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EVOLUTION AND CONTEMPORARY TRENDS IN SHARE CLASS REGULATION

Master thesis

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Vilnius, 2025

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INTRODUCTION

Problem of research. At present, European company law offers no consistent framework capable of addressing the full range of share classes, from multiple-vote structures to preference and redeemable shares. Global competitive pressures encourage Member States to adopt permissive regulatory models in order to attract capital and scale-up enterprises, yet these efforts remain tempered by entrenched national legal traditions and unresolved concerns over agency costs and the safeguarding of minority investors. The outcome has been a patchwork of national reforms, producing divergence rather than harmonization across the European landscape. This raises a central question: how does the interplay between international competition and national path dependence shape the trajectory of share class regulation, and which hybrid models of governance are beginning to take form within Europe?

The relevance of the master thesis. The regulation of share classes is a fundamental component of European company law. It dictates how undertakings can structure their capital, allocate control, and attract investment. In recent years, a powerful wave of reform has swept across the continent.¹ National legislatures are actively liberalizing their legal frameworks to make it easier for entities like start-ups and family businesses to raise capital.² This evolution reflects a broader trend where company law is increasingly viewed not just as a domestic regulatory tool but as a critical asset in the global competition for capital and innovation.³

This trend is not uniform. Jurisdictions with historically flexible, enabling legal systems, most notably the United States⁴ alongside European benchmarks like the United Kingdom⁵ and the Netherlands,⁶ continue to champion corporate autonomy. In contrast, many continental civil law systems are moving away from traditionally prescriptive models. Recent reforms in Germany,⁷ France, and Italy,⁸ along with the dynamic legislative journey of Lithuania,⁹ illustrate a deliberate shift towards greater flexibility. This divergence in starting points and reform paths creates a complex and highly relevant field for comparative legal analysis.

¹ Jorge Brito Pereira, "Once Bitten, Twice Shy: Multiple Voting Shares in Continental Europe," *Journal of International Business and Law* 22, 2 (2023): 222–242.

² Klaus J. Hopt and Susanne Kalss, "Multiple-voting shares in Europe - A comparative law and economic analysis," *Law Working Paper N° 786/2024* (July 2024): 12.

³ *Ibid.*, 1.

⁴ Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure of Corporate Law* (Cambridge, MA: Harvard University Press, 1991), 2.

⁵ Pereira, *Once Bitten, Twice Shy*, 236.

⁶ Hopt and Kalss, *Multiple-voting shares in Europe*, 1.

⁷ *Ibid*

⁸ Pereira, *Once Bitten, Twice Shy*, 222.

⁹ Virginijus Bitė, „Bendrovių reglamentavimo pokyčiai: ar atėjo startuolių aukso amžius?“, *Lietuvos teisė* 2023, Nr. 2 (2023): 191–209.

At the European Union level, harmonisation efforts such as the Directive on multiple vote share structures¹⁰ signal a coordinated attempt to address regulatory fragmentation. This directive, part of the broader Listing Act package,¹¹ aims to create common rules to enhance the attractiveness of EU public markets, particularly for high-growth companies. The introduction of such EU-level instruments adds another layer of complexity. It forces an examination of how minimum harmonisation interacts with deeply rooted national legal traditions and the powerful force of regulatory competition. The contemporary legal landscape is therefore defined by a triangular tension between national path dependency, competitive liberalisation, and supranational harmonisation.

Scientific novelty and overview of the research on the selected topic. The scientific novelty of this research lies in its integrated and theoretically grounded approach. While the academic debate is extensive, it tends to analyse share classes in isolation. For example, prominent recent scholarship provides deep comparative analysis of multiple-voting rights across Europe¹² or detailed examinations of specific national reforms, such as in Germany,¹³ but these studies remain focused on the singular issue of enhanced voting rights. This thesis moves beyond that singular focus by being one of the first studies to systematically analyse the concurrent evolution of enhanced voting, preference, and redeemable shares within a unified framework.

The thesis also introduces a novel analytical model by combining the theories of regulatory competition and path dependency. The contractarian foundations of regulatory competition are well-established,¹⁴ and the constraining force of path dependency is widely recognized as shaping corporate law.¹⁵ However, existing literature typically applies these theories to explain singular phenomena. The novelty of this thesis lies in combining these two frameworks into an integrated model to explain the concurrent evolution of distinct share classes across different legal traditions.

Furthermore, the detailed case study of Lithuania's non-linear regulatory journey provides a unique perspective. While recent Lithuanian reforms have been expertly analysed, the focus has been on their immediate impact on the business environment for start-ups.¹⁶ The

¹⁰ European Union, Directive (EU) 2024/2810 of the European Parliament and of the Council on multiple-vote share structures, art. 2(2), Official Journal L2024/2810, October 23, 2024.

¹¹ European Securities and Markets Authority (ESMA), "Listing Act," accessed September 18, 2025, <https://www.esma.europa.eu/esmas-activities/listing-act>.

¹² Jorge Brito Pereira, "Once Bitten, Twice Shy: Multiple Voting Shares in Continental Europe," *Journal of International Business and Law* 22, no. 2 (2023): 222–242.

¹³ Klaus Ulrich Schmolke, "Dual-class shares on the rise. Some remarks on the (re)introduction of multiple-voting rights in German stock corporation law," *European Company Case Law* 1, 4 (2023): 359–377.

¹⁴ Frank H. Easterbrook and Daniel R. Fischel, "The Economic Structure of Corporate Law" (Cambridge, MA: Harvard University Press, 1991), 1–39.

¹⁵ Lucian A. Bebchuk and Mark J. Roe, "A Theory of Path Dependence in Corporate Governance and Ownership," Working Paper No. 131, *Columbia Law School, The Center for Law and Economic Studies* (November, 1999): 1–38.

¹⁶ Bitė, *Bendrovių reglamentavimo pokyčiai: ar atėjo startuolių aukso amžius?*, 191–209.

scientific novelty of this thesis' case study lies in its detailed historical analysis of Lithuania's full legislative path, tracing the framework from the permissive 1990 law, through the restrictive *numerus clausus* model adopted in 2004, to the recent re-liberalization and the forthcoming changes scheduled for 2026, which have not yet been academically analysed.

Finally, the research contributes a new analysis of redeemable shares by identifying a fundamental divergence in creditor protection philosophies. This thesis systematically contrasts the traditional, formalistic capital maintenance doctrine which continues to police every payment by a UK company¹⁷ with the more flexible, solvency-based tests that recent national reforms for private companies, such as in Belgium¹⁸. This comparative analysis is particularly useful for jurisdictions such as Lithuania which are currently in the process of introducing a legal framework for redeemable shares.

This thesis provides a comprehensive comparative analysis of the evolution and contemporary trends in the regulation of fundamental share classes. The research scrutinises the relevant national statutes, EU directives, and scholarly literature to build a detailed and nuanced picture of the current state of European company law in the context of share class regulation.

Significance of research. The relevance of this study can be understood on several levels. For policymakers and legislators, particularly in states considering reforms to company law, the thesis offers a systematic assessment of current regulatory developments and identifies prevailing models of practice. For lawyers and business advisors, the research provides practical guidance by mapping the differences in legal frameworks across European jurisdictions, which is especially useful in structuring cross-border investments and transactions. For scholars, the work introduces a fresh and comprehensive perspective to the ongoing discussion on whether European company law is moving towards greater uniformity or continuing to reflect national diversity.

The aim of research. The purpose of this research is to examine how the regulation of share classes, particularly those that grant enhanced voting power, preferential financial rights, or redemption features, has developed and continues to evolve within selected European jurisdictions. The study also aims to identify the main legal models as well as the regulatory drivers that are shaping these changes.

The objectives of research. To achieve the established aim of this master thesis the following objectives have been set.

¹⁷ Alan Dignam and John Lowry, *Company Law*, 11th ed. (Oxford: Oxford University Press, 2020), 119.

¹⁸ Hans De Wulf, "AN INTRODUCTION TO AND EVALUATION OF THE 2019 BELGIAN COMPANIES ACT – PREPARING FOR THE PREVIOUS WAR?," WP 2023-11 (Ghent: Financial Law Institute, Ghent University, 2023), 2.

1. To establish the theoretical foundations of share class regulation by examining core legal concepts, contrasting permissive and prescriptive regulatory models, and analysing the determinative roles of regulatory competition and path dependency.
2. To identify key international trends in the regulation of share classes with enhanced voting rights through a comparative perspective.
3. To determine how the regulation of preference shares in the United Kingdom, the Netherlands, and Lithuania has evolved toward greater contractual freedom, and to assess the legal implications of this development.
4. To evaluate how the regulation of redeemable shares reflects the evolving balance between corporate flexibility and the doctrine of capital maintenance in both EU law and national legal systems.

Research methodology. This scientific research employs several established legal research methods.

The *historical* method is used to trace the development of share class regulation over time. This provides the necessary context to understand the evolution from historical prohibitions to modern permissive frameworks.

The *comparative* method is central to the thesis. It is used to systematically compare the legal frameworks of the United Kingdom, the Netherlands, Lithuania, and the European Union, identifying key similarities and differences in their approaches. These jurisdictions were selected because they represent diverse legal traditions and regulatory backgrounds. The United Kingdom illustrates a common law system with long-established capital markets, the Netherlands reflects a continental jurisdiction that relies on an enabling corporate law framework, Lithuania represents a civil law system that has recently undertaken important reforms in this area, and the European Union functions as a supranational legislator that influences and shapes national regulatory approaches.

The *systemic analysis* method allows for an assessment of the totality of legal sources. This includes a thorough examination of statutes, legislative drafts, EU directives, case law, and scholarly articles to understand how different legal norms interact.

The *legal document analysis* method is applied to deconstruct specific legal texts. This facilitates a precise interpretation of statutory provisions and their practical implications for company law.

The *teleological* method is employed to examine the stated intentions of legislators. Analysing explanatory memoranda and parliamentary debates provides insight into the policy goals behind recent regulatory reforms.

In this research, Generative Artificial Intelligence (AI) was used as a supplementary tool. Google's Gemini was primarily utilized to enhance the clarity, style, and coherence of the academic language. Perplexity AI was employed for initial information searches and to simplify complex legal concepts. All information obtained through AI was independently verified against authoritative legal and scholarly sources. In line with university policy, AI was not used to generate original analysis, arguments, or conclusions.

The structure of the master thesis. The first chapter of this thesis establishes the theoretical foundations of the research. It explains key legal concepts and introduces the analytical framework based on the theories of regulatory competition and path dependency. The second chapter provides a systematic typology of the fundamental share classes. It defines the legal and economic characteristics of ordinary, preference, and redeemable shares, as well as instruments that deviate from the one-share-one-vote principle. The third, fourth, and fifth chapters form the special, analytical part of the thesis. Chapter three provides a comparative analysis of the regulation of share classes with enhanced voting rights. Chapter four conducts a similar comparative analysis for preference shares. Chapter five examines the regulation of redeemable shares. The thesis concludes with a final section that summarises the key findings of the research and presents overall conclusions regarding the evolution and contemporary trends in European share class regulation.

Defence statements:

1. European share class regulation evolves not through convergence, but due to ongoing tension between global regulatory competition and national path dependency, making full harmonization unattainable.
2. The recognition of shares with enhanced voting rights represents not a step towards deregulation, but the adoption of a framework where founder control is permitted only if strong safeguards for minority shareholders, such as voting caps and sunset provisions, are clearly in place.
3. The liberalization of preference shares regulation shows that regulatory competition for venture capital investment can overcome the constraints of traditional civil law systems. A jurisdiction's ability to compete effectively in this area depends on its willingness to move away from restrictive statutory models and embrace greater contractual flexibility.
4. The regulation of redeemable shares reveals the non-universality of the EU capital maintenance doctrine. The successful application of models based on functional solvency tests for private companies proves that the traditional, formalistic capital protection rules applied to public companies are not essential for effective creditor protection and can become a factor that reduces competitive advantage.

LIST OF ABBREVIATIONS

ABĮ - Akcinių bendrovių įstatymas (Lithuanian Law on Companies)

AI - Artificial Intelligence

AktG - Aktiengesetz (German Stock Corporation Act)

BCCA - Code des sociétés et des associations (Belgian Code of Companies and Associations)

BV - Besloten vennootschap (Dutch private limited liability company)

BW - Burgerlijk Wetboek (Dutch Civil Code)

CII - Council of Institutional Investors

ESMA - European Securities and Markets Authority

EU - European Union

ISS - Institutional Shareholder Services

LIBOR - London Interbank Offered Rate

LTD - Private limited company (United Kingdom)

MVS - Multiple-Vote Share

NV - Naamloze vennootschap (Dutch public limited liability company)

NYSE - New York Stock Exchange

OSOV - One-Share-One-Vote

PLC - Public limited company (United Kingdom)

SEC - U.S. Securities and Exchange Commission

1. THEORETICAL FOUNDATIONS OF SHARE CLASS REGULATION

This chapter establishes the theoretical groundwork for understanding this complex and evolving field. It begins by deconstructing the legal concept of the share class, examining how different legal traditions define and categorise these instruments. It then proceeds to analyse the principal regulatory models that govern their design, contrasting the enabling philosophy prevalent in common law systems with the more prescriptive approaches often found in civil law jurisdictions. Finally, the chapter introduces the theory of regulatory competition as an essential analytical lens, explaining how this market-driven dynamic acts as a powerful driver of contemporary trends and legislative reforms in share class regulation.

1.1. Concept and Legal Definitions of Share Classes

Shares embody the legal rights a shareholder has in relation to the company as consideration for their equity contribution.¹⁹ The rights attached to shares can be grouped into three categories. Financial rights usually cover the entitlement to receive dividends and a share in the company's remaining assets upon liquidation. Voting rights give shareholders the ability to vote at general meetings, though they may be limited or excluded in exchange for additional financial benefits. Administrative rights involve access to company information, representation in management or supervisory bodies, veto powers, and other participatory privileges.²⁰

The combination of these rights can vary between different shares within a company, leading to the creation of distinct classes of shares. The concept of a share class as a bundle of rights is well-established. Yet the definition in statutory law differs greatly across jurisdictions.

In the United Kingdom, the definition of share classes is primarily set out in the Companies Act 2006. The Act indicates that “shares are of one class if the rights attached to them are in all respects uniform”.²¹ This formulation makes uniformity of rights the decisive factor for determining whether shares belong to the same class. Explanatory Notes further explain that “class rights typically cover matters such as voting rights, rights to dividends and rights to a return of capital on a winding up”.²²

¹⁹ Andrea Vicari, *European Company Law* (Berlin/Boston: Walter de Gruyter GmbH, 2021), 105.

²⁰ *Ibid.*, 114.

²¹ United Kingdom, *Companies Act 2006*, s. 629(1), accessed August 12, 2025, <https://www.legislation.gov.uk/ukpga/2006/46/section/629>.

²² United Kingdom, *Companies Act 2006*, Explanatory Notes, sec. 629, accessed August 12, 2025, <https://www.legislation.gov.uk/ukpga/2006/46/notes/division/10/17/7>.

In contrast with the common law framework of the United Kingdom, the legal system in the United States, particularly in Delaware, contains more detailed statutory definition. According to the Delaware Code, a company may create different classes of shares with specified voting powers, designations, preferences, relative or participating or optional or other special rights, together with qualifications, limitations or restriction.²³ Delaware's statute offers a detailed catalogue of rights and features that may define a share class, whereas the UK provision merely treats a class as any group of shares whose rights are uniform.

In the supranational context, European Union law takes a different approach when it comes to defining share classes. Rather than establishing comprehensive, standalone definition of "share class" in general company law, the EU has chosen a more targeted approach that addresses specific contexts while leaving broader definitional matters to individual Member States.

The clearest recent example of EU-level share class treatment can be found in MVS Directive. This directive defines multiple-vote shares as those belonging to "a distinct and separate class of shares in which the shares carry more votes per share than in another class of shares with voting rights."²⁴ The directive recognizes that such structures necessarily involve "at least two distinct classes of shares, each with a different number of votes per share."²⁵ This definition, while precise, applies only within the narrow scope of multiple-vote arrangements and does not create a broader framework for share classification throughout EU company law.

ESMA has offered its own interpretation and describes share classes as categories that remain "linked by a common investment objective which is realised through the investment in a common pool of assets,"²⁶ while allowing "share classes [to] attribute different rights or features to sub-sets of investors."²⁷ Nevertheless, this definition serves the regulated investment fund industry but does not extend to company structures.

Given the absence of a comprehensive definition of share classes in EU law, the task of establishing clear classification frameworks falls to individual Member States, each of which has developed distinct statutory approaches to defining and regulating share classes.

