Contractual Exit Rights in Stockholders' Agreements: Enforcement and Strategic Considerations under English and Delaware Law

I. *Introduction*

Exit rights in stockholders' agreements determine when and how stockholders may realize their investments or compel others to do so. These contractual mechanisms are essential in private companies where shares lack market liquidity and transfer restrictions typically prevent free alienation. When commercial relationships deteriorate or strategic visions diverge, properly drafted exit rights provide structured pathways for resolution without requiring voluntary cooperation between adverse parties.

The enforcement of exit rights frequently generates complex disputes, particularly where agreements contain ambiguous drafting or where parties deploy tactics to frustrate the contractual mechanisms. This article examines the principal types of contractual exit rights, with a focus on their interpretation under English and Delaware law, available enforcement mechanisms, and strategic considerations affecting their implementation.

Although the below focuses on drag-along provisions, similar considerations apply to other forms of exit rights.

II. *Principal Types of Exit Rights*

Drag-Along Rights

Drag-along rights enable specified stockholders (typically those holding a majority of shares) to compel other stockholders to participate in sales to third-party purchasers on identical terms, without board involvement, or the need to affect a freeze-out merger. These provisions facilitate exits by ensuring purchasers can acquire 100% ownership, which typically commands premium valuations compared to majority stakes. Even minority stockholders with a strong negotiating position can acquire drag-along exit rights. Effective contract terms (usually included in a Voting Agreement) agreed to by sophisticated investors can eliminate most lawsuits, except for those based on intentional wrongdoing, that could arise from a decision to exercise drag-along rights.

Tag-Along Rights

Tag-along rights protect minority stockholders by permitting participation when another defined group of stockholders (usually a majority) sell to third parties. For example, if a majority stockholder holding 75% of shares agrees to sell to a strategic purchaser, a minority group holding 25% can exercise tag-along rights to sell on equivalent terms, including the same price per share and similar warranty protections.

While tag-along rights are rarely exercised in practice because majority sellers typically achieve better prices by delivering 100% of shares, triggering drag-along provisions instead, they provide essential protection against minorities being left with unknown or potentially hostile majority

stockholders. The existence of tag-along rights also strengthens minorities' negotiating positions by potentially complicating majority exits, if not properly managed. Drafters representing minority stockholders should be wary of flexible language that would permit a majority stockholder to amend or negotiate-away tag-along provisions without minority consent. Delaware courts, for example, are not likely to imply terms against eliminating tag-along rights.[1]

Redemption Rights

Redemption rights are governed in Delaware by Delaware General Corporation Law (DGCL) Section 151(b). A redemption right can be a "superior right giving the stockholder the ability to put its shares to the corporation, or it can be an inferior limitation that gives the corporation the right to call the shares."[2] Under Section 151(b), corporations and boards of directors have flexibility to make shares redeemable at "such time or times, price or prices, or rate or rates, and with such adjustments," as either stated in the certificate of incorporation or board resolution issuing the relevant class of stock. Redemption rights can take various forms, but essentially can be categorized into call and put options.

Call Options

Call options grant holders or the corporation itself the contractual right to compel other stockholders to sell their shares (sometimes all other shares) at predetermined prices or through specified valuation mechanisms. These provisions typically activate upon defined trigger events including breach of the stockholders' agreement, competition with the company's business, termination of employment relationships, or failure to achieve performance targets.

The valuation mechanisms in call options often differentiate between "good leavers" and "bad leavers" in employment-related contexts. A founder who retires after achieving agreed milestones might receive full market value, while one dismissed for gross misconduct might receive only book value.

However, trigger events are not required: a stockholder can hold a call option with discretion to exercise it at will. For example, a stockholder can hold a discretionary buyout option to call all shares at a set price or one determined by a pre-set valuation formula. Such buyout options may affect a change of control at the time the option is granted, triggering potential breach of fiduciary duty claims against the board of directors. Once a party chooses to exercise a call option, Delaware courts are likely to find that the process must continue, even if the valuation process is incomplete.

Put Options

Put options operate inversely, enabling stockholders to require others or the company to purchase their shares. Common triggers include death or permanent incapacity of a key individual, change

[1] *Khan v. Warburg Pincus, LLC*, 2025 WL 1251237, at *6-9 (Del. Ch. Apr. 30, 2025).

[2] *Colon v. Bumble, Inc.*, 305 A.3d 352, 361 (Del. Ch. 2023).

of control, retirement after specified periods, the passage of time, or deadlock situations in joint ventures. These provisions provide essential liquidity for minority stockholders who otherwise lack exit routes in private companies.

