists in other European legal systems. Our methodology involved analyzing Spanish law and case law, as well as key recent rulings by European courts, including those in France, Italy, and Germany, among others. The conclusions could not be more interesting, as they represent a shift that reaffirms the traditional Spanish model, underscoring the clear separation between the contractual and corporate spheres. The same is true in other European legal systems, but we will analyze some, such as the Dutch system, where that distinction is not so clear-cut and internal effectiveness can be transferred to the corporate sphere through different mechanisms provided by Private Law.

Keywords: Agreement; Contractual; Effectiveness; Private; Valid