For example, German company law defines share classes through the *Aktiengesetz* (German Stock Corporation Act), which establishes that "the shares may grant various rights, in

²³ Delaware, Delaware Code Annotated, tit. 8, § 151(a), accessed September 18, 2025, <https://delcode.delaware.gov/title8/c001/sc05/index.html#151>.

²⁴ Directive (EU) 2024/2810 on multiple-vote share structures, art. 2(2).

²⁵ *Ibid.*, recital 4.

²⁶ European Securities and Markets Authority, Opinion on UCITS Share Classes," ESMA34-43-296, January 30, 2017, 3, accessed September 18, 2025, https://www.esma.europa.eu/sites/default/files/library/opinion_on_ucits_share_classes.pdf.

²⁷ *Ibid.*, 6.

particular in the distribution of profits and company assets. Shares with equal rights form a class.”²⁸ Lithuania takes a similar approach in its Law on Companies (*Akcinių bendrovių įstatymas*), which provides that “shares are classified into classes according to the rights granted to their owners”.²⁹ France likewise requires under the *Code de commerce* that securities “confer identical rights by category,” implicitly defining share classes by uniform entitlements.³⁰ Therefore, a share class is generally can be understood as the configuration of rights or characteristics conferred on its holders.

1.2. Regulatory Models for Share Class Design

The concept of share classes, especially in continental civil law tradition, is not confined solely to the bundle of rights that are assigned to specific shares in a company. Another way to categorize distinct classes of shares established by statutory provisions. Some legal systems follow a *numerus clausus* model, under which companies may issue only the classes enumerated by statute “statutory menu”, and any such issuance remains subject to mandatory legal limits. For example, the AktG recognizes ordinary shares as the default rule and permits the issuance within statutory constraints preference shares³¹ and recently multiple voting shares.³² A comparable approach is followed in Lithuania, where the statutory law permits ordinary shares and preference shares,³³ although preference shares are issued infrequently, possibly due to legal constraints and uncertainty.³⁴

The primary reasonable rationale for “statutory menus” is that they serve to confirm the legality of certain governance arrangements in situations where their permissibility might otherwise be in doubt.³⁵ Nevertheless, proponents contend that companies are fully capable of creating such menus themselves and have been doing so for a long time. There is no compelling basis to presume that privately designed “menus” are inherently prone to inefficiency or failure.³⁶

²⁸ Germany, *Aktiengesetz* (Stock Corporation Act), § 11, accessed August 12, 2025, https://www.gesetze-im-internet.de/englisch_aktg/englisch_aktg.html.

²⁹ Lithuania, *Akcinių bendrovių įstatymas* (Law on Companies), art. 40(3), accessed August 12, 2025, <https://e-seimasx.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/asr>.

³⁰ France, *Code de commerce*, Art. L228-1, accessed August 12, 2025, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038591684

³¹ Germany, *Aktiengesetz* (Stock Corporation Act), § 139.

³² *Ibid.*, 135.

³³ Lithuania, *Akcinių bendrovių įstatymas*, art. 42.

³⁴ Bitė, *Bendrovių reglamentavimo pokyčiai: ar atėjo startuolių aukso amžius?*, 193.

³⁵ Daniel M. Häusermann, *The Case Against Statutory Menus in Corporate Law*, University of St. Gallen Law and Economics Working Paper No. 2012-01, March 7, 2012, 7, available at SSRN: <http://ssrn.com/abstract=2024876>.

³⁶ *Ibid.*, 12.

The prevailing model of company law in the United States, particularly in Delaware, is that of an enabling statute.³⁷ This framework treats the companies as a nexus of contracts, a voluntary arrangement among investors, managers, and other participants.³⁸ Company law, from this contractarian perspective, does not prescribe substantive terms of governance but rather provides a standard set of default rules from which founders can deviate.³⁹ The founders of a company possess a wide domain of choice, including what kinds of shares to issue, with what entitlements to payment, and crucially, with what allocation of voting rights.⁴⁰

With prevailing model participants design the governance that fits their business,⁴¹ since no single rule works for all companies. The ability to design bespoke share classes, such as creating a class of non-voting shares or a class of multiple voting shares, is a direct consequence of this contractual freedom.

Investors who disagree with the offered terms, such as a class of shares with no voting rights, can protect themselves by paying a lower price for the security, which disciplines founders to offer value maximizing governance structures.⁴² The enabling model thus facilitates the creation of diverse share classes, including complex multi class share designs, reflecting the belief that market forces are the most efficient mechanism.

Jurisdictions following enabling model defines the rights of a share class without being strictly bound by an exhaustive “statutory menu”. For example United Kingdom Companies Act 2006, which allows companies to issue different classes of shares with whatever rights are specified, provided those rights are set out in the articles of association or in the terms of issue where the articles permit.⁴³ Delaware law lists the types of rights that share class may carry yet still leaves parties broad freedom to configure them.⁴⁴

While in civil law tradition, such an approach is more of an exception than a general rule, the Dutch Civil Code provides significant flexibility for customizing shareholder rights, drawing a clear distinction between the powers granted to private (BV) and public (NV) companies. BV exemplifies this flexibility, as its articles of association can attach or exclude special control rights,⁴⁵ create shares with additional economic entitlements⁴⁶, or even exclude them from profits

³⁷ Frank H. Easterbrook and Daniel R. Fischel, “The Corporate Contract,” *Columbia Law Review* 89, no. 7 (1989): 1417.

³⁸ *Ibid.*, 1426.

³⁹ Easterbrook and Fischel, *The Economic Structure of Corporate Law*, 12.

⁴⁰ *Ibid.*, 2.

⁴¹ *Ibid.*

⁴² *Ibid.*, 6.

⁴³ United Kingdom, *Companies Act 2006*, s. 630(1).

⁴⁴ Delaware, *Delaware Code Annotated*, tit. 8, § 151.

⁴⁵ Art. 2:201(3) and 2:228(5), Dutch Civil Code, Book 2, accessed August 16, 2025, <http://www.dutchcivillaw.com/legislation/dcctitle2255aa.htm>.

⁴⁶ *Ibid.*, 2:216(10).

entirely.⁴⁷ In contrast, while NV can also create shares with special economic rights⁴⁸, its powers are more constrained by the principle that no shareholder may be entirely excluded from the company's profits.⁴⁹

Company law in continental Europe is characterized by a greater prevalence of mandatory rules that impose statutory limits.⁵⁰ European prescriptive models often restrict the ability of companies to deviate from the permissible variations in share class design.

For example, many European jurisdictions historically prohibited or severely capped the use of multiple voting shares for listed companies, viewing the one share one vote principle as a cornerstone of shareholder protection.⁵¹ These mandatory rules are intended to prevent the potential for abuse that arises from wedges between voting rights and cash flow rights.⁵² Another example is the imposition of ceilings on the proportion of preference shares in a company's total share capital.⁵³

This mandatory model reflects a greater scepticism of market efficiency and a stronger belief in the state's role in correcting for agency costs, information asymmetry, and potential oppression of minority shareholders through statutory design. The limited flexibility for creating share classes with rights, such as the constraints on the vote multiple in dual class structures, is a direct result of this more regulatory philosophy.

Therefore, the legal framework governing the characteristics of a share class generally aligns with one of two distinct models. The first is a permissive model predicated on contractual freedom, which allows the specific rights and restrictions of shares to be freely designed within a company's constitutional documents. Conversely, a prescriptive model exists where the features of a share class are predetermined by statute. Under this regime, the creation of new classes or the combination of their respective rights or legal limits is permissible only within the explicit boundaries established by the statute.

⁴⁷ *Ibid.*, 2:216(7).

⁴⁸ *Ibid.*, 2:105(10).

⁴⁹ *Ibid.*, 2:105(9).

⁵⁰ Jens Dammann, "The Mandatory Law Puzzle: Redefining American Exceptionalism in Corporate Law," *Hastings Law Journal* 65 (2014): 449.

⁵¹ Pereira, *Once Bitten, Twice Shy*, 235-236.

⁵² Schmolke, Dual-class shares on the rise. Some remarks on the (re)introduction of multiple-voting rights in German stock corporation law, 5.

⁵³ Don Berger, "Shareholder Rights Under the German Stock Corporation Law of 1965," *Fordham Law Review* 38, no. 4 (1970): 687, at 723 (discussing AktG § 139(2), which caps the aggregate par value of preferred (non-voting) shares at no more than the par value of all other shares issued).

1.3. The Theory of Regulatory Competition and Path Dependency

The theoretical framework of regulatory competition provides a compelling lens through which to understand the recent wave of liberalization in share class regulation across multiple jurisdictions. Regulatory competition is a process in which national legislatures compete to attract firms to operate under their legal systems. This dynamic depends on two preconditions: first, that firms can select the most cost-effective laws for their activities (a practice known as regulatory arbitrage), and second, that jurisdictions have an actual incentive to attract these companies. When these conditions are met, legislatures are motivated to enact laws that appeal to companies, which ultimately results in a law reform process that is driven by the preferences of the regulated companies themselves.⁵⁴ Company law has undergone a paradigmatic shift. It is no longer viewed as a purely domestic policy tool but as a strategic economic asset in the global economy. This change fuels competition among jurisdictions, which now create more favourable legal frameworks to attract and retain corporate investment and domicile within their borders.

The theoretical foundation of regulatory competition rests on two competing hypotheses that animate contemporary academic discourse. The “race to the top” hypothesis suggests that jurisdictional competition produces increasingly efficient legal rules that maximize value for all stakeholders, as market pressures reward jurisdictions offering superior governance frameworks.⁵⁵ Conversely, the “race to the bottom” hypothesis posits that competition may lead to legal regimes that unduly favour company insiders and managers at the expense of broader investor protection.⁵⁶ This theoretical tension becomes particularly salient when examining the contemporary liberalization of share class regulation across European jurisdictions. Particularly – relaxing their adherence to the “one-share-one-vote” principle.⁵⁷

One of the examples of regulatory competition is illustrated by the United Kingdom's 2021 Listing Review.⁵⁸ This reform was a direct response to the competitive challenge from capital markets in the United States, which have become a dominant venue for the initial public offerings of high-growth companies.⁵⁹ However, the resulting framework was not a simple adoption of the permissive approach found in the United States. The proposal encountered significant opposition from influential domestic stakeholders, particularly institutional investors with a long-standing

⁵⁴ John Armour, *Who Should Make Corporate Law?* EC Legislation versus Regulatory Competition, ILF Working Paper Series no. 41 (Frankfurt am Main: Institute for Law and Finance, Johann Wolfgang Goethe-Universität, 2005), 8-9.

⁵⁵ Armour, *Who Should Make Corporate Law?*, 11.

⁵⁶ *Ibid.*, 10-11.

⁵⁷ Pereira, *Once Bitten, Twice Shy*, 222.

⁵⁸ Bobby V. Reddy, “Up the Hill and Down Again: Constraining Dual-Class Shares,” *Cambridge Law Journal* 80, no. 3 (November 2021): 516, 522.

⁵⁹ *Ibid.*, 522.

rejection to dual class share structures.⁶⁰ Consequently, the initial 2021 rules represented a negotiated compromise aimed at appeasing these concerns: a hybrid model that subjected all enhanced voting rights to a mandatory five-year sunset clause.⁶¹ Yet, underscoring the ongoing intensity of competitive pressures, this framework was radically overhauled in July 2024. In a nuanced policy shift, the UK's financial regulator removed the sunset clause for individual directors to attract founders, while simultaneously introducing a new ten-year sunset period that applies specifically to enhanced voting rights shares held by institutional entities.⁶²

Regulatory competition extends beyond corporate control to include share classes with special economic rights. To attract venture and private capital, a jurisdiction's company law must be flexible enough to accommodate the sophisticated financial instruments these complex investments require. The ability to create bespoke convertible preference shares,⁶³ redeemable securities,⁶⁴ and other hybrid instruments becomes a critical competitive advantage in attracting innovative technology companies.⁶⁵ Companies founded in jurisdictions with inflexible share class regimes face substantial disadvantages⁶⁶ as sophisticated investors demand the ability to negotiate complex share class features that may be unavailable under restrictive legal frameworks.

However, the response to such competitive pressures is never straightforward. It is profoundly shaped by a deeper, historical force known as path dependency. This theory posits that a country's corporate structure is fundamentally a product of its own past arrangements.⁶⁷ This historical inertia creates the central tension in the contemporary evolution of share classes.

The existing structures of ownership and the political interests they foster act as a powerful "brake" or "filter" on change. Therefore, a complete analysis cannot focus on the competitive race alone. It must also account for the unique historical tracks that determine how each jurisdiction runs that race, as any response is constrained by its deeply embedded legal culture, scholarly interpretations, and institutional practices.⁶⁸ Significant diversity in share regulation persists across jurisdictions, despite a powerful push towards convergence driven by regulatory competition. This tension exists because path dependency controls the form any reforms can take, while regulatory competition provides the relentless pressure that makes them necessary.

⁶⁰ *Ibid.*, 517.

⁶¹ *Ibid.*, 534.

⁶² Financial Conduct Authority, Policy Statement PS24/6: *The new UK listing regime* (London: FCA, July 2024), 42.

⁶³ Enriques, Nigro, and Tröger, "Can U.S. Venture Capital Contracts Be Transplanted into Europe?," 21.

⁶⁴ *Ibid.*, 63.

⁶⁵ Reddy, *Up the Hill and Down Again: Constraining Dual-Class Shares*, 516.

⁶⁶ Lucian A. Bebchuk and Mark J. Roe, "A Theory of Path Dependence in Corporate Governance and Ownership," *Working Paper No. 131*, Columbia Law School, The Center for Law and Economic Studies (November, 1999): 6.

⁶⁷ *Ibid.*, 1.

⁶⁸ Enriques, Nigro, and Tröger, *Can U.S. Venture Capital Contracts Be Transplanted into Europe? Systematic Evidence from Germany and Italy*, 12.

2. FUNDAMENTAL SHARE CLASSES: A TYPOLOGY

The previous chapter established the theoretical basis for differentiating shares as configurable bundles of rights. This chapter builds on that foundation by providing a systematic examination of the primary instruments that form a company's capital structure. The practical application of legal theory has resulted in several distinct classes of shares. Each class is designed to serve specific financial purposes and to allocate risk and control in a particular manner.

This chapter provides an essential descriptive typology of these instruments. It begins with an analysis of the ordinary share as the default instrument of company law and the bearer of residual risk. The discussion then moves to explore significant deviations from this standard. It will examine the one-share-one-vote principle and its derogations, including loyalty shares and multiple voting shares. The chapter will subsequently detail the legal and economic characteristics of preference shares, which offer investors prioritised financial returns for limited governance rights. Finally, it will define redeemable shares as a contractual mechanism for the return of capital.

A precise understanding of these instruments is a necessary prerequisite for the comparative analysis that follows. It is indispensable for evaluating the contemporary evolution of company law across different European jurisdictions.

2.1. Default rule – Ordinary shares

Although the possible combinations of rights are almost limitless, in practice two main share types are the most common: ordinary shares and preference shares.⁶⁹ Where a company's share capital is not differentiated into multiple classes, these shares are necessarily designated as "ordinary shares." This is underscored by the foundational principle that any corporation possessing share capital is statutorily required to have issued at least one ordinary share.⁷⁰ Ordinary shares, often referred to as common shares, constitute the primary and most basic form of equity, representing an ownership interest in a company.⁷¹ They typically confer a bundle of essential rights upon their holders, encompassing both financial entitlements and governance participation.⁷² These rights allow shareholders to benefit from the company's success and to exercise a degree of control and oversight over its operations. They are foundational to a company's capital structure, with shareholders providing the legal capital necessary for the company to commence its activities.⁷³

⁶⁹ Andreas Cahn and David C. Donald, *Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA* (Cambridge: Cambridge University Press, 2010), 265

⁷⁰ Paul L. Davies, Sarah Worthington, and Christopher Hare, *Gower's Principles of Modern Company Law*, 11th ed. (London: Sweet & Maxwell, 2021), para. 6-009.

⁷¹ Strathmore University, School of Accountancy, "Chapter Four: Shares," in *Company Law, CPA Part 2 Section 3, Full Time Course Notes* (Nairobi: Strathmore University, n.d.), 2.

⁷² *Ibid.*

⁷³ Vicari, *European Company Law*, 47.