The enforceability of put options against companies themselves raises particular challenges. In the UK, the company must possess sufficient distributable reserves to fund the purchase and must comply with the procedural requirements of Part 18 of the Companies Act 2006, including shareholder approval and solvency declarations. In Delaware, Section 160 of the DGCL prohibits redemption where the redemption would impair the corporation's capital, meaning that a corporation may not redeem shares "if the funds used in the repurchase exceed the amount corporation's 'surplus,' defined by 8 *Del. C.* § 154 to mean the excess of net assets over the par value of the corporation's issued stock."[3] Given par value is often set at a miniscule level, this bar is not exceptionally high. However, Delaware common law goes farther, preventing redemptions that would render a corporation insolvent or that would leave a corporation without "sufficient resources to operate for the foreseeable future," meaning that a company is left unable "to pay bills as they become due."[4]

Where put options require purchases by other stockholders rather than the company, different considerations apply. The purchasing stockholders must have financial capability, and the agreement should clearly specify consequences for non-compliance, such as allowing sale to third parties or triggering company purchase obligations as fallback positions.

III. *Typical Issues with the Exercise of Drag-Along Rights*

The right to sell

The first, often overlooked, point concerns the relationship between drag-along provisions and restrictions on transfers. The drag-along mechanism usually does not create an independent power to sell shares. Instead, the stockholder must first possess a right to transfer their shares under the agreement's or articles of incorporation's general transfer provisions. The drag-along provision then permits them to compel minority participation in that permitted transfer.

This distinction has practical significance. If the stockholders' agreement restricts transfers except in specified circumstances (for example, lock-up periods, minimum return hurdles, consent requirements and restrictions relating to whom the transfers can be made) or if the shares are of a type that require other regulatory conditions for transfer, the drag-along cannot operate until those underlying conditions are satisfied. The drag-along provisions must therefore be read in conjunction with the corporation's operating and stockholders' agreement's and/or regulatory regime's broader transfer restrictions. If the drag-along right is only valid for a particular window of time, it could prove to be unworkable in the broader context.

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[3] *Klang v. Smith's Food & Drug Ctrs., Inc.*, 702 A.2d 150, 153 (Del. 1997).

[4] *Frederick Hsu Living Trust v. ODN Hldg. Corp.*, 2017 WL 1437308, at *14-15 (Del. Ch. Apr. 14, 2017).

Pre-emption rights

Once a right to sell has arisen, the second consideration is whether it is necessary to comply with pre-emption rights. Pre-emption rights typically come in two forms:

1. **Right of first refusal** – this right is triggered by a third party offer and typically permits the holder of the right to purchase the shares on similar terms to that offered by the third party. As a matter of Delaware law, unless a right of first refusal (ROFR) provision states otherwise, disclosure of material non-public information is not required to exercise a ROFR.

2. **Right of first offer/look** – this right is triggered when a stockholder decides to sell. When applicable, the stockholder must offer their shares to the holder of the right prior to marketing their shares to a third party. In the UK, this right is less powerful than a right of first refusal as the seller has a choice to whom it sells it shares, even if both the third party purchaser and the holder of the right of first offer make the same offer. In Delaware, given the state's emphasis on private ordering, right of first offer (ROFO) provisions can be structured in different ways; the key feature of a ROFO provision is that it prohibits the potential seller from negotiating a sale before providing the right-holder notice and opportunity to participate in the sale. If the right-holder declines to purchase, the seller may sell the stock as they see fit, subject to any restrictions contained in the ROFO provision.

It is always important to examine pre-emption rights in both stockholders' agreements and articles of association (int the UK) or certificates of incorporation (in Delaware). Often shareholders' agreements are expressed in the UK as taking precedence over articles of association. However, the relationship requires careful consideration. Stockholders' agreements bind only their parties, while article and certificates of incorporation constitute the company's constitutional document binding all members. For exit rights to function effectively, both documents should align. Inconsistencies create uncertainty and potential scope for disputes. Where dealing with a foreign company, local law will also need to be considered.