2.1.1. Ordinary shareholders right to dividend

The entitlement of ordinary shareholders to dividends fundamentally represents the method by which an investor receives a return on their investment in a company.⁷⁴ However, this entitlement is not absolute or guaranteed. Its realization is contingent upon a specific decision by the company to distribute earnings.⁷⁵ The distribution rule, often referred to as the capital maintenance rule, prohibits a company from making distributions to its shareholders, including dividends, unless the value of such a distribution is less than the profits available for that purpose.⁷⁶

The common rule is that each shareholder's entitlement to dividends is determined by the nominal value of the ordinary shares they hold.⁷⁷ For example Lithuanian Law on Companies states that "a dividend is a part of the company's profits allocated to the shareholder in proportion to the nominal value of shares owned by them."⁷⁸

In essence, the dividend right for an ordinary shareholder signifies a potential return on investment, but it is not an inherent guarantee. This entitlement only materializes if the company's leadership affirmatively decides to distribute earnings and if sufficient legally distributable profits exist, respecting capital maintenance rules. Such payments are discretionary, usually ranking after any preferred shareholder claims,⁷⁹ and are subject to the company's strategic financial decisions.

2.1.2. Ordinary shareholders right to receive liquidation surplus

Same as with dividend payments, their entitlement to the company's assets during liquidation is subordinate to all other prior claims. They are, in effect, the last in line to receive any distribution from the company's assets.⁸⁰ This order mandates that all company debts and liabilities owed to various classes of creditors including secured, preferential, and unsecured creditors along with any specific entitlements of preference must be fully satisfied before ordinary shareholders become eligible to receive any portion of the remaining assets.⁸¹

⁷⁴ María Sáez Lacave and M. Gutiérrez Urtiaga, *Dividend Policy with Controlling Shareholders*, Law Working Paper N° 250/2014 (European Corporate Governance Institute (ECGI), March 2014), 13.

⁷⁵ *Ibid.*, 14.

⁷⁶ J. K. S. Ho, "Revisiting the Relevance of the Legal Capital Regime in Modern Company Law," *Journal of Comparative Law*, n.d., 1.

⁷⁷ Eilís Ferran and Look Chan Ho, *Principles of Corporate Finance Law*, 2nd ed. (Oxford: Oxford University Press, 2014), 240.

⁷⁸ Lithuania, Akcinių bendrovių įstatymas, art. 60(1).

⁷⁹ Davies et al., *Gower's Principles of Modern Company Law*, para. 6-009.

⁸⁰ Margit Vutt, "Shareholder's Derivative Claim: Does Estonian Company Law Require Modernisation?," *Juridica International* XIII (2008): 76.

⁸¹ Javier Paz Valbuena and Horst Eidenmüller, *Bailout Blues: the Write-Down of the AT1 Bonds in the Credit Suisse Bailout*, ECGI Law Working Paper No. 705/2023 (April 2023), 2, <https://ssrn.com/abstract=4431170>

European company law principles, such as the absolute priority rule, reinforce this by generally prohibiting distributions to shareholders if such payments would compromise the full satisfaction of creditor claims.⁸²

The remaining assets is then distributed among the ordinary shareholders. The standard and equitable method for this distribution is on a pro rata basis, meaning each ordinary shareholder receives a share of the surplus that is directly proportional to their respective shareholding in the company. National laws often codify this principle. For instance, Germany's AktG stipulates that remaining assets are distributed among stockholders according to their shares in the capital share, once unequal contributions have been accounted for.⁸³ The currently applicable version of the Lithuanian Law on Companies similarly directs that after creditors and preference shareholders are paid, remaining assets are divided proportionally among shareholders based on their shares' nominal value, accounting for any differing rights.⁸⁴

2.1.3. Ordinary shareholders pre-emptive right

Another fundamental right is the pre-emptive right, often referred to as a subscription right or, in broader contexts, a right of first refusal. It represents a core entitlement of existing shareholders to be offered newly issued shares before they are made available to others.⁸⁵ The principal aim of these rights is to protect existing ordinary shareholders from the dilution of their proportionate ownership interest and the corresponding diminishment of their voting power that can occur when a company issues new shares, particularly for cash consideration.⁸⁶ This protection is crucial because, without such rights, if new shares are not offered pro rata, the financial interests and voting influence of current shareholders can be significantly weakened. The existence of pre-emptive rights thus serves as an important ex-ante safeguard, potentially mitigating agency problems by deterring company insiders from issuing shares to favoured parties or at prices that could disadvantage existing shareholders, especially minority holders.⁸⁷

⁸² José Garrido, Chanda DeLong, Amira Rasekh, and Anjum Rosha, "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive," IMF Working Paper WP/21/152 (International Monetary Fund, May 27, 2021), 22, <https://www.elibrary.imf.org/view/journals/001/2021/152/001.2021.issue-152-en.xml>.

⁸³ German Stock Corporation Act (Aktiengesetz – AktG), § 271(2), accessed May 27, 2025, https://www.gesetze-im-internet.de/englisch_aktg/englisch_aktg.html

⁸⁴ Lietuvos Respublikos akcinių bendrovių įstatymas Nr. VIII-1835 [Law on Companies of the Republic of Lithuania No. VIII-1835], Art. 73(13), accessed May 27, 2025, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/asr>.

⁸⁵ Practical Law, "Pre-emption rights," *Practical Law Thomson Reuters*, accessed May 27, 2025, [https://uk.practicallaw.thomsonreuters.com/1-107-7026?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/1-107-7026?transitionType=Default&contextData=(sc.Default)&firstPage=true).

⁸⁶ Pre-Emption Group, "Pre-Emption Group (overview)," *Financial Reporting Council*, accessed May 27, 2025, <https://www.frc.org.uk/library/external-groups/pre-emption-group/pre-emption-group-overview/>.

⁸⁷ Tom Vos, "Authorisations to Issue Shares and Disapply Pre-Emption Rights in the UK, Belgium and France: Law, Economics and Practice" (University of Antwerp Jean-Pierre Blumberg Chair Legal Working Paper Series; KU

The EU's statutory default rule for public companies, where pre-emptive rights are presumed unless lawfully disapplied, contrasts with the approach in other significant jurisdictions, such as in the United States.⁸⁸ Under Delaware Code pre-emptive rights are not automatically conferred upon shareholders. Instead, they must typically be explicitly granted within the company's certificate of incorporation, embodying a more contractual or "opt-in" framework.⁸⁹ This divergence highlights differing jurisprudential philosophies, with the EU often embedding core shareholder protections in statutes, while Delaware Code emphasizes contractual freedom and the enabling nature of its corporate statutes, allowing companies greater flexibility in tailoring governance structures through their charters.

2.1.4. Ordinary shareholders voting right

Voting rights are a quintessential element of ordinary share ownership, representing a primary mechanism for shareholder participation in the governance of the company. These rights are not merely symbolic. They form a crucial aspect of the corporate democratic process, with EU law recognizing that holders of shares carrying voting rights should be able to exercise them, given that these rights are reflected in the price paid for the shares.⁹⁰ This linkage between the economic commitment of purchasing shares and the entitlement to a voice in corporate affairs suggests an underlying principle where risk-bearing through investment is coupled with a degree of control, reinforcing the idea that effective shareholder control is a prerequisite for sound corporate governance.⁹¹ Indeed, the ability to influence company decisions, such as management selection or voting at general meetings, is considered one of the most important rights of ordinary shareholders.⁹²

These voting rights empower shareholders to exert influence over the strategic direction of the company and to hold management accountable for its actions and performance. The exercise of voting rights is thus intrinsically linked to the broader framework of corporate accountability and the alignment of management interests with those of the shareholders, serving as an important

Leuven Centre for IT & IP Law (CiTiP) Working Paper Series, posted to SSRN September 20, 2022), 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4221125.

⁸⁸ Marco Ventoruzzo, *Issuing New Shares and Preemptive Rights: A Comparative Analysis*, 12 Rich. J. Global L. & Bus. 517 (2013).

⁸⁹ "Subchapter I. Formation, Delaware Code Title 8, Chapter 1," *Delaware Code Online*, State of Delaware, accessed May 27, 2025, <https://delcode.delaware.gov/title8/c001/sc01/>.

⁹⁰ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, recital 3, 2007 O.J. (L 184) 17, accessed May 27, 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007L0036>.

⁹¹ *Ibid.*

⁹² International Securities Lending Association (ISLA), "Shareholder Rights Directive (SRD II) One Pager," April 2021, accessed May 27, 2025, <https://www.islaemea.org/regulation-and-policy/shareholder-rights-directive-srd/one-pager/>.

channel through which corporate governance is exercised globally. Empirical observations support this, indicating that shareholder votes can have tangible governance-related outcomes, such as influencing director turnover, thereby demonstrating a causal link between shareholder voting patterns and board accountability.⁹³ Shareholder powers, including the appointment of directors, consequently, fulfil a vital function in the management of the company.⁹⁴

2.2. The One-Share-One-Vote Rule and Its Deviations

The OSOV rule is widely acknowledged as a foundational concept for ordinary shares in numerous European jurisdictions, rooted in the idea that share capital should typically carry control rights proportionate to the risk borne by the shareholder.⁹⁵ This principle, which dictates that control should be exactly proportionate or equally proportional to the capital invested, means that share capital should typically carry control rights in proportion to the risk carried by the shareholder. This alignment is believed to encourage shareholders, who are interested in higher share value, to vote in a manner that promotes that interest and maximizes the company's value.⁹⁶ OSOV rule is often associated with the concept of shareholder democracy, where each unit of capital carries equal voting weight, and is generally designed as a legal counterbalance to managerial power, addressing the separation of ownership and control inherent in modern corporations.⁹⁷ It is important to acknowledge that while the OSOV rule serves as a significant benchmark, European company law, both at the EU level and within Member States, generally permits variations from this baseline.⁹⁸

Although deviations from the OSOV rule are permitted, with greater voting rights being assigned to another share class, ordinary shares are, by their nature, intended for the management of the company. Ordinary shareholders typically exercise their voting rights on a range of significant corporate matters, fundamentally shaping the company's governance and strategic trajectory. These commonly include the election and removal of directors or members of the

⁹³ Peter Iliev, Karl V. Lins, Darius P. Miller, and Lukas Roth, "Shareholder Voting and Corporate Governance Around the World" (working paper, University of Bristol, August 2012), 32 accessed May 28, 2025, <https://www.bristol.ac.uk/efm/media/conference-papers/corporate-finance/shareholder-voting.pdf>.

⁹⁴ Yavuz Selim Günay, "A Comparative Legal, Economic and Structural Analysis of Challenging Shareholders' Resolutions Under Turkish and English Legal Systems," *Yıldırım Beyazıt Hukuk Dergisi*, no. 2 (2023): 495, accessed May 28, 2025, <https://doi.org/10.33432/ybuhukuk.1267056>.

⁹⁵ European Corporate Governance Institute (ECGI), *OSOV Final Report* (report, February 2007), 7, accessed May 28, 2025, https://www.ecgi.global/system/files?file=2024-02/_osov_final_report_en.pdf.

⁹⁶ Arman Khachaturyan, "The One-Share-One-Vote Controversy in the EU" (ECMI Paper No. 1, European Capital Markets Institute, August 2006), 5, accessed May 28, 2025, <https://scispace.com/pdf/the-one-share-one-vote-controversy-in-the-eu-2u1z32yppo.pdf>.

⁹⁷ *Ibid.*

⁹⁸ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, recital 4, 2007 O.J. (L 184) 17, accessed May 28, 2025, <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:32007L0036>.

supervisory board, thereby influencing the composition of the body responsible for overseeing the company's management and shaping its future policies.⁹⁹

2.2.1. Loyalty shares

Common departure from the OSOV rule in Europe are loyalty shares, also called tenured voting rights, which grant extra votes to investors who keep their holding for a set period.¹⁰⁰ Rather than creating separate classes of shares, this approach rewards long-term ownership. Company bylaws grant additional voting rights, typically double the standard vote, to ordinary shares that have been held continuously by the same registered shareholder for a specified minimum period, commonly two years.¹⁰¹ These enhanced voting rights are personal to the long-term holder and are generally extinguished upon transfer of the shares. The primary justification for loyalty shares is to encourage long-term investment horizons and combat perceived market short-termism, aligning shareholder interests with the company's sustained performance.¹⁰² Because the extra votes arise only if the shareholder keeps the shares for the qualifying period, and are not reserved for a closed group of insiders, supporters maintain that loyalty shares pose a smaller risk of cementing permanent control than the classic dual-class model.¹⁰³

In 2014, France made loyalty shares the standard arrangement for listed companies,¹⁰⁴ meaning an issuer must pass a resolution if it wishes to keep the strict one-share-one-vote rule. Italy introduced a similar possibility in the same year, and Belgium and Spain have since followed, but in those three jurisdictions the regime applies only when the general meeting chooses to adopt it.¹⁰⁵ Despite their intended purpose, the effectiveness and fairness of loyalty shares remain subjects of debate. Critics contend that they primarily benefit stable, long-term block holders (such as founding families or strategic investors) who may already possess significant influence, while offering little practical empowerment to dispersed retail or institutional investors whose individual holding periods might fluctuate or for whom the marginal increase in voting power is negligible. The administrative complexity of tracking individual holding periods to determine voting entitlements can also reduce transparency regarding the precise distribution of voting power at any given shareholder meeting.¹⁰⁶ Furthermore, the loss of enhanced rights upon sale can create a

⁹⁹ Iliev et al., *Shareholder Voting and Corporate Governance Around the World*, 2.

¹⁰⁰ Pereira, *Once Bitten, Twice shy*, 227,

¹⁰¹ Hopt and Kalss, *Multiple-voting shares in Europe*, 1, 18.

¹⁰² Pereira, *Once Bitten, Twice Shy*, 229.

¹⁰³ Hopt and Kalss, *Multiple-voting shares in Europe*, 18, 40.

¹⁰⁴ *Code de commerce*, art. L.225-132 and art. L22-10-46, Legifrance, accessed August 15, 2025, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042339741, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000049720039.

¹⁰⁵ Ventoruzzo, *The Disappearing Taboo of Multiple Voting Shares*, 8, 14

¹⁰⁶ Hopt and Kalss, 40-41.

“lock-in” effect, potentially discouraging shareholders from selling shares even when it might be economically rational, thus impairing market liquidity and preventing the realization of any control premium embedded in the shares.¹⁰⁷

2.2.2. Non-voting ordinary shares

The defining criterion of an ordinary share class is the role of the residual claimant, the ultimate risk-bearer entitled to the company's remaining assets,¹⁰⁸ rather than its voting power. While loyalty shares grant additional voting power over time, another departure from the OSOV rule is the dual-class structure, which issues two classes of ordinary shares. One of these classes has restricted or no voting rights compared to the other. Yet, holders of the non-voting ordinary shares retain the same underlying economic rights as the holders of fully voting ordinary shares.

Non-voting ordinary shares are more frequently encountered in jurisdictions rooted in the common law tradition due to their broad contractual freedom. Nevertheless, examples of share classes with no or limited voting rights can also be found in jurisdictions following the civil law tradition.¹⁰⁹ The general disapproval of non-voting ordinary shares by entities like the Stock Exchange has contributed to their rarity, yet this does not entirely preclude the possibility of a company with such shares obtaining a listing.¹¹⁰ It is important to emphasize that such shares should not be confused with preference shares, as preference shares without voting rights are usually compensated by additional economic advantages.¹¹¹

2.2.3. Multiple voting shares

A multiple voting share is a class of share within a company's subscribed capital that confers superior voting rights to its holder in derogation of the proportionality principle.¹¹² In such a structure, while ordinary shares offered to the public may adhere to the one-share-one-vote

¹⁰⁷ Pereira, *Once Bitten, Twice Shy*, 228, 230.

¹⁰⁸ Frank H. Easterbrook and Daniel R. Fischel, “The Corporate Contract,” *Columbia Law Review* 89, no. 7 (1989): 1425.

¹⁰⁹ For example, the Dutch Civil Code provides that non-voting shares may be created for private limited companies. Article 2:228(5) states: “The articles of association may provide that shares are not entitled to vote in the general meeting. Such a settlement may only be made in respect of all shares of a particular type or designation for which all shareholders agree or for which it has been provided in the publication of the articles of association that there is no voting rights in the general meeting.” Dutch Civil Code, art. 2:228(5), accessed August 16, 2025, https://wetten.overheid.nl/BWBR0003045/2025-01-01#Boek2_Titeldeel5_Afdeling4_Artikel228.

¹¹⁰ Alan Dignam and John Lowry, *Company Law*, 11th ed. (Oxford: Oxford University Press, 2020), para. 9.11.

¹¹¹ Aurelio Gurrea-Martínez, “Revisiting the Bright and Dark Sides of Loyalty Shares: A Comparative and Policy-Oriented Analysis,” *European Business Organization Law Review* 22, no. 3 (2021): 478, <https://doi.org/10.1007/s40804-021-00212-4>.