In Delaware, the Delaware General Assembly recently reaffirmed the broad authority of parties in stockholders' agreement to shape their affairs notwithstanding potentially contrary provisions in a certificate of incorporation or even the DGCL. Section 122(18) of the DGCL provides that "a restriction, prohibition or covenant in any ... contract [enumerated in Section 122(18)] that relates to any specified action *shall not be deemed contrary to the laws of this State or the certificate of incorporation* by reason of a provision of this title or the certificate of incorporation that authorizes or empowers the board of directors (or any 1 or more directors) to take such action." (emphasis added). Drafters of stockholders' agreements should continue to monitor Delaware cases that interpret Section 122(18).

IV. *Key Restrictions and Protections in Drag-Along Rights*

Majority thresholds

A threshold requirement for exercising drag-along rights fundamentally determines the balance of power between holders of the right (typically majorities) and other stockholders, and often between investors and founders/management. A simple majority threshold of >50% is common and necessarily more majority stockholder/investor friendly, whereas a higher super-majority threshold of 65% or even 75-90% provides great protection for minority stockholders and often management. These higher thresholds protect substantial minority stockholders, particularly founder groups or management teams, from being compelled to sell before they wish. Other threshold requirements can also be set to protect against the exercise of drag-along rights, including, for example, the passage of a set amount of time or a guaranteed minimum price or rate of return.

Bona fide third-party acquiror / board approval

Minority stockholders should ensure that drag-along provisions include a threshold requirement that they can only be triggered by a sale to a bona fide third party acquiror. Without this requirement, a majority stockholder could trigger the drag-along by transferring shares to a subsidiary or affiliate. Similarly, minority stockholders could bargain for a board approval requirement, but that right may not be as meaningful if the board is controlled by the majority stockholder.

Price / fair value / sale process

Restrictions on the sale price of shares are one of the most powerful protections for minority stockholders. Without such restrictions, minority stockholders could potentially be forced to sell their shares for a price below market value, even if the majority stockholder is willing to accept such a price. Appropriate restrictions in stockholders' agreements can include minimum pricing or a requirement that fair market value is obtained (often in combination with an obligation to obtain an independent valuation). Relatedly, drag-along provisions can include pre-set sale procedures to ensure orderly negotiations and post-closing conduct.

Covenants / representations and warranties

It is common for drag-along provisions to require minority stockholders to agree to the same covenants and representations and warranties as the majority stockholders agree to in a sale. However, minority stockholders can and should push for carveouts. Importantly, while minority stockholders might agree to bear pro rata indemnification obligations, they can do so severally and not jointly to avoid footing the bill for a future financially distressed majority stockholder. Minorities may also want to carveout prospective agreement to restrictive covenants that a majority stockholder may agree to in a future sale, like non-competition, non-solicitation, or non-disparagement clause.

Good Faith

In the UK, express good faith requirements in drag-along provisions extend beyond mere

procedural compliance to encompass genuine commercial conduct throughout the sale process. *In Astor Management AG v Atalaya Mining PLC [2017] EWHC 425 (Comm),* Leggatt J (as he then was) referred to the duty to act in good faith as reflecting "*the expectation that the contracting party will act honestly towards the other party and will not conduct itself in a way which is calculated to frustrate the purpose of the contract, or which could be regarded as commercially unacceptable by reasonable and honest people*."

In practice, good faith obligations can be satisfied by majority shareholders conducting a proper sale process: engaging qualified advisers, marketing to appropriate purchasers, allowing adequate time for due diligence, and considering all credible offers rather than favoring predetermined outcomes. Information sharing with minority shareholders, while not extending to control over negotiations, typically requires regular updates on process developments and disclosure of material terms before drag-along rights are formally exercised.

It is also common in the UK for there to be a requirement that the sale be to a "bona fide third party." In *United Company Rusal plc v Crispian Investments Ltd* [2018] EWHC 2415 (Comm); [2019] B.C.C. 237 at [64.1] the ordinary meaning of "bona fide third party" was held to "*connote an outside person, unconnected with the transaction in question.*" The requirement encompasses that the purchase must be "*without collusion and not be part of a scheme to avoid the provisions of the*" contract.

In Delaware, the implied covenant of good faith and fair dealing attaches to every contract and cannot be waived. It "requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." *Halpin v. Riverstone National, Inc.*, 2015 WL 854724, at *10 (Del. Ch. Feb. 26, 2015). But the implied covenant is only a gap filler. Stockholders should expect Delaware courts to apply the express terms of drag-along provisions and only read in terms under the implied covenant where the parties to an agreement could not have foreseen certain developments during drafting. Stockholders should be careful to bargain for the full set of protections or flexibility that they seek before agreeing to drag-along provisions to avoid any need to rely on the implied covenant.