¹¹² Pereira, “Once Bitten, Twice Shy,” 227.

principle, the multiple voting share class carries disproportionate influence.¹¹³ For instance, historical examples from France show *actions de priorité* granting twenty to twenty-five more votes than ordinary shares, while in Italy, the *azioni a voto plurimo* could carry up to two hundred votes per share.¹¹⁴ The massive popularization of such shares in continental Europe surged after the First World War, driven by factors like national protectionism against foreign investors and the urgent need to recapitalize companies in a difficult macroeconomic environment.¹¹⁵ This period was, however, marked by generalized abuse, which ultimately led to the prohibition of MVS in France (1933), Italy (1942), and Germany (1937).¹¹⁶ As with loyalty shares, this class of shares is typically held by the company's founders, a controlling family, or other incumbent shareholders.

A defining legal feature of the multiple voting share is that, unlike loyalty shares, the superior voting rights are attached to the share class itself and are not extinguished upon transfer.¹¹⁷ Thus, the share class is fundamentally an instrument of control, designed to separate corporate influence from pure economic exposure. The capacity of this share class to entrench control explains its central role in the European debate on corporate governance, particularly concerning the balance between the interests of controlling shareholders and the protection of minority investors.

2.3. Preference Shares

While ordinary shares are the basic form of equity and their holders considered as residual claimants, preference share class represent a distinct class of security within a company's capital structure, offering an alternative to ordinary shares by providing a more adaptable and unified framework for special rights.¹¹⁸ These instruments often exhibit a hybrid nature, as their characteristics can position them along a spectrum between debt and equity, depending on their specific attributes.¹¹⁹

Companies opt to issue preference shares for a variety of strategic and financial reasons. A primary motivation is to raise capital without significantly diluting the voting control typically held by ordinary shareholders, as preference shares are often issued with limited or no

¹¹³ Gurrea-Martínez, *Theory, Evidence, and Policy on Dual-Class Shares*, 477.

¹¹⁴ Pereira, *Once Bitten, Twice Shy*, 232-233.

¹¹⁵ *Ibid.*, 231.

¹¹⁶ *Ibid.*, 226 & 235.

¹¹⁷ *Ibid.*, 227.

¹¹⁸ Pierre-Henri Conac, *The New French Preferred Shares: Moving towards a More Liberal Approach*, *European Company and Financial Law Review*, no. 4 (2005): abstract.

¹¹⁹ Sandra Laurent, "Securities that do the deal: The decision to issue preference shares by UK firms." (Working Paper, University of the West of England, Bristol, n.d.), 5.

voting rights.¹²⁰ This makes them an attractive financing tool for existing shareholders who wish to maintain their influence over the company's governance.¹²¹ Furthermore, preference shares appeal to a specific segment of investors who prioritize more stable and predictable income streams, such as fixed dividends, and a lower risk profile due to preferential treatment in the distribution of assets upon liquidation, over the potential for high capital growth or voting influence associated with ordinary shares.¹²² Their utility is also evident in specific financial structuring contexts. For instance, venture capitalists often utilize convertible preference shares in early-stage financing, as these instruments can offer downside protection while allowing participation in upside potential through conversion into ordinary shares.¹²³ In corporate reorganizations or private equity transactions, preference shares can provide a flexible means of allocating risk and return among different stakeholders.¹²⁴

2.3.1. Financial entitlements of preference shares

A core characteristic of preference shares is the preferential right regarding the payment of dividends. Nonparticipating preference shares sets an amount and has to be paid before ordinary shareholders. Participating preference shares not only provide an amount of preference dividend but also carry a right for holders to participate in surplus profits, if any exist, after dividends have been paid to ordinary shareholders up to a certain specified limit.¹²⁵ While usually fixed, the dividend on preference shares can also be structured as a floating rate tied to an interest rate index, or it can be set based on the profits of the company.¹²⁶

The treatment of unpaid dividends further classifies these shares: with cumulative preference shares and non-cumulative preference shares. A cumulative preference share entitles its holder to any dividends that are not declared in a given year. The unpaid amount is carried forward and accumulates as arrears.¹²⁷ Conversely, holders of non-cumulative preference shares are not entitled to receive a dividend if it is not declared in a given year.¹²⁸

In the event of a company's liquidation, preference shareholders generally have a senior claim to the company's assets compared to ordinary shareholders, entitling them to a specified

¹²⁰ Conac, *The New French Preferred Shares*, 489.

¹²¹ Laurent, *Securities that do the deal*, 16.

¹²² *Ibid.*

¹²³ Charles R. Korsmo, "Venture Capital and Preferred Stock," *Brooklyn Law Review* 78, no. 4 (2013): 1173.

¹²⁴ Laurent, *Securities that do the deal*, 27.

¹²⁵ Kirti Dubey, "Share Capital: Exploring the backbone of Company Law", 15

¹²⁶ RBC Global Asset Management, "Understanding Preferred Shares," <https://www.rbcgam.com/documents/en/articles/understanding-preferred-shares.pdf>.

¹²⁷ Dignam and Lowry, *Company Law*, para. 9.11.

¹²⁸ Dubey, *Share Capital: Exploring the backbone of Company Law*, 14.

liquidation preference before ordinary shareholders receives any distribution.¹²⁹ This priority typically covers the return of the nominal capital invested.¹³⁰ In some structures, after receiving their preferential return of capital, preference shareholders also share in any remaining surplus assets alongside ordinary shareholders.¹³¹ Preference shares conferring solely the right to recover their nominal value upon liquidation are classified as non-participating preference shares. By contrast, where preference shareholders are additionally entitled to share in the distribution of the residual assets of the company after payment of their liquidation entitlement, such instruments are designated as participating preference shares.

Redeemable preference shares are issued by a company on the condition that it will repay the share amount to the holders after a fixed period or possibly earlier at its own discretion.¹³² The redemption of shares is typically employed as a method for returning surplus capital to shareholders or to facilitate a particular shareholder's exit from the company.¹³³

Another more complex financial entitlement is the conversion right attached to convertible preference shares. This instrument serves as the standard in venture finance, effectively combining the downside protection of traditional preference shares with the potential for upside participation akin to ordinary shares through their conversion feature.¹³⁴ The holders of convertible preference shares possess an option to convert their preference shares into ordinary shares at a subsequent date, generally within a specified timeframe,¹³⁵ or to another class of preference shares.¹³⁶

2.3.2. Voting rights of preference shares

The voting rights of preference shareholders differ significantly from those of ordinary shareholders. As a rule, preference shares often do not grant any voting rights on ordinary company matters, or they may possess only limited voting rights, such as voting only on specific issues like the approval of annual accounts¹³⁷ also they typically possess class-specific voting rights, for

¹²⁹ William W. Bratton and Michael L. Wachter, "A Theory of Preferred Stock," *University of Pennsylvania Law Review* 161 (2013): 1815.

¹³⁰ Dubey, *Share Capital: Exploring the backbone of Company Law*, 14.

¹³¹ Paolo Giudici, Luca Enriques, and Alberto M. Benedetti, *The Corporate Design of Investments in Startups: A European Perspective*, ECGI Law Working Paper No. 764/2023 (2023), 806.

¹³² Dubey, *Share Capital: Exploring the backbone of Company Law*, 16.

¹³³ Practical Law Corporate & Securities, "Redeemable preference shares," Thomson Reuters Practical Law, <https://content.next.westlaw.com/practical-law/document/I79623b87b64f11e698dc8b09b4f043e0/Redeemable-preference-share?contextData=%28sc.Default%29&transitionType=Default&viewType=FullText&utm>.

¹³⁴ William W. Bratton, "Venture Capital on the Downside: Preferred Stock and Corporate Control," *Michigan Law Review* 100 (2002): 929.

¹³⁵ Dubey, *Share Capital: Exploring the backbone of Company Law*, 15.

¹³⁶ Lithuania, *Akcinių bendrovių įstatymas* (Law on Companies), art. 42(6).

¹³⁷ Vicari, "European Company Law", 114.

example even non-voting preference shares will usually have the right to vote as a separate class on any resolutions or proposals that specifically affect or would prejudice the rights, privileges, or conditions attached to their class of shares.¹³⁸ This restriction is often a trade-off for the financial preferences they enjoy and can be a mechanism to allow companies to raise capital without diluting the control of existing majority shareholders.

2.4. Redeemable Shares

As Anna Battauz and Francesco Rotondi stated “a redeemable share is a class of a company’s share capital that the issuer can repurchase, or redeem, at a predetermined price known as the call price as soon as a given barrier event is triggered.”¹³⁹ This redemption can be at the option of the company, the shareholder,¹⁴⁰ or triggered automatically upon a specific date or when a certain event¹⁴¹ (for example, the share price reaching a preset threshold). The key distinction from a conventional share buy-back is that redemption is mandatory for the shareholder once initiated, and the price is fixed in advance.¹⁴² In contrast, a buy-back is entirely optional for the shareholder, and the price is determined by prevailing market conditions.¹⁴³ This makes redeemable shares a more predictable and forceful tool for capital management from the issuer’s perspective.

The legal framework for these instruments in Europe has a long history. UK company law was initially reluctant to permit redemption due to concerns about creditor protection.¹⁴⁴ The concept was first introduced for preference shares in the UK Companies Act of 1929 and was later expanded in 1981 to include ordinary shares, partly to address the difficulties small companies faced in raising capital.¹⁴⁵ At the EU level, the fundamental rules for redeemable shares in public limited liability companies were outlined for the first time in the Second Company Law Directive.¹⁴⁶ This directive stipulates that redemption must be authorised by the company’s statutes, the shares must be fully paid up, and the redemption must be financed either from distributable profits or the proceeds of a fresh issue of shares. Furthermore, when shares are

¹³⁸ *Ibid.*, 117.

¹³⁹ Anna Battauz and Francesco Rotondi, “Optimal Liquidation Policies of Redeemable Shares” (working paper, Bocconi University, December 30, 2023): 1.

¹⁴⁰ Razina Ahmed, “Analysis of Redeemable Shares: Features, and Implications,” *International Journal of Innovative Research in Engineering and Management* 9, no. 9 (2022): 75

¹⁴¹ Jodie Thomson, “What Are Redeemable Preference Shares and How Do They Work?,” LegalVision, October 18, 2021, <https://legalvision.com.au/redeemable-preference-shares>.

¹⁴² Battauz and Rotondi, *Optimal Liquidation Policies*, 2.

¹⁴³ *Ibid.*

¹⁴⁴ Jazia Hasan Abu Jadoou and Shereen Nabil Abu Ghazaleh, “Stocks Redemption,” *Journal of Positive School Psychology* 6, no. 4 (2022): 4954.

¹⁴⁵ *Ibid.*

¹⁴⁶ Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012, 2012 O.J. (L 315) 74.

redeemed, an amount equal to their nominal value must be placed in a non-distributable “capital redemption reserve” to protect the company's capital base. The original company law directives had been changed and updated many times over the years. To make the rules clearer and more rational, the principles from the Second Company Law Directive were later transferred into the single, codified Directive (EU) 2017/1132.¹⁴⁷

Companies issue redeemable shares for several strategic functions. They are particularly useful in venture capital financing, as they provide a clear and contractually defined exit path for investors.¹⁴⁸ They also serve to protect the control of the original shareholders by offering an exit mechanism for short-term investors, and can function as a defence against hostile takeovers by reducing the number of shares on the market.¹⁴⁹ From a capital management perspective, redemption can be an alternative method of returning surplus capital to shareholders, sometimes offering a more favourable tax treatment or avoiding stamp fees associated with buy-backs.¹⁵⁰

Upon redemption, the shares are legally treated as cancelled, and the company's issued share capital is diminished by their nominal value.¹⁵¹ This places the shareholder in a unique position. They face a trade-off between liquidating their holding early on the open market or waiting for a potential mandatory redemption to receive the call price, which typically includes a premium to compensate for the forced sale.¹⁵² For the holder of such a share, an early liquidation is generally considered optimal only if the share pays dividends.¹⁵³ Ultimately, the redeemable share represents a hybrid instrument, blending features of both equity and debt, which offers strategic flexibility to the issuer at the cost of certainty and autonomy for the shareholder.

Redeemable shares can be understood as a distinct class of shares primarily because the feature of redeemability is not exclusive to any single type of shares. UK historical legal development show that while the right was first applied to preference shares, it was later expanded to include ordinary shares as well, proving it is a fundamental characteristic rather than a mere subtype.¹⁵⁴ This is a crucial distinction because redeemability fundamentally alters the nature of the investment from a permanent to a temporary contribution of capital. Unlike traditional shares where capital is returned upon liquidation, redeemable shares are defined by the ability to return

¹⁴⁷ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017, 2017 O.J. (L 169) 1. The reason for the codification is stated in Recital (1) and the principles governing the acquisition of own shares (redemption) are now found in Arts. 60(1)(a), 60(1)(b), 60(1)(c), and 63(1)(b).

¹⁴⁸ Ahmed, *Analysis of Redeemable Shares*, 1.

¹⁴⁹ Jadoou and Abu Ghazaleh, *Stocks Redemption*, 4954.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, 4964.

¹⁵² Battauz and Rotondi, *Optimal Liquidation Policies*, 3.

¹⁵³ *Ibid.*

¹⁵⁴ Jadoou and Abu Ghazaleh, *Stocks Redemption*, 4954.

the investment to the shareholder during the company's operational life.¹⁵⁵ Because of this unique, temporary nature of capital, academics identify redeemable shares as a special class of their own.¹⁵⁶ Therefore, for the sake of clarity, in this thesis redeemable shares are understood not as a feature of ordinary or preference shares, but as a separate class of shares, defined by their temporary nature.

¹⁵⁵ Adnan S. Alomar and Amjad H. Al-Azzam, "The Legal Effects of the Share Redemption Process in Jordanian Company Law in Light of the 2020 Instructions for Redeemable Shares for Private Shareholding Companies," *Dirasat: Shari'a and Law Sciences* 52, no. 4 (2025): 2,

¹⁵⁶ Vicari, *European Company Law*, 114-115.

3. REGULATING SHARE CLASSES WITH ENHANCED VOTING RIGHTS

Having established a typology of fundamental share classes, the analysis now transitions to the special part of this thesis. It will investigate the most contentious area of contemporary share class regulation. The focus shifts to instruments that deviate from the one-share-one-vote principle to create dual class structures. These arrangements, which separate voting power from economic ownership, present a complex challenge for company law. They create a direct conflict between the desire to protect a founder's strategic vision and the fundamental need to safeguard the interests of minority shareholders. This chapter examines the core legal and economic arguments that define the debate over dual class shares. It analyses the rationale for insulating founder-led companies from market pressures against the significant agency costs and risks of entrenchment that such structures create. By exploring this central conflict, the chapter serves as the first in-depth analysis of the evolution and contemporary trends in share class regulation. The discussion will proceed by examining the powerful global trend towards permitting these structures, a development driven by intense regulatory competition. It will then deconstruct the primary safeguards that jurisdictions are implementing as a condition of this permission. These include the imposition of maximum voting ratios, the mandatory use of sunset provisions, and the statutory exclusion of enhanced voting rights for certain critical decisions. Through this analysis, the chapter will demonstrate how modern regulatory frameworks attempt to strike a deliberate balance between facilitating capital formation and enforcing corporate accountability.

3.1. Balancing Control and Capital: The Rationale for Regulating Share Classes with Differential Voting Rights

Share classes conferring greater or limiting voting rights are inextricably linked to the so-called dual class structure. A dual class share structure is a company arrangement comprising multiple classes of shares that confer unequal voting rights. In the most common structure, there are two types of shares: one class with superior voting power, usually held by company insiders to maintain control, and another class with limited voting power (often one vote per share). This model can also have more complex variations, such as creating more than two share classes or issuing shares with no voting rights at all.¹⁵⁷

Based on the overview of share classes provided in the previous section, a dual-class share structure arises when, in addition to ordinary shares, the company issues one other class with different voting rights, such as multiple-voting shares or non-voting shares whether classified as

¹⁵⁷ Jill E. Fisch and Steven Davidoff Solomon, Dual Class Stock, ECGI Law Working Paper No. 715/2023, October 2023, 2, <https://ssrn.com/abstract=4436331>

preference shares or as a separate non-voting ordinary class. Although a dual class structure typically involves issuing classes of shares with different voting rights within the company, a comparable effect may also be achieved through loyalty shares, where a portion of shareholders acquire additional voting power compared with those who have not obtained increased votes per share.

The theoretical issues with such structures center on the creation of agency costs that permit company insiders to take advantage of public shareholders.¹⁵⁸ These costs arise because voting rights in a dual class structure are severed from the economic interest in the company, leaving public shareholders to bear the financial burden of decisions.¹⁵⁹ This separation creates a “wedge,” representing the gap between a controller’s voting power and their cash-flow rights.¹⁶⁰ Such a structure may allow insiders to extract private benefits of control, irrespective of the value they add to the company.¹⁶¹ A significant divergence between voting power and economic risk can incentivize the holders of a share class with enhanced voting rights to engage in high-risk company strategies, as they are effectively shielded from the full financial consequences of potential failure. This concentrated control may diminish the influence of other shareholders to such a degree that active oversight is no longer exercised.¹⁶² Consequently, the value of a company tends to decrease as the voting rights of insiders increase relative to their cash-flow rights.¹⁶³ Empirical studies confirm that as these companies with dual class structure mature, their valuation declines and they become less efficient compared to single-class companies.¹⁶⁴

Conversely, proponents argue that dual class structures offer significant benefits, primarily by protecting a founder’s long-term strategic vision from the short-term demands of public investors.¹⁶⁵ This insulation allows founders to create value by pursuing their unique vision without undue market interference. Such structures also incentivize entrepreneurs to take their companies public as the fear of losing control is mitigated, thereby increasing investment opportunities for the public.¹⁶⁶ Some economic theories suggest that investors are aware of the governance structure at the IPO stage and that any potential costs are priced into the shares, making further regulatory intervention unnecessary.¹⁶⁷

¹⁵⁸ *Ibid.*, 2.

¹⁵⁹ *Ibid.*, 9.

¹⁶⁰ Lucian A. Bebchuk and Kobi Kastiel, “The Untenable Case for Perpetual Dual-Class Stock,” *Virginia Law Review* 103, no. 4 (June 2017): 603-604.

¹⁶¹ Aurelio Gurrea-Martínez, “Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate,” *European Business Organization Law Review* 22 (2021): 482, <https://doi.org/10.1007/s40804-021-00212-4>.

¹⁶² Hopt and Kalss, *Multiple-voting shares in Europe*, 28.

¹⁶³ Gurrea-Martínez, *Theory, Evidence, and Policy on Dual-Class Shares*, 484.

¹⁶⁴ *Ibid.*, 485.

¹⁶⁵ Fisch and Solomon, *Dual Class Stock*, 2.

¹⁶⁶ Gurrea-Martínez, *Theory, Evidence, and Policy on Dual-Class Shares*, 480.

¹⁶⁷ Fisch and Solomon, *Dual Class Stock*, 10.

Other scholars contest this position and maintain that the IPO market is unlikely to exert the discipline required. They emphasize governance heterogeneity, since no single governance architecture is suitable for all companies.¹⁶⁸ A dual class share structure that protects a founder's long-term strategy may enhance value in highly innovative technology companies,¹⁶⁹ yet it may reduce value in conventional companies. Asymmetries of information aggravate these concerns, as insiders possess superior knowledge of the governance arrangement that would be optimal relative to outside investors.¹⁷⁰ This informational gap can induce less innovative issuers to imitate visionary companies by adopting a dual class structure to obtain a more favorable IPO valuation,¹⁷¹ which results in mispricing and the wider diffusion of inefficient governance arrangements.¹⁷²

It may be argued that price differentials between share classes with unequal voting rights can indicate whether company insiders holding shares with enhanced voting rights are adopting high risk strategies that increase agency costs. Nevertheless, such price signals do not provide a reliable basis to assume companies' decisions that will be taken in the future. Even where insiders govern the company with due regard of low voting shareholders, the market price is relevant only prior to the acquisition of shares. It operates as a preventive financial signal rather than a statutory mechanism capable of ensuring legal certainty, the need for which is even more apparent in the context of companies that do not publicly trade.¹⁷³

Regulation of share classes that allocate unequal voting rights in the company structure presents a twofold challenge. On the one hand, it should permit founders to pursue a long-term strategy, and on the other, it should ensure effective protection for holders of low voting shares and other non-controlling investors who provide capital without commensurate control. The central legal issue in designing a balanced regulatory framework is to distinguish the risks inherent in a founder's long-term strategy, including the risk of delayed profitability or even complete failure, from conduct that exploits the capital of holders of low voting or no voting classes through the extraction of private benefits by those with enhanced voting rights. Continued protection therefore requires legal arrangements that enable holders of the low voting share class to participate in company governance to a reasonable extent, proportionate to the risks assumed in accepting limited or no influence.

A comprehensive review of the competing theories and ambiguous empirical findings suggests that neither a strict adherence to the OSOV principle nor an entirely permissive approach

¹⁶⁸ Albert H. Choi, "Pricing Corporate Governance," *UC Law Journal* 75 (December 2023): 73, <https://ssrn.com/abstract=4039126>.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, 90.

¹⁷¹ *Ibid.*, 89.

¹⁷² *Ibid.*, 87.

¹⁷³ *Ibid.*, abstract.

to MVS structures is a tenable regulatory position.¹⁷⁴ The contemporary trend in share class regulation is a decisive move away from the polarizing positions of either an outright prohibition of MVS or complete deregulation. Instead, the prevailing approach is to seek a balanced regulatory framework that acknowledges the potential benefits of founder control while addressing inherent agency risks. This trend is toward a model of structured permission, where MVS structures are allowed, but only within a system of clearly defined safeguards that moves beyond a strict adherence to the OSOV principle to protect minority shareholders and ensure a baseline of corporate accountability.

3.2. The Global Trend Towards Permitting Multiple Voting Shares

A dominant contemporary trend in corporate law is the clear and powerful international shift toward permitting multiple-vote share (MVS) structures. While historically banned or heavily restricted in many jurisdictions, particularly throughout Europe, MVS are now increasingly embraced as a vital tool for attracting innovative, founder-led companies to public markets. This global trend, however, is not one of simple convergence towards a single model.¹⁷⁵ Instead, it is unfolding along two fundamentally divergent philosophical paths, best exemplified by the flexible, market-driven “private ordering” system of the United States and the more cautious, legislative “rule-based” approach solidifying within the European Union. Both systems ultimately create a hybrid of safeguards, but their differing natures reveal a deep-seated transatlantic divide on how to best manage the enduring tension between founder control and investor protection.¹⁷⁶

In the United States, corporate governance is addressed directly by state law, which provides a flexible framework allowing companies to create MVS structures.¹⁷⁷ In addition to this government regulation, the prevalence of dual-class shares structures is also affected by the policies and behaviour of private actors such as stock exchanges, index providers, and institutional investors.¹⁷⁸ Historically, dual-class capital structures were primarily used by media conglomerates when the need for journalistic integrity and independence from the market required strong voting control, with The New York Times Company being a representative example. The structure was also used by companies built by a powerful founder with a singular vision, such as The Ford Motor Company, where investors provided capital with minimal protections based on

¹⁷⁴ Hopt and Kalss, *Multiple-voting shares in Europe*, 34.

¹⁷⁵ Pereira, *Once Bitten, Twice Shy*, 222.

¹⁷⁶ Hopt and Kalss, *Multiple-voting shares in Europe*, 1

¹⁷⁷ Committee on Capital Markets Regulation, “The Rise of Dual Class Shares: Regulation and Implications,” April 2020, 4–5.

¹⁷⁸ *Ibid.*, 12.

trust in that founder.¹⁷⁹ The pivotal moment that propelled MVS into the mainstream was Google's 2004 IPO, which began a twenty-first-century trend of founders opting for dual-class structures.¹⁸⁰

This legal latitude, however, is not without its own unique form of discipline. The US system relies heavily on two powerful checks that are not based on prescriptive statutes. The first is the robust enforcement of fiduciary duties by an active and sophisticated judiciary. In Delaware, these duties extend beyond directors to controlling shareholders, including those who wield power through MVS structures. When a controlling shareholder has a personal interest in a transaction, Delaware law presumes the board cannot exercise independent judgment due to the controller's power to remove and elect directors.¹⁸¹ Consequently, Delaware courts apply an onerous "entire fairness" standard of review to such transactions, requiring the board to demonstrate that both the process "fair dealing" and the price "fair price" were fair to the company.¹⁸² This stands in stark contrast to the more deferential "business judgment" standard applied to typical board decisions,¹⁸³ and it provides a formidable ex-post deterrent against the expropriation of minority interests.

The second check is the significant regulatory role played by private market actors. Stock exchanges like NASDAQ and the NYSE, while permitting MVS at the IPO stage, enforce rules that restrict a listed company's ability to disparately reduce the voting power of its existing shares mid-stream. These rules are based on the former SEC Rule 19c-4, which was invalidated by the courts but later adopted by the exchanges themselves under regulatory pressure.¹⁸⁴ At the same time, influential index providers and powerful institutional investors exert constant pressure on these structures.¹⁸⁵ For example, S&P Dow Jones Indices announced in 2017 that companies with multiple share classes would no longer be eligible for inclusion in its flagship indices like the S&P 500, though this policy was later reversed in 2023.¹⁸⁶ FTSE Russell has adopted a "hurdle approach", requiring companies to have at least 5% of their voting rights held by public investors to be included in its indexes.¹⁸⁷ Furthermore, powerful groups like the Council of Institutional Investors (CII) and proxy advisory firms such as Institutional Shareholder Services (ISS) consistently advocate against MVS structures that lack reasonable time-based sunset provisions, often recommending votes against the directors of such companies.¹⁸⁸

¹⁷⁹ Charles M. Elson and Craig K. Ferrere, "Unequal Voting and the Business Judgment Rule," *Harvard Law School Forum on Corporate Governance*, April 7, 2018.

¹⁸⁰ Jill E. Fisch and Steven Davidoff Solomon, "Dual Class Stock," Law Working Paper N° 715/2023, October 2023, 5.

¹⁸¹ Committee on Capital Markets Regulation, *The Rise of Dual Class Shares*, 5.

¹⁸² Zohar Goshen and Assaf Hamdani, "Corporate Control, Dual Class, and the Limits of Judicial Review," Law Working Paper N° 462/2019, July 2020, 950.

¹⁸³ Committee on Capital Markets Regulation, *The Rise of Dual Class Shares*, 5.

¹⁸⁴ *Ibid.*, 13.

¹⁸⁵ *Ibid.*, 17.

¹⁸⁶ Fisch and Solomon, *Dual Class Stock*, 13.

¹⁸⁷ Committee on Capital Markets Regulation, *The Rise of Dual Class Shares*, 16.

¹⁸⁸ *Ibid.*, 27.

In stark contrast to this market-centric approach, the evolution in Europe has been a more reluctant and legislatively driven process, prompted directly by the competitive pressure exerted by the US. The historical experience on the continent, where the proliferation of MVS in the early 20th century led to generalized abuse, fostered a deep-seated regulatory scepticism that resulted in outright prohibitions for decades.¹⁸⁹ However, the modern reality of global capital markets, underscored by high-profile cases of European companies like Fiat-Chrysler merger, where the inability for founders to utilize flexible dual-class structures under Italian law prompted the iconic Italian automotive company to redomicile to the Netherlands, thereby accessing more permissive company governance rules.¹⁹⁰ Consequently, key jurisdictions that once banned MVS, such as Germany, France, and Italy, have all recently amended their laws to permit them, though typically with more conditions than their US counterparts.¹⁹¹

The culmination of this legislative trend in Europe is MVS Directive.¹⁹² The Directive's explicit goal is to harmonize rules to enable companies, especially startups, to utilize MVS structures when accessing public markets.¹⁹³ However, it does so by creating a distinctly European hybrid model grounded in a "rule-based" philosophy. Instead of relying on judicial interpretation of broad fiduciary principles, the MVS Directive mandates a framework of specific, ex-ante legislative safeguards. It requires a qualified majority shareholder vote to establish an MVS structure and gives member states a menu of additional protective measures to implement.¹⁹⁴ This approach creates a system where flexibility is granted, but it is a structured, legislated flexibility, circumscribed by explicit rules designed to provide legal certainty and protect minority shareholders from the outset. Thus, while the global trend to permit MVS is undeniable, its implementation reveals two very different visions of corporate governance.

The primary contemporary trend is a global convergence towards permitting MVS structures, driven by intense international competition to attract innovative companies to public markets.¹⁹⁵ This is not a trend toward simple deregulation, but rather a bifurcated one reflecting two distinct regulatory philosophies.¹⁹⁶ It is characterized by a transatlantic divide between the flexible, market-driven US approach that relies on ex-post judicial review¹⁹⁷ and the more

¹⁸⁹ Pereira, "Once Bitten, Twice Shy," 226.

¹⁹⁰ Marco Venturuzzo, *The Disappearing Taboo of Multiple Voting Shares: Regulatory Responses to the Migration of Chrysler-Fiat* (European Corporate Governance Institute, Law Working Paper No. 288/2015, March 2015), 3.

¹⁹¹ Hopt and Kalss, *Multiple-voting shares in Europe*, 22-23.

¹⁹² Directive (EU) 2024/2810 of the European Parliament and of the Council of 23 October 2024 on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market, OJ L 2024/2810.

¹⁹³ Directive (EU) 2024/2810, recital 2.

¹⁹⁴ *Ibid.*, article 4.

¹⁹⁵ Hopt and Kalss, *Multiple-voting shares in Europe*, 29.

¹⁹⁶ Pereira, *Once Bitten, Twice Shy*, 241.

¹⁹⁷ Bebchuk and Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 626.

cautious, rule-based European model that mandates ex-ante legislative safeguards to protect minority investors from the outset.¹⁹⁸

3.2.1. The rise of maximum voting ratios

The restriction of multiple-voting rights to a specific multiple or ratio is the most significant limitation for protecting other shareholders within a company.¹⁹⁹ The historical experience of several European nations in the early twentieth century illustrates the necessity for such regulatory controls. In Germany, for instance, the absence of limits on the number of votes per share allowed insiders to commit abuses in structuring company equity.²⁰⁰ There are documented cases of German companies that granted thousands of votes for a single share. The massive popularization of MVS in France also brought associated abuse in the form of disproportionate votes, as in the most extreme cases, privileged shares granted twenty or twenty-five more votes than ordinary shares. Similarly, several Italian companies established multiple voting in their bylaws where the number of votes per privileged share ranged from one to two hundred.²⁰¹

In response to these historical risks, jurisdictions have implemented various caps on the number of votes associated with shares that have superior voting rights. A 2024 French law permits a voting rights ratio of no more than 25:1 over an ordinary share for companies admitted to trading on a multilateral trading facility.²⁰² Other jurisdictions have adopted more stringent limits. Portuguese regulation accepts dual-class voting shares only for listed companies and limits them to five votes per share.²⁰³ Poland enforces an even stricter regime, with a maximum ratio of two-to-one²⁰⁴ and allowing to have MVS only for closed companies.²⁰⁵ In contrast, some legal systems remain highly permissive. Dutch company law, for instance, does not currently place any limits on MVS, such as a cap on the number of votes that can be cast per share.²⁰⁶

¹⁹⁸ Pereira, *Once Bitten, Twice Shy*, 241.

¹⁹⁹ Hopt and Kalss, *Multiple-voting shares in Europe*, 46.

²⁰⁰ Pereira, *Once Bitten, Twice Shy*, 231.

²⁰¹ *Ibid.* 232.

²⁰² France, Code de commerce, art. L. 22-10-46-1, version in force since 15 June 2024, created by Loi no. 2024-537 of 13 June 2024, art. 1, JORF no. 0138 of 14 June 2024, Legifrance, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000049709281/2024-09-14, accessed 1 September 2025.

²⁰³ VdA, *In review: shareholder rights and responsibilities in Portugal*, Lexology (May 10 2023), accessed September 1 2025, <https://www.lexology.com/library/detail.aspx?g=50129f98-bb2d-4a00-90f4-b1629e07ffdb&utm>.

²⁰⁴ Poland, *Kodeks spółek handlowych* (Commercial Companies Code), art. 352 (Dz.U. 2000 No. 94, item 1037, as amended), available at [lexlege.pl](https://lexlege.pl/ksh/art-352/), <https://lexlege.pl/ksh/art-352/>, accessed 1 September 2025.

²⁰⁵ Poland, *Kodeks spółek handlowych* (Commercial Companies Code), art. 351 § 1–3 (consolidated text: Dz.U. 2024 No. 18), stipulating that “uprawnienia w zakresie prawa głosu nie dotyczą spółki publicznej,” available at Lex – sip.lex.pl, <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-spolek-handlowych-16886516/art-351>.

²⁰⁶ Joti Roest, „Dual-Class Shares and Loyalty Shares: The Dutch Perspective,” *European Company Case Law (ECCL)* 2, no. 3 (2024): 232.

Across different systems, it has become common practice worldwide to cap enhanced voting rights at no more than ten times those of an ordinary share.²⁰⁷ This common ratio of ten-to-one is not merely a convention but a calibrated solution to balance control and accountability. For example, Swedish law provides that no share may carry voting rights that are ten times greater than the voting rights of any other share.²⁰⁸ Similarly, Swiss law limits the power of its multiple-voting shares to a maximum of ten times the nominal value of other shares.²⁰⁹ This ten-to-one limit has also been adopted by Germany in its new legislation.²¹⁰ Italy has also moved toward this standard, making it possible for the voting-rights multiplier to be raised to ten in all companies as of March 2024.²¹¹ This regulatory model extends beyond Europe, as jurisdictions like Hong Kong, Singapore, and Shanghai have also decided to limit the number of voting rights to ten votes per share.²¹²

The practical significance of this ten-to-one standard is that it enables a simple majority for the controlling shareholder.²¹³ This limitation on voting weight means that a shareholder with multiple-voting rights who holds around 9.09 percent of the shares, each with ten times as many votes, can obtain a simple majority. While this structure protects entrepreneurial management from the demands of shareholders, it does so within a defined boundary that prevents the extreme levels of control historically associated with uncapped systems.