Notice

Delaware courts will also strictly enforce notice provisions where a party seeks specific performance of drag-along rights. For example, in *Halpin v. Riverstone National, Inc.*,[5] the Court of Chancery refused to grant specific performance of a drag-along provision where the stockholder failed to comply with the notice provision requiring advanced notice to minority stockholders. Those seeking to exercise drag-along rights should be careful to follow notice requirements to the letter.

[5] 2015 WL 854724 at *9 (Del. Ch. Feb. 26, 2015).

Stockholders should be careful to bargain for the full set of protections or flexibility that they seek before agreeing to drag-along provisions to avoid any need to rely on the implied covenant.

V. *Contractual Interpretation*

Textual Approach

UK and Delaware courts both adopt an objective approach to contractual interpretation, focusing on how a reasonable person with all the background knowledge available to the parties would understand the terms of the contract.

The starting point remains the plain meaning of the words used in the agreement, as established in the landmark cases of *Arnold v Britton* [2015] UKSC 36 and *Manti Holdings, LLC v. Authentix Acquisition Company, Inc.*, 261 A.3d 1199, 1208 (Del. 2021). Courts will "read the agreement as a whole and enforce the plain meaning of clear and unambiguous language." *Id.* Presuming that the parties chose their words deliberately, courts will attempt to interpret contracts to give effect to each term and provision and to avoid rendering any terms meaningless. The inquiry ends here where a contract is clear and unambiguous.

Courts are unlikely to imply terms not included in the plain meaning of the agreement, particularly where the parties are sophisticated and can be "charged with knowledge" of applicable corporate law. In the case of sophisticated and often complex stockholders' agreements that intersect with other corporate governance documents, prepared with the assistance of skilled professionals, a plain textual analysis is likely to be the principal tool of interpretation.

This textual approach provides commercial certainty and predictability, which are essential for business transactions.

Iterative Approach to Ambiguities (UK)

In the UK, the modern approach to interpretation employs what is known as an iterative process, as articulated by Lord Hodge in *Wood v Capita Insurance Services* [2017] UKSC 24. This methodology requires judges to consider the various possible meanings of disputed provisions and the implications of rival constructions, checking each interpretation against the contract as a whole and its commercial consequences.

Rather than applying a linear hierarchy between textual analysis and commercial common sense, courts engage in a continuous process of testing interpretations against both the language used and the factual matrix.

This iterative approach recognizes that the weight to be given to textual analysis versus contextual considerations will vary according to the quality of the drafting, the clarity of the relevant language, and the complexity of the commercial background. Where contracts are professionally drafted with detailed provisions, greater emphasis will typically be placed on textual analysis, while ambiguous wording in less formal agreements may require deeper contextual investigation.

The courts maintain strict boundaries around admissible evidence when interpreting contracts, which shapes how the iterative process operates in practice.

Determining Existence of Ambiguity and Approach to Ambiguities (Delaware)

In Delaware, contract language is ambiguous only if it is "susceptible to more than one reasonable interpretation." *Manti*, 261 A.3d at 1208. Importantly, the parties' disagreement alone does not render a contract term ambiguous. Nor will Delaware courts find ambiguity when a party proffers a reading that "produces an absurd result" or is one that "no reasonable person would have accepted when entering the contract." *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1160 (Del. 2010).

Where a relevant contract term is found to be ambiguous, various doctrines of interpretation may come into play, but ultimately, Delaware courts seek to determine the intent of the contracting parties. Where parties with equal bargaining power negotiate the terms of a contract, Delaware courts will seek to determine "the interpretation of the words that is most reasonable in view of all the circumstances." *Wilmington Firefighters Ass'n, Local 1590 v. City of Wilmington*, 2002 WL 418032, at *10 (Del. Ch. Mar. 12, 2002).

Drafters should be careful to avoid contradictory or ambiguous terms wherever possible. For stockholders' agreements that address exit opportunities, we recommend reviewing the National Venture Capital Association's Model Legal Documents (https://nvca.org/model-legal-documents/). Delaware courts have cited to these model legal documents when seeking to interpret stockholders' agreements.

Admissible Evidence

Where a contract is unambiguous, evidence of pre-contractual negotiations is excluded from consideration. This was confirmed in the UK in *Chartbrook v Persimmon Homes* [2009] 1 AC 1101. And in Delaware, once a contractual term is deemed ambiguous, however, courts "may consider evidence of prior agreements and communications of the parties as well as trade usage or course of dealing." *Eagle Inds., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1233 (Del. 1997). This rule promotes certainty where the terms of a fully-integrated contract are unambiguous.