In conclusion, the implementation of maximum voting ratios is a direct regulatory response to the significant agency problems posed by the separation of control and economic ownership. Grounded in the historical abuses seen across continental Europe, these caps serve as an essential safeguard to limit insider entrenchment and the extraction of private benefits. While jurisdictional approaches vary, reflecting different legal traditions and market conditions, a clear international standard has emerged around the ten-to-one ratio. This specific cap represents a widely accepted compromise, offering founders a meaningful mechanism to retain control while

²⁰⁷ Hopt and Kalss, “Multiple-voting shares in Europe,” 46.

²⁰⁸ Sweden, *Aktiebolagslag* (2005:551), 4 kap 5 §, stipulating that ingen aktie får ha ett röstvärde som överstiger tio gånger röstvärdet för någon annan aktie, available at Sveriges Riksdag, https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/aktiebolagslag-2005551_sfs-2005-551/, accessed 2 September 2025.

²⁰⁹ Switzerland, *Federal Code of Obligations* (Code des obligations, SFS 220), art. 693, available at fedlex.admin.ch, https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en#art_693, accessed 2 September 2025.

²¹⁰ AktG, § 135a..

²¹¹ Italy, Legge 5 marzo 2024, n. 21, art. 13, replacing “tre” with “dieci” in article 2351(4) of the Civil Code, Gazzetta Ufficiale no. 60 (12 March 2024), available at gazzettaufficiale.it, https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.codiceRedazionale=24G00041&art.dataPubblicazioneGazzetta=2024-03-12&art.flagTipoArticolo=0&art.idArticolo=13&art.idGruppo=1&art.idSottoArticolo=1&art.idSottoArticolo1=10&art.progressivo=0&art.versione=1, accessed 2 September 2025.

²¹² Aurelio Gurrea-Martínez, “Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate,” *European Business Organization Law Review* 22 (2021): 495.

²¹³ Hopt and Kalss, “Multiple-voting shares in Europe,” 1.

ensuring they maintain a sufficient economic stake to align their interests, at least partially, with those of minority shareholders.

A key contemporary trend in share class regulation is the widespread adoption of quantitative limits on voting power as a direct response to historical abuses. This trend reflects a regulatory consensus that while MVS are permissible, their voting power must not be unlimited. The most tangible manifestation of this is the remarkable international convergence towards a 10:1 maximum voting ratio, which has become a de facto global standard to constrain the "wedge" between control and cash-flow rights, thereby balancing founder autonomy with essential investor protection.

3.2.2. The role and design of sunset provisions

Sunset clauses are provisions, whether set out in legislation or in corporate instruments, that restrict the duration of enhanced voting rights, designed to mitigate the governance imbalances arising from such arrangements.²¹⁴ In substance, they represent the recognition within company law that company structures are not indefinite, and that even the most entrenched arrangements must ultimately give way to temporal limits and the fundamental tenets of shareholder democracy.²¹⁵ These clauses function as an intermediate solution between a total prohibition of dual class share structures and the unrestricted possibility for issuers to retain them indefinitely.²¹⁶ They work as predetermined safeguards that gradually rebalance control rights over time, helping to maintain investor trust by avoiding the risks linked to prolonged preferential voting power.²¹⁷

The rationale behind sunset provisions is commonly linked to the life-cycle approach to dual class companies, which suggests that the benefits of such share structures decline as the company matures and their long-term value progressively decreases.²¹⁸ Simultaneously, the potential costs, particularly agency costs, tend to rise as the company matures.²¹⁹ This stems from the notion that protection from market discipline, which may support a company in its initial development, can turn detrimental once the company reaches a more advanced stage. With the passage of time after the IPO, the likelihood increases that a dual class share structure will reduce overall firm value, exposing public investors to an inefficient governance framework accompanied

²¹⁴ Maria Lucia Passador, „Sunset Clauses in Tenure Voting Structures: When Corporate Power Faces the Inevitable Twilight“, (2025): 2.

²¹⁵ *Ibid.*, 3.

²¹⁶ Jill E. Fisch and Steven Davidoff Solomon, „The Problem of Sunsets“, *Boston University Law Review* 99 (2019): 1062.

²¹⁷ Passador, „*Sunset Clauses in Tenure Voting Structures*“, 5.

²¹⁸ Bebchuk and Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 590.

²¹⁹ Martijn Cremers, Beni Lauterbach, and Anete Pajuste, „The Life-Cycle of Dual Class Firm Valuation“, *European Corporate Governance Institute (ECGI) - Finance Working Paper No. 550/2018* (2018): abstract.

by heightened risks and costs.²²⁰ Empirical evidence supports this view, with multiple studies finding that the valuation premium associated with dual-class firms at the IPO stage disappears over time, typically within seven to nine years.²²¹ Further evidence shows that although newly established dual class companies can initially attract a valuation premium and operate effectively, their performance typically deteriorates over time, with declines in profitability, innovative capacity, and labour productivity when measured against single class firms.²²² As previously noted, the incentives of controlling shareholders may become misaligned, since a reduced capital stake and diminished economic exposure can encourage riskier decision making. Controllers thus have strong reasons to preserve a dual class structure even once it ceases to be efficient. In this context, a sunset clause operates as a predetermined and time-based restriction on such control arrangements, supporting a progressive move toward more balanced governance.

In practice, various forms of sunset provisions have developed, each characterised by different structures, underlying justifications, and corresponding criticisms. Among these, the time based model has attracted the greatest attention and support.²²³ A time based sunset clause mandates the termination of the dual class share structure on a predetermined date, usually set out in the company's articles of association at the moment of the IPO.²²⁴ Under this model, once the specified date is reached, the dual class share structure will either automatically, or following a shareholder resolution, revert to a one share one vote system. This mechanism directly reflects empirical evidence indicating that the advantages of founder control typically diminish within a foreseeable timeframe. The duration of such sunset periods lacks uniformity, ranging from as little as three years to as long as twenty,²²⁵ and it ultimately falls within the competence of the regulatory framework to determine appropriate limits for these timeframes. For example, the Council of Institutional Investors in the United States has proposed that the lifespan of a dual class share structure should be limited to a maximum of seven years.²²⁶ However, this remains merely a recommendation, whereas in many European jurisdictions that follow a mandatory rules approach, the law imposes strict time limits on the duration of such structures.

The European Union has also addressed sunset provisions in the MVS Directive, adopting a flexible rule-based model instead of a strict obligation. Within this framework, Member States

²²⁰ Bebchuk and Kastiel, "The Untenable Case for Perpetual Dual-Class Stock," 631.

²²¹ Cremers et al., „Life-Cycle of Dual Class Firm Valuation,“ 19.

²²² Gurrea-Martínez, „Theory, Evidence, and Policy on Dual-Class Shares,“ 485.

²²³ Zhi Li, „Sunset Clause in the Dual Class Share Structure,“ *Journal of Economics, Business and Management* 10, no. 2 (April 2022): 93.

²²⁴ Council for Institutional Investors, "Investors Petition NYSE, Nasdaq to Curb Listings of IPO Dual-Class Share Companies," press release, October 24, 2018, https://www.cii.org/files/issues_and_advocacy/correspondence/FINAL%20Dual%20Class%20Petition%20Press%20Release%20Oct%202024,%202018.pdf.

²²⁵ Fisch and Davidoff Solomon, „The Problem of Sunsets,“ 1080.

²²⁶ Li, "Sunset Clause in the Dual Class Share Structure," 94.

are offered a choice of optional safeguards, which are grouped into three types of sunset mechanisms: time based, transfer based and event-based clauses.²²⁷ This minimum harmonisation framework leaves Member States with regulatory discretion while promoting the introduction of protective mechanisms.

Recent legislative developments in several major European jurisdictions illustrate a careful but evident movement toward imposing time bound limits on control structures. For example, a recent reform in Germany makes multiple voting rights available to both public and private stock corporations, but once the company is admitted to trading, these rights must lapse within ten years, with the possibility of a single extension for another ten-year period. The framework also includes strong safeguards, such as requiring a supermajority shareholder vote for any extension.²²⁸ In France, by contrast, the law adopted in June 2024, commonly referred to as the *Loi Attractivité*, introduced multiple voting shares that are strictly limited to listed companies at the time of their IPO. These shares are subject to a sunset clause capping their duration at ten years, with the option of a single five-year renewal requiring approval by ordinary shareholders, excluding the holders of the multiple votes shares themselves.²²⁹ In contrast to Germany or France, as with voting right ratio, Dutch law does not impose statutory sunset provisions unless the company's statutes provide otherwise.²³⁰

Although widely used, time based sunset provisions are often criticized for offering an arbitrary solution to governance concerns. The duration of the sunset period is often seen as arbitrary, lacking any clear connection to the time a founder may reasonably need to realize their strategic vision.²³¹ A fixed timeframe raises the concern that it may prove too short for founders to fully implement their long term vision, or conversely, too long, allowing entrenched control to persist even after it has become harmful to the company. Another unresolved concern with time-based sunsets is that they may create moral hazard, as holders of share classes with enhanced voting rights, knowing that their control is nearing its end, may be tempted to pursue short term gains rather than safeguard the company's long-term interests.²³²

To address the shortcomings of time-based models, transfer-based sunsets have been introduced. A key trigger in this approach is the transfer of the founder's ownership stake. A transfer based sunset is activated when enhanced voting shares pass from the founder to a non-

²²⁷ Directive (EU) 2024/2810, art. 4(2).

²²⁸ AktG, § 135a.

²²⁹ LOI n° 2024-537 du 13 juin 2024 visant à accroître le financement des entreprises et l'attractivité de la France, art. 1, *Journal Officiel de la République Française* (June 14, 2024), https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000049707578.

²³⁰ Dutch Civil Code, Book 2, Art. 2:118(2) and Art. 2:228(2).

²³¹ Fisch and Davidoff Solomon, „The Problem of Sunsets,“ 1081.

²³² *Ibid.*

founder shareholder, at which moment the transferred shares automatically convert into ordinary shares.²³³ This mechanism is designed to counter the so called “idiot heir” problem, preventing control from passing to a successor of the founder who may not possess comparable entrepreneurial skill or strategic vision.²³⁴ This model has been legislatively mandated in several key jurisdictions. For example, for listed companies in Germany, multiple-voting rights expire upon the transfer of the share.²³⁵ Under French law, multiple voting shares are required to convert into ordinary shares in the event of a transfer, whether the transfer takes place during the holder’s lifetime or upon death.²³⁶ According to the amended Singaporean Listing Rules MVS must automatically revert to ordinary shares when transferred from the initial holder to another party.²³⁷ The Hong Kong listing framework follows the same approach, mandating automatic conversion of such shares upon transfer to a new holder.²³⁸ In contrast, the United Kingdom’s listing rules introduced in July 2024 take a different approach. Rather than requiring automatic conversion, the regime imposes strict limits on the transfer of enhanced voting shares, typically allowing their transfer only to entities that remain under the sole control of the original holder.²³⁹

An event based sunset clause is a governance tool that ends enhanced voting rights once a defined event occurs, rather than through the expiry of a fixed period or the transfer of shares. The MVS directive expressly allows for the use of such event-based mechanisms under its framework of optional safeguards. Potential triggers may include the company’s delisting or its transition to a regulated market²⁴⁰ or requires special voting shareholders to hold a certain percentage of equity to maintain their enhanced voting rights.²⁴¹ For instance, if the holdings of a shareholder with special voting rights drop below the threshold set by a dilution sunset, all of that shareholder’s special voting shares are automatically converted into ordinary shares. The purpose is to guarantee that the founder maintains a substantial economic stake in the company, thereby keeping their interests aligned with those of minority shareholders. Such clauses are designed to address the so called “wedge” problem, which arises when a controller preserves significant voting influence despite a declining ownership share.

²³³ Li, “Sunset Clause in the Dual Class Share Structure,” 93.

²³⁴ Marc T. Moore, “Designing Dual-Class Sunsets: The Case for a Transfer-Centered Approach,” *William & Mary Business Law Review* 12, no. 1 (2020): 142.

²³⁵ AktG, § 135a.

²³⁶ LOI n° 2024-537 du 13 juin 2024, art. 1.

²³⁷ Moore, „Designing Dual-Class Sunsets,“ 143.

²³⁸ *Ibid.*, 144.

²³⁹ Financial Conduct Authority, *Primary Markets Effectiveness Review: Feedback to CP23/31 and final UK Listing Rules*, PS24/6 (July 2024), 51, UKLR 5.4.5 R (3).

²⁴⁰ Hopt and Kalss, “Multiple-voting shares in Europe,” 54.

²⁴¹ *Ibid.*, 45.

In the U.S., such ownership-percentage sunsets are common in practice, usually with a threshold of up to 10%.²⁴² The recently amended listing framework of the Hong Kong Stock Exchange allows the use of dual class share structures, provided that the holders of such shares collectively retain no less than 10 percent of the company's equity capital, thereby ensuring a continuing alignment between control and economic ownership.²⁴³ Despite these conceptual options, this particular form of event based sunset has so far received little attention in European regulatory frameworks and company practices.²⁴⁴ For example, German law does not specifically address this type of sunset,²⁴⁵ but its use is not expressly prohibited and is instead left to private ordering, allowing companies to introduce such a mechanism through their articles of association.

The development of sunset provisions illustrates the growing recognition that dual class structures cannot remain unchecked throughout the entire life cycle of a company. While the time-based model has emerged as the most widely applied solution, particularly in Europe, its rigid character has also exposed weaknesses that legislators and market actors have attempted to overcome through transfer based and event-based mechanisms. The recent reforms in Germany and France demonstrate a decisive legislative turn toward embedding temporal limits in company law, whereas the Dutch approach reflects continuing reliance on private ordering. Beyond Europe, transfer based, and event-based models have been more actively implemented, often with stricter obligations, as seen in Asian jurisdictions. These trends indicate that the evolution of sunset clauses is moving from experimental and voluntary use toward a structured system of safeguards, though without full convergence on a single model. What unites these diverse approaches is the recognition that entrenched control must be balanced against investor protection, and that sunset provisions, despite their imperfections, represent an essential tool in reconciling the long-term vision of founders with the principles of shareholder democracy.

The most significant contemporary trend concerning the duration of MVS structures is the widespread adoption of sunset provisions, reflecting a regulatory consensus that founder control is not perpetually optimal. This trend manifests in a variety of forms, from mandatory, fixed-term sunsets becoming the standard in Europe to the implementation of transfer-based and event-based sunsets in Asia and the US. The overarching direction is clear: regulators are increasingly requiring that all MVS structures have a pre-determined end point, ensuring an eventual return to an OSOV governance model as a company matures.

²⁴² *Ibid.*

²⁴³ Moore, „Designing Dual-Class Sunsets,“ 140-141.

²⁴⁴ Passador, *Sunset Clauses in Tenure Voting Structures: When Corporate Power Faces the Inevitable Twilight*, 23.

²⁴⁵ AktG, § 135a.

3.2.3. Statutory exclusions from multiple voting

A significant contemporary trend in corporate governance involves the legislative practice of neutralizing the power MVS for specific, critical resolutions. For certain designated company decisions, this regulatory approach mandates that such shares confer only a single voting right.²⁴⁶ This model creates specific “carve-outs” where the principle of one-share, one-vote is imposed to safeguard minority shareholder interests in situations most vulnerable to conflicts of interest or the abuse of control. These statutory limitations represent a crucial element in the toolkit of jurisdictions that permit MVS, acting as a counterbalance to the significant power held by controlling shareholders.²⁴⁷ Jurisdictions like the United States do not impose statutory restrictions on the exercise of multiple-voting rights, relying instead on judicial review and the enforcement of fiduciary duties to police the actions of controlling shareholders.²⁴⁸ A similar permissive approach is found in the Netherlands, where company law does not restrict the multiple-voting structure or provide for specific resolution-based exclusions, leaving such matters to private ordering within a company’s articles of association.²⁴⁹ This divergence highlights a fundamental split between jurisdictions that favour ex-ante legislative safeguards and those that rely on ex-post judicial or market-based accountability.