Post-contractual conduct is generally also inadmissible for contract interpretation purposes, although certain exceptions exist, such as evidence of trade customs or where contracts have been varied by the parties' subsequent actions or course of dealing.

These general evidentiary rules permit courts to reach commercially sensible interpretations while respecting the primacy of the contractual text, thereby balancing the need for contextual interpretation with the commercial imperative for contractual certainty.

VI. *Enforcement*

Typically purchasers will require that transactions be consensual and all stockholders are willing to sell their shares. This reduces litigation risk for the purchaser and makes the timing of the

transaction easier to manage.

In the event that minority stockholders refuse to participate in a sale, the majority can seek to exercise and enforce its drag-along rights. To do so in a timely manner, at least in the UK and possibly in Delaware, the stockholders' agreement can establish the agreed upon form of transfer agreements and can include a provision permitting the majority to sign the share transfer forms on behalf of the minority stockholders. Using these tools may avoid the need to compel the share transfers though litigation or arbitration and may help provide certainty to any prospective buyer that litigation risks in connection with an opposed drag-along right may be minimized.

Court Procedure

Enforcement of drag-along rights through English courts can be commenced as either Part 8 or Part 7 claims.

The Part 8 procedure suits disputes involving questions of pure contractual interpretation without substantial factual disputes. Where parties agree that specific events occurred but disagree whether these trigger exit rights, Part 8 can provide a streamlined resolution without extensive disclosure or witness evidence.

The Part 7 procedure is the default procedure which applies where there is likely to be substantial disputes of fact, for example regarding whether trigger events occurred, the extent of breaches, or parties' conduct. These proceedings involve full disclosure obligations, witness statements, potential expert evidence, and trial with cross-examination. It takes longer and is more expensive than the Part 8 procedure.

In Delaware, assuming jurisdiction exists, parties can enforce or resist enforcement of drag-along rights in the Delaware Court of Chancery through actions seeking specific performance of drag-along provisions or seeking to enjoin enforcement of those provisions. In either case, parties should consider seeking expedited proceedings. The court readily expedites deal litigation where the party seeking expedition files its claims promptly and will be imminently harmed absent relief.

The Court of Chancery has the power to issue temporary restraining orders, preliminary injunctions, and expedited final injunctive relief. Temporary restraining orders are often adjudicated within one to two weeks of filing and can be issued on the basis of affidavits and complaint allegations (including exhibits). The Court can, but need not, permit discovery before issuing a preliminary injunction, for which the speed of adjudication will depend on the needs of the case and the imminence of the asserted harm. Finally, the Court will often hold expedited trials, where necessary, within 45 to 90 days of the initial complaint filing. For example, Quinn Emanuel successfully litigated a case on behalf of Desktop Metal, Inc. to force closure of a deal, and that case went to trial on the merits within 90 days of the filing of the complaint.

Arbitration

If the stockholders' agreement contains a binding arbitration agreement, then any enforcement of the drag-along provisions would need to be commenced in accordance with that agreement. *See*,

e.g., *Angus v. Ajio, LLC*, 2016 WL 2894246 (Del. Ch. May 13, 2016) (requiring arbitration of arbitrability of minority stockholder's attempt to rescind consent pursuant to a drag-along provision).

Arbitration v. Litigation

Arbitration can, in some situations, resolve more quickly and at a lower cost than litigation. However, arbitrators lack certain enforcement powers that courts possess. Arbitrators cannot directly compel compliance through contempt proceedings or grant certain types of relief against third parties. When recalcitrant parties ignore arbitral orders, enforcement ultimately requires court assistance, potentially negating time and cost advantages.

Emergency arbitrator procedures partially address these limitations. ICC and LCIA rules internationally, and JAMS and AAA rules in the United States, permit appointment of emergency arbitrators to grant urgent interim relief pending tribunal constitution. These procedures prove valuable for preserving the status quo or preventing irreversible steps, though enforcement still requires court support.

The ability to appeal decisions is typically much curtailed in arbitration. The UK Arbitration Act 1996 provides only narrow grounds of challenge: jurisdictional objections under section 67, serious irregularity causing substantial injustice under section 68, and points of law under section 69 (which is frequently excluded by agreement and/or in the arbitral rules). Court proceedings in the UK offer broader appeal rights through the conventional appeal system, but those come with associated time and cost implications.