One of the primary areas targeted by statutory exclusions in Europe and Asia is the safeguarding of independent company oversight, which is essential for monitoring management and protecting the interests of all shareholders. The appointment and removal of auditors and independent directors are frequently ring-fenced from the influence of enhanced voting rights to prevent controllers from undermining these key monitoring functions. Several legal systems mandate a one-share, one-vote standard for resolutions concerning the appointment or removal of a company’s external auditors. In Germany, the Future Financing Act of 2023 restricts the exercise of multiple-voting rights in two key cases, which are resolutions to appoint a statutory auditor and resolutions to appoint a special auditor.²⁵⁰ The new French law similarly mandates that MVS holders may only exercise a single voting right per share for resolutions on the appointment of auditors.²⁵¹ This principle is also firmly established in Hong Kong, where the listing rules require that the appointment or removal of an auditor must be undertaken on a one-share, one-vote basis.²⁵²

²⁴⁶ Hopt and Kalss, “Multiple-voting shares in Europe,” 23.

²⁴⁷ *Ibid.*, 35.

²⁴⁸ Committee on Capital Markets Regulation, *The Rise of Dual Class Shares*, 4.

²⁴⁹ Hopt and Kalss, “Multiple-voting shares in Europe,” 17.

²⁵⁰ AktG, § 135a, 119 (5), 142(1).

²⁵¹ LOI n° 2024-537 du 13 juin 2024, art. 1, codified at C. com., art. L. 22-10-46-1, para. IV.

²⁵² Committee on Capital Markets Regulation, *The Rise of Dual Class Shares*, 14.

This logic of neutralizing controller influence is frequently extended to the composition of the board itself, especially regarding the independent directors who are tasked with monitoring management on behalf of minority shareholders. In Hong Kong, the one-share, one-vote requirement applies equally to resolutions for the appointment or removal of an independent non-executive director.²⁵³ A more nuanced mechanism for safeguarding board independence in controlled companies is found in the United Kingdom, where the election of independent directors requires approval by a dual majority, which includes a separate vote exclusively among independent shareholders.²⁵⁴ However, to preserve the core strategic purpose of MVS, some frameworks explicitly carve out decisions regarding the appointment and dismissal of board members from such voting restrictions. The German Future Financing Act of 2023, for example, deliberately refrained from limiting the exercise of multiple voting rights in the election of supervisory board members,²⁵⁵ thereby preserving the influence of controlling shareholders in board composition.

A second central rationale for statutory exclusions is the reduction of direct conflicts of interest and the prevention of insider self-dealing. To address this risk, some jurisdictions require that MVS carry only a single vote when resolutions concern the approval of related-party transactions. In the legal framework in France, the approval of related-party transactions and “say on pay” votes are among the decisions where enhanced voting shares confer only a single right.²⁵⁶ Compared to France, other European systems regulate shareholder voting on related party transactions in different ways that reduce conflicts without copying the French one-vote carve out. In Italy, listed companies must route material related party transactions through a disinterested shareholder safeguard at the meeting level that can block the deal if unrelated investors vote it down.²⁵⁷ Spain requires the general meeting to approve significant related party transactions and removes the vote of the conflicted shareholder for that item, while the board clears other transactions.²⁵⁸ Sweden also takes qualifying related party transactions to the general meeting and excludes the related party from the vote so that only disinterested shareholders decide.²⁵⁹ Germany assigns approval of material related party transactions to the supervisory board with disclosure to

²⁵³ *Ibid.*

²⁵⁴ Gurrea-Martínez, “Theory, Evidence, and Policy on Dual-Class Shares,” 493.

²⁵⁵ Hopt and Kalss, “Multiple-voting shares in Europe,” 49.

²⁵⁶ France, *Code de commerce*, art. L.22-10-46-1, Legifrance, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000049709281.

²⁵⁷ Italia, Regolamento CONSOB n. 17221, art. 11, Consob, <https://www.consob.it/web/consob-and-its-activities/-/consob-regulation-no.-17221-of-12-march-2010-provisions-relating-to-transactions-with-related-parties-as-amended-by-resolution-no.-22144-of-22-december-2021>

²⁵⁸ España, Ley de Sociedades de Capital, cap. VII bis, art. 529 duovicies, BOE, <https://www.conceptosjuridicos.com/ley-sociedades-capital-articulo-529-duovicies/>.

²⁵⁹ Sweden, *Aktiebolagslagen* (2005:551), 16 a kap. 7 § and 8 §, Sveriges riksdag, accessed 7 September 2025, https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/aktiebolagslag-2005551_sfs-2005-551/.

the market rather than a meeting vote.²⁶⁰ The Netherlands places approval with the supervisory board and provides a statutory framework for material transactions with connected parties, with a meeting vote only if the company lacks a supervisory board.²⁶¹ The United Kingdom no longer requires a meeting vote for related party transactions in the main equity listing category. Approval is granted by a board composed only of non-conflicted directors, supported by a written fair and reasonable opinion from an independent adviser and followed by prompt public disclosure.²⁶²

Across jurisdictions that permit multiple voting shares, legislators and listing authorities have inserted targeted guardrails in pay and accountability matters that neutralize control where conflicts are most acute. In the European Union, France applies a OVOS standard to “say on pay” by routing both the ex ante policy vote and the ex post awards vote through the general meeting under the Commercial Code, which functions to dilute any enhanced voting power at the point of approval.²⁶³ In practice, these guardrails reallocate effective decision rights on compensation from controllers to non-controlling public shareholders at the key approval moments. The United Kingdom pairs an advisory vote on the remuneration report with a binding vote on the remuneration policy so that directors cannot make payments outside an approved policy, which constrains controllers even where dual class exists.²⁶⁴ If the binding policy is voted down, off policy awards such as a special sign on bonus cannot be paid and must be redesigned. In the United States, federal proxy rules require a recurring advisory shareholder vote on executive compensation and a separate vote on the frequency of that vote, which creates a uniform baseline that cuts across capital structures and limits the insulation that super voting shares can provide.²⁶⁵ A negative advisory vote on remuneration together with an annual frequency resolution generally leads the board to curtail equity dilution from share based awards and to impose objective performance conditions ahead of the next general meeting. Switzerland goes further by mandating annual binding votes on aggregate board and executive pay, with a consultative vote on the compensation report where variable pay is approved prospectively, which channels decision making to the free float at each annual meeting.²⁶⁶ If shareholders reject the aggregate cap, the board must return with a lower total before any payments can be made. Outside Europe and the United States, Israel requires “majority of the minority” approval for specified conflicted

²⁶⁰ Aktiengesetz, §§ 111a–111c.

²⁶¹ Netherlands, *Burgerlijk Wetboek Boek 2*, art. 2:169(3) and (4).

²⁶² United Kingdom, FCA Handbook, UK Listing Rules, UKLR 8.2 Requirements for related party transactions, accessed 7 September 2025, <https://handbook.fca.org.uk/handbook/uklr8/uklr8s2?timeline=true>.

²⁶³ France, *Code de commerce*, art. L.22-10-8.

²⁶⁴ United Kingdom, *Companies Act 2006*, s. 439A and s. 439.

²⁶⁵ United States, 17 C.F.R. § 240.14a-21, eCFR, accessed 7 September 2025, <https://www.ecfr.gov/current/title-17/chapter-II/part-240/subpart-A/subject-group-ECFR8c9733e13b955d6>.

²⁶⁶ Switzerland, *Code of Obligations*, art. 735 para. 3 and art. 735 para. 3 no. 4, unofficial English consolidation, Lawbrary, accessed 7 September 2025, <https://lawbrary.ch/law/art/OR-v2025.01-en-art-735>.

transactions with a controlling shareholder, which compels sponsors and controllers to obtain the assent of disinterested holders and thereby offsets any multiple voting rights in practice.²⁶⁷

A defining contemporary trend in rule-based jurisdictions is the use of statutory exclusions to surgically limit the scope of MVS. Rather than imposing a blanket restriction, this regulatory approach neutralizes the power of MVS for specific, high-risk decisions, effectively imposing an OSOV standard for matters such as auditor appointments, related-party transactions, and executive pay. This trend represents a sophisticated compromise, allowing founders to maintain strategic control while empowering minority shareholders and upholding core governance principles in situations most susceptible to conflicts of interest.

²⁶⁷ Israel, *Companies Law*, 5759-1999, §§ 270 to 275 on approvals for extraordinary transactions with a controlling shareholder, Ministry of Justice legal information portal, accessed 7 September 2025, <https://www.gov.il/en/departments/legalinfo?OfficeId=4aadba43-3d71-4e7c-a4fe-5bf47b723d4e>.

4. REGULATING PREFERENCE SHARES

The analysis now shifts from the regulation of voting rights to the legal frameworks governing shares with preferential financial entitlements. While dual class structures concern the allocation of control, preference shares address the allocation of economic returns and risk. These instruments are fundamental to modern company finance. They provide undertakings with a flexible means to raise capital without diluting the control of ordinary shareholders. For investors, they offer a hybrid security that combines the predictable income of debt with the potential for equity participation.

The legal regulation of preference shares is shaped by a persistent tension. Company law must provide the contractual freedom necessary to design instruments that are attractive to investors and useful for complex financial structuring. At the same time, it must uphold the foundational doctrine of capital maintenance to ensure that preferential distributions do not prejudice the interests of creditors. The evolution of national legal frameworks across Europe reveals different approaches to resolving this core conflict. This evolution is a key indicator of contemporary trends in share class regulation.

This chapter undertakes a comparative legal analysis of the regimes governing preference shares in three distinct European jurisdictions. It will examine the enabling common law model of the United Kingdom, where rights are defined by contractual terms and judicial interpretation. It will then contrast this with the flexible civil law approach of the Netherlands. Finally, it will analyse the dynamic and non-linear path of Lithuania, a jurisdiction that has moved from a permissive framework to a prescriptive one and is now returning to greater contractual freedom.

4.1. The Common Law Model of Enablement: The United Kingdom

The rights attached to preference shares, particularly concerning dividends, were primarily determined by the company's constitutional documents, such as the articles of association.²⁶⁸ The nature and extent of these rights, including whether dividends were cumulative or non-cumulative, and rights to participate in surplus profits, depended on the express terms of their issue, with courts generally construing these provisions as exhaustive. As Viscount Haldane L.C. stated in *Will v. United Lankat Plantations Co. Ltd.* (1914): “you do not look outside a document of this kind in order to see what the bargain is; you look for it as contained within the

²⁶⁸ M. A. Pickering, „The Problem of the Preference Share,“ *The Modern Law Review* 26, no. 5 (1963): 499, <https://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1963.tb00727.x>.

four corners of the document”.²⁶⁹ This principle meant that preference shareholders were only entitled to the rights explicitly granted to them in the company’s articles, such as a fixed preferential dividend, and had no right to participate further in profits unless those rights were clearly stated in the terms of issue.

The dividend rights attached to United Kingdom preference shares have evolved considerably from the simpler Victorian fixed-rate model, reflecting a broader trend towards contractual freedom in share-class design.²⁷⁰ Initially, preference shares emerged in the 19th century. The Companies Clauses Act 1863 provided an early statutory mention. This Act was significant because it offered an early legal foundation for the dividend priority of preference shares, establishing that preference shares were entitled to a preferential dividend from the profits of each year, in priority to ordinary shares, as specifically laid out in Section 14 of the Act.²⁷¹ However, while this fundamental priority was set, many other crucial aspects and detailed specifics about dividend rights were not covered by the Act itself and were instead left to be determined by the contract between the company and its shareholders, as set out in the company’s articles of association, and subsequently by the interpretations of the courts.

The judiciary played a significant role in developing a set of presumptions or “canons of construction” to interpret the rights of preference shareholders when articles were silent or ambiguous. A pivotal early case, *Henry v. Great Northern Railway Co.* (1857)²⁷² dealt with the right to arrears of preference dividends. Through this case and similar judgments, the courts began to assume (or “presume”) that, in the absence of clear contrary language in a company’s articles, preferential dividends were presumed to be cumulative.²⁷³ This meant that if a company couldn’t afford to pay the preference dividend in one year, that unpaid dividend wasn’t just lost or forgotten. Instead, it was presumed to carry over and add to the next year’s dividend, meaning any missed payments had to be made up in subsequent profitable years before ordinary shareholders could receive any dividends.

The 20th century saw further refinements and occasional shifts in judicial attitudes. The lack of precise statutory guidance meant that the specific wording of a company’s articles of association remained paramount. Poorly drafted articles could lead to significant uncertainty and

²⁶⁹ “*Will v. United Lankat Plantations Co.*, [1914] A.C. 11 at p. 17 (H.L. 1913),” CommonLII, accessed May 10, 2025, <https://www.commonlii.org/uk/cases/UKLawRpAC/1913/46.html>.

²⁷⁰ Paul L. Davies, Sarah Worthington, and Christopher Hare, *Gower's Principles of Modern Company Law*, 11th ed. (London: Sweet & Maxwell, 2021), para. 6-007.

²⁷¹ “Companies Clauses Act 1863, Part II (Preference Shares or Stock),” legislation.gov.uk, accessed May 15, 2025, <https://www.legislation.gov.uk/ukpga/Vict/26-27/118/part/II/crossheading/preference-shares-or-stock>.

²⁷² “*Henry and Others v The Great Northern Railway Company and Others* (1857) 44 E.R. 858,” vLex UK, accessed May 15, 2025, <https://vlex.co.uk/vid/henry-and-others-v-805342745>.

²⁷³ “*Will v United Lankat Plantations Co Ltd* [1914] A.C. 11 (H.L.),” CommonLII, accessed May 15, 2025, <http://www.commonlii.org/uk/cases/UKLawRpAC/1913/46.html>.

litigation. Academics have consistently highlighted the “hybrid” nature of preference shares, sitting uneasily between debt and equity.²⁷⁴ This inherent tension has been a recurring theme in their legal treatment. For instance, while preference shareholders had priority for dividends, they generally lacked the voting rights of ordinary shareholders unless their dividends were in arrears or their class rights were directly affected.²⁷⁵

More recent developments, including the Companies Act 2006, while codifying many aspects of company law, largely continued the established UK legal tradition of allowing companies significant autonomy in their internal governance. This principle of company autonomy extends to the structuring of its share capital. The Act facilitates the definition of share rights within the company’s articles of association, allowing the *prima facie* equality between shares (regarding aspects like dividends, voting, and capital return) to be modified to establish different classes of shares with distinct rights attached to each.²⁷⁶ The emphasis thus remains on the contractual terms agreed upon and documented in the articles with a safeguard that all dividends must be paid from legally available distributable profits.²⁷⁷

This autonomy allows UK companies to create a variety of share classes, each with specifically defined dividend entitlements tailored to different purposes, such as attracting specific types of investors, incentivizing employees, or managing family business structures. When specifically considering preference shares, this flexibility allows for a nuanced approach to defining their dividend rights. Common dividend features that can be attached to preference shares in the UK include:

- Holders of fixed dividend preference shares are typically entitled to receive dividends at a predetermined fixed rate or amount²⁷⁸ (percentage of the share’s nominal value or a specific monetary sum per share each year).
- With cumulative preference shares, a crucial feature is that if the company has insufficient distributable profits to pay the preference dividend in any given year, the unpaid dividend entitlement accrues.²⁷⁹
- In the case of non-cumulative preference shares, if a preference dividend is not declared or paid in a particular year (usually due to a lack of distributable profits), the

²⁷⁴ Davies, *Gower's Principles of Modern Company*, 6-007.

²⁷⁵ *Ibid.*, para. 6-008(5).

²⁷⁶ “Companies Act 2006, s 629 (Classes of shares),” [legislation.gov.uk](https://www.legislation.gov.uk/ukpga/2006/46/section/629), accessed May 15, 2025, <https://www.legislation.gov.uk/ukpga/2006/46/section/629>.

²⁷⁷ *Ibid.*, s. 830 (Distributions to be made only out of profits available for the purpose).

²⁷⁸ Davies, *Gower's Principles of Modern Company*, 6-007.

²⁷⁹ HM Revenue & Customs, “CFM11020 - Overview: meaning of corporate finance: raising finance: types of finance: overview,” in *Corporate Finance Manual*, GOV.UK, accessed May 17, 2025, <https://www.gov.uk/hmrc-internal-manuals/corporate-finance-manual/cfm11020>.

shareholder's right to that specific year's dividend is lost and does not carry forward to future years.²⁸⁰

- Participating preference shares exhibit both debt-like and equity-like characteristics, placing them in the category of hybrid financial instruments. While they typically carry a fixed preferential dividend similar to debt securities, their distinguishing feature is the right to participate in surplus profits alongside ordinary shareholders, once a specified return has been paid.²⁸¹

Beyond the rights to ongoing profits through dividends, the position of preference shareholders upon the winding-up of a company is also fundamentally shaped by judicial interpretation of their contractually defined entitlements. The historical development of preferred shareholders' rights to the return of capital upon company liquidation in the UK, and specifically their priority and any further participation in surplus assets has been primarily shaped by judicial interpretations of company articles.

Initially, in the absence of explicit provisions, the default legal position was one of equality among shareholders in a winding-up. As stated in *Birch v. Cropper*, "Every person who becomes a member of a company limited by shares of equal amount becomes entitled to a proportionate part in the capital of the company, and, unless it be otherwise provided by the regulations of the company, entitled, as a necessary consequence, to the same proportionate part in all the property of the company, including its uncalled capital".²⁸²

Another path by the courts was taken in *Re Isle of Thanet Electricity Supply Co Ltd*.²⁸³ The court held that, where the articles set out the rights attached to a class of shares, those rights are exhaustive. This rule meant that, if preference shares were granted priority only for the return of their nominal capital, that priority was taken as the full extent of their capital rights in a winding-up unless further rights were expressly conferred.

Therefore, settled principles of case law confirm that where the articles of association are silent on liquidation payments, all shareholders (ordinary and preference) share any surplus *pari passu*. Conversely, where the articles of association grant a limited liquidation preference, such as the return of paid-up capital, but do not mention participation in the part outstanding, the

²⁸⁰ Priya Sopori, "Cumulative Preference Shares & Other Pref Share Variants Explained," Sprintlaw UK, January 12, 2024, https://sprintlaw.co.uk/articles/cumulative-preference-shares-other-prefshare-variants/#2_Non-Cumulative_Preference_Shares.

²⁸¹ Davies, *Gower's Principles of Modern Company*, 6-007.

²⁸² Pickering, *The Problem of the Preference Share*, 500.

²⁸³ Evan James Macgillivray and David Houseman, "Legal Notes," *Journal of the Institute of Actuaries*, Vol. LXXVI (1950), 19, available at <https://www.actuaries.org.uk/system/files/documents/pdf/0001-00440.pdf>.

preference specified in the articles of association is exhaustive and the remaining surplus rests solely in favour of the ordinary shareholders.

Later the question of whether accumulated or undistributed profits formed part of the “surplus assets” for distribution also received judicial attention. The decision in *Dimbula Valley (Ceylon) Tea Co., Ltd. v. Laurie* indicated that such profits could be included in “surplus assets” in which preference shareholders might participate if their articles so allowed.²⁸⁴ The prevailing principle is that, on winding-up, all of a company’s assets are treated as a single pool of capital unless the articles provide otherwise. *Dimbula Valley (Ceylon) Tea Co Ltd v Laurie* once again confirms that the company’s articles are paramount in determining how any surplus remaining after liquidation is to be distributed among shareholders.

The historical principles established by landmark cases governing the definition and priority of preference shareholders’ rights in liquidation remain fundamental to modern UK company law, now primarily governed by the Companies Act 2006.

Therefore, the rights of preference shareholders upon company winding-up have been primarily shaped by court interpretations of company articles. Initially, shareholders were treated equally. However, as preference shares emerged, courts established that their explicitly stated rights are exhaustive. Thus, the precise indication of the rights attached to preference shares in the articles of association gradually became a fundamental rule, which remains applicable today. In this regard, UK company law has fully granted companies the power to tailor different classes of shares with varying attached rights, reflecting a highly enabling approach.

Historically forged yet still embedded in today’s Companies Act, the capital-maintenance doctrine continues to police every payment by a UK company. This doctrine seeks to safeguard creditor interests by preventing the inappropriate return of company capital to shareholders.²⁸⁵ It is a core principle of UK company law that companies are only permitted to make distributions to their investors from funds not essential for satisfying creditor claims.²⁸⁶ Dividends can generally only be paid from “distributable profits” which are defined as accumulated, realised profits after deducting losses.²⁸⁷ This rule, previously under section 263 of the Companies Act 1985 and now largely restated in Part 23 of the Companies Act 2006, ensures that capital is not returned to shareholders outside of legally sanctioned procedures such as a formal capital reduction or winding up. The bedrock of this principle was articulated by Lord Watson in *Trevor v. Whitworth* (1887),

²⁸⁴ Pickering, *The Problem of the Preference Share*, 504.

²⁸⁵ Dignam and Lowry, *Company Law*, 11th edition, 119.

²⁸⁶ Eva Micheler, “Disguised Returns of Capital – An Arm’s Length Approach,” *The Cambridge Law Journal* 69, no. 1 (March 2010): 1, <https://doi.org/10.1017/S0008197310000292>.

²⁸⁷ John Armour, „LEGAL CAPITAL: AN OUTDATED CONCEPT?: (Centre for Business Research, University Of Cambridge Working Paper No. 320, March 2006), 3.

who stated that statutory restrictions are in place to “prohibit every transaction between a company and a shareholder, by means of which the money already paid to the company in respect of his shares is returned to him, unless the Court has sanctioned the transaction”.²⁸⁸ Section 830(1) of the Companies Act 2006 continues this, specifying, “A company may only make a distribution out of profits available for the purpose”.²⁸⁹

A notable trend has been towards the clarification, and, in certain respects, simplification of rules related to capital maintenance and distributions, although core creditor protection tenets persist. The legal concept of “capital maintenance” dictates that a company must preserve its capital to cover its debts and obligations, thereby offering a layer of protection to its creditors, who transact with the company on the understanding that this capital buffer exists.²⁹⁰ The case of *Aveling Barford Ltd v Perion Ltd* (1989) illustrates that such transactions could be classified as unlawful distributions if not made from distributable profits.²⁹¹ The Companies Act 2006, for instance, aimed to ease some of these regulations for private companies, while largely reaffirming the existing law for public entities concerning capital maintenance.²⁹² Private companies (LTD) are subject only to requirement that dividends come from “distributable profits”²⁹³ and may cut their share capital by passing a directors’ solvency-statement resolution.²⁹⁴ Public companies (PLC), by contrast, still have to clear the extra net-assets test in before paying dividends²⁹⁵, must seek court approval for any capital reduction²⁹⁶, and must at all times keep the statutory £50 000 minimum share-capital floor.²⁹⁷

Recent case law continues to underscore the ability to tailor preference share rights to specific financial and corporate needs, while also highlighting the interpretative challenges that can arise from such customization. For instance, the specific design of a compounding dividend feature on preference shares became a central point of contention in *Customs v Stephen Warshaw* (2020), where the court had to determine if such a tailored right still constituted a “dividend at a fixed rate”, impacting the shares’ classification.²⁹⁸ Furthermore, the practicalities of interpreting

²⁸⁸ *Trevor v Whitworth* (1887) 12 App Cas 409 (11 July 1887),” CommonLII, accessed May 15, 2025, <https://www.commonlii.org/uk/cases/UKLawRpAC/1887/26.html>.

²⁸⁹ Companies Act 2006, c. 46, s. 830, <https://www.legislation.gov.uk/ukpga/2006/46/section/830>.

²⁹⁰ Paul L. Davies, Sarah Worthington, and Christopher Hare, *Gower's Principles of Modern Company Law*, 11th ed. (London: Sweet & Maxwell, 2021), chap. 16, para. 16-001.

²⁹¹ Micheler, „Disguised Returns of Capital – An Arm's Length Approach,” 13.

²⁹² Dignam and Lowry, *Company Law*, 11th edition, 120.

²⁹³ Companies Act 2006, s. 830

²⁹⁴ *Ibid.*, s. 641(1)(a).

²⁹⁵ *Ibid.*, s. 831.

²⁹⁶ *Ibid.*, s. 641(1)(b).

²⁹⁷ *Ibid.*, s. 763.

²⁹⁸ “*HM Revenue and Customs v Stephen Warshaw* [2020] UKUT 0366 (TCC),” GOV.UK, accessed May 15, 2025, https://assets.publishing.service.gov.uk/media/5fe3953ad3bf7f089339bfe2/HM_Revenue_and_Customs_v_Stephen_Warshaw.pdf.

dividend terms tailored to external benchmarks were brought to the fore in *Standard Chartered PLC v Guaranty Nominees Limited* (2024). This case dealt with the construction of preference share dividend rates following the cessation of LIBOR (London Interbank Offered Rate), illustrating how bespoke terms, while offering flexibility, require meticulous drafting to anticipate and navigate changes in underlying financial conditions.²⁹⁹ These judicial examinations reinforce a core theme of this chapter: while the contractual freedom to define preference share rights allows for highly specific and tailored instruments, this very flexibility necessitates exceptional clarity in their documentation to avoid ambiguity and subsequent legal disputes over their meaning and application.

The United Kingdom's approach to preference, as delineated, has been characterized by a significant degree of contractual freedom, with the specifics of such rights largely determined by the company's articles of association and shaped by a long history of judicial interpretation and established common law presumptions. Early statutory interventions like the Companies Clauses Act 1863 provided a foundational framework, but the nuanced details, such as the cumulative nature of or participation rights, were predominantly left to the terms of issue and subsequent case law.

²⁹⁹ “*Standard Chartered PLC v Guaranty Nominees Limited & Ors* [2024] EWHC 2605 (Comm) (Press Summary),” Judiciary of England and Wales, accessed May 15, 2025, <https://www.judiciary.uk/wp-content/uploads/2024/10/Press-Summary-LIBOR-Judgment-Summary-Standard-Chartered-PLC-v-Guaranty-Nominees-Limited-2024-EWHC-2605-Comm.pdf>

4.2. Civil Law Flexibility: The Dutch Approach

The Netherlands provides a compelling example of a civil law jurisdiction that has also cultivated a highly flexible and enabling environment for share class regulation. The historical foundations were laid in the *Code of Commerce* of 1838, which, while assuming a default of proportional dividend distribution, allowed for different arrangements.³⁰⁰ This principle was carried forward in the *Wetboek van Koophandel* of 1928, which explicitly permitted a company's articles to deviate from proportional profit sharing, so long as no shareholder was entirely excluded from any dividend entitlement.³⁰¹ This statutory permission was used by Dutch firms to finance fixed assets with preference shares that appealed to investors seeking predictable returns, often including not only a fixed primary dividend but also a capped right to participate in surplus earnings.³⁰²

The modern Dutch Civil Code continues this tradition of flexibility for both public limited companies (NVs) and private limited companies (BVs). The cornerstone provisions state that all shares grant identical rights in proportion to their nominal value unless the articles of association provide otherwise.³⁰³ This clause is the statutory gateway that permits the creation of preference shares with distinct and often complex economic entitlements. In practice, this flexibility is frequently employed in sophisticated transactions involving venture capital and private equity, where cumulative preference shares are a common tool for securing predictable returns for investors. For instance, companies like Affimed N.V. have issued cumulative preference shares with floating dividends tied to market interest rates,³⁰⁴ while Prosus N.V. utilizes a multi-class structure with an explicitly unequal allocation of profits.³⁰⁵ The case of Prosensa Holding B.V. provides a clear example of a tiered return hierarchy established through different classes of preference shares, each with subordinated dividend rights and controlled by specific shareholder approval requirements,³⁰⁶ reflecting a functional use of legal flexibility to align economic rights with investor priorities.

³⁰⁰ T.A. Keijzer, *Vote and Value: An economic, historical and legal-comparative study on dual class equity structures*, Uitgaven vanwege het Instituut voor Ondernemingsrecht nr. 121 (Deventer: Wolters Kluwer, 2020), 423.

³⁰¹ *Ibid.*, 431.

³⁰² Herman Clasinus van Beusichem, "Firms and Financial Markets: Empirical studies on the informational value of dividends, governance and financial reporting" (PhD diss., Erasmus University Rotterdam, 2016), 10.

³⁰³ Dutch Civil Code Book 2, Article 2:92(1) and Article 2:201(1).

³⁰⁴ Affimed N.V. *Triptych Including the Amendment of the Articles of Association of Affimed N.V. – English Translation*, art. 10.1.4. b. Accessed May 18, 2025. <https://www.affimed.com/wp-content/uploads/Triptych-including-the-amendment-of-the-articles-of-association-of-Affimed-N.V.-English-translation.pdf>.

³⁰⁵ Articles of Association, Prosus N.V., art. 30.3, accessed May 18, 2025, <https://www.prosus.com/~media/Files/P/Prosus-CORP/policies/other-documents-ddv/Articles%20of%20Association%20English.pdf>.

³⁰⁶ Shareholders' Agreement, Prosensa Holding B.V., 12 June 2013, Ex. 10.1 to Form F-1 Registration Statement, U.S. Securities and Exchange Commission, art. 3.1. (Types of shares) 3.4.2 (dividends), 3.4 (dividend policy), 7.7 (class approvals), <https://www.sec.gov/Archives/edgar/data/1574111/000119312513252585/d519642dex101.htm>

The Dutch approach to shareholder rights, including those of preference shareholders in liquidation, reflects the broader civil law tradition, where codified statutes take precedence over judicial interpretation. BW sets out general rules on profit distributions. For both BVs and NVs the statute assumes that, unless otherwise specified in the articles of association, all shares rank *pari passu* in proportion to their nominal value.³⁰⁷ In general, the proprietary rights of shareholders include entitlement to dividends and to liquidation proceeds, as set out in Articles 2:105 and 2:216.³⁰⁸ In practice, however, the flexibility allowed under Dutch corporate law enables companies to diverge from this statutory parity by adopting tailored liquidation preference provisions through their articles of association or contractual arrangements.

Several examples of such practice have been disclosed publicly by Dutch-incorporated or Dutch-founded companies. One prominent case is AVG Technologies N.V., which, prior to its initial public offering, adopted a multi-class share structure that included preferred shares with specific liquidation rights.³⁰⁹ As provided in Article 23 of its articles of association, in the event of a liquidation, dissolution, or winding up of the company, holders of Class D preferred shares were granted a liquidation preference, entitling them to receive distributions in priority to all junior share classes. Once the preference amount was fully distributed, any remaining assets were shared among all shareholders, including the preferred, on an as-converted basis.³¹⁰ This structure ensured both a senior position in the liquidation waterfall and the ability to participate in any residual value of the company.

Another example of such a structure prior to an initial public offering is provided by Elastic N.V., a Dutch-founded company that, before its admission to trading on the New York Stock Exchange, maintained a capital structure consisting of several series of preference shares, each carrying defined liquidation entitlements.³¹¹ This structured liquidation hierarchy was fully dismantled immediately prior to the initial public offering through the conversion of all preference shares into ordinary shares and the adoption of new articles of association that implemented a uniform equity structure without class-based liquidation rights.³¹² This suggests that the diminishing of Elastic N.V.'s multi-tiered preference share structure in favour of a uniform class of ordinary shares was a deliberate response to the expectations of public market investors, who

³⁰⁷ “Dutch Civil Code Book 2,” art. 23b.

³⁰⁸ *Ibid.*, art. 2:105(1)–(2), art. 2:216(1), (2), and (7).

³⁰⁹ U.S. Securities and Exchange Commission, *Form F-1 Registration Statement of AVG Technologies N.V.*, filed January 27, 2012, <https://www.sec.gov/Archives/edgar/data/1528903/000119312512011146/d218946df1.htm>

³¹⁰ AVG Technologies N.V., *Articles of Association*, art. 23, <https://www.sec.gov/Archives/edgar/data/1528903/000119312512011146/d218946dex31.htm>

³¹¹ Elastic N.V., *Form S-1 Registration Statement*, filed September 5, 2018, <https://www.sec.gov/Archives/edgar/data/1707753/000119312518266861/d588632ds1.htm>.

³¹² Elastic N.V., *Articles of Association*, Exhibit 3.1, filed October 10, 2018, https://www.sec.gov/Archives/edgar/data/1707753/000156459018030849/estc-ex31_330.htm.

generally favour transparent, simplified capital structures that ensure equal treatment of shareholders. Although there is no formal prohibition under applicable listing regulations against the use of multiple share classes or the inclusion of liquidation preferences, the conversion of all preference shares into ordinary shares reflects a strategic effort to align with prevailing market standards. This example illustrates that, although Dutch corporate law affords significant flexibility in structuring share class rights, admission to capital markets governed by distinct regulatory expectations may necessitate substantive amendments to a company's articles of association and the unification of share classes. Legal permissiveness, therefore, does not guarantee market compatibility, and regulatory convergence becomes essential for securing investor confidence and a successful public listing.

The evolution of share class regulation reveals that while Dutch corporate law provides companies with the freedom to adopt share structures and to assign differentiated rights, such as priorities in liquidation, market realities often impose a disciplining effect on that flexibility. Elastic N.V., for example, eliminated its preference share structure prior to its public offering, aligning with the expectations of NYSE investors, who typically favour simplified, proportional equity arrangements. In contrast, AVG Technologies N.V., although also listed on the NYSE, retained its multi-class structure with liquidation preferences, demonstrating that such arrangements are not legally incompatible with listing. Nevertheless, contemporary