Under the Delaware Arbitration Act (by which parties can explicitly agree to abide in their stockholders' agreements), the Court of Chancery retains jurisdiction to vacate awards in arbitration only in the limited circumstances set forth in 10 *Del. C.* § 5714(a), but notably the Court cannot vacate an award because "the relief was such that it could not or would not be granted by a court of law or equity." *Id.*

Confidentiality Considerations

Arbitration is typically confidential and the parties are under express obligations to maintain the confidentiality of the proceedings. However, that confidentiality has its limits - court involvement for enforcement or challenges may result in public disclosure of previously confidential materials. It can also be difficult and/or costly to enforce any breaches of confidentiality by the other party.

Proceedings in the English Courts are public and increasingly so. The Business and Property Courts have announced a pilot scheme commencing on October 1, 2025 significantly increasing the ability of third parties to access documents filed at court. Implementing the Supreme Court's judgment in *Dring v Cape* [2018] UKSC 59 regarding open justice, the pilot scheme will make most court documents automatically public once referred to in hearings (including, statements of case, witness statements, expert reports, skeleton arguments, and documents deemed critical to understanding proceedings). The shift from requiring specific third-party applications to automatic availability represents a significant change of which parties need to

be aware.

Proceedings in the Delaware courts are also public. Although certain documents may be filed under seal pursuant to confidentiality rules in the Court of Chancery and Superior Court, both courts require public versions of at least pleadings, motions, and briefs and have strict limitations on redactions. For example, Court of Chancery Rule 5.1 only permits redactions where the information is "maintained confidentially" and "not otherwise publicly available" and where its disclosure "will cause particularized harm" and the "magnitude of the harm … outweighs the public interest in the information." As a default, the Court of Chancery also automatically unseals all confidential filings after three years. Third parties even have standing to challenge confidential designations in Delaware courts.

Litigants should thus expect the public to have access to the vast majority of information submitted to courts in either Delaware or the UK.

VII. *Tactics for Delaying or Frustrating Exit Rights*

There is a wide array of potential options for parties seeking to delay or frustrate the operation of exit rights.

By way of example, a disgruntled stockholder faced with being imminently dragged along with a share sale can:

1. Withhold consent for the transaction and encourage other stockholders to do the same to prevent the ability to reach a drag-along provision's voting threshold;

2. Refuse to execute share transfer forms;

3. Make a books and records demand or otherwise seek to enforce informational or oversight rights;

4. Commence proceedings on the basis that: i) a right to sell has not arisen; ii) pre-emption rights have not been properly complied with; iii) drag-along provisions have not be triggered; iv) and/or directors have not complied with their fiduciary duties where exercising the right was accomplished through board action; and

5. Seek an interim injunction to prevent the exercise of drag-along rights until the dispute has been resolved.

There is a risk to the transaction if the minority takes any such steps, which is why clear drafting of enforceable provisions is critical.

VIII. *Key Drafting Considerations*

From the perspective of the majority, when negotiating drag-along rights it is imperative to ensure that there is an ability to effect the drag-along in the face of a recalcitrant minority. In practice, that means ensuring that: i) the rights to initiate a transfer are clearly defined; ii) there are agreed

form transfer instruments; and iii) the majority holds the right to sign form transfer instruments on behalf of the minority (*i.e.*, a power of attorney). It is also best practice to ensure that the Company is party to the stockholder agreement so that it is bound to register the share transfers. Finally, drafters should be as clear as possible when crafting waiver provisions.

From the perspective of the minority, it is important to ensure that, if the majority is going to initiate a drag, there are protections that prevent the majority selling to a related party and/or at a below market value. A clear cut mechanism for obtaining market value is the strongest form of protection (such as requiring a third-party valuation). It is preferable to set clear parameters in terms of inputs and process for valuations to avoid disputes over the valuation itself. It is also important to bear in mind the time it takes for valuation to be conducted.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to contact:

Richard East
Email: richardeast@quinnemanuel.com
Phone: _____

Karabeth Ovenden
Email: karabethovenden@quinnemanuel.com
Phone: _____

Rupert Goodway
Email: rupertgoodway@quinnemanuel.com
Phone: +44 20 7653 2065

Michael A. Barlow
Email: michaelbarlow@quinnemanuel.com
Phone: +1 302-302-4030

To view more memoranda, please visit www.quinnemanuel.com/the-firm/publications/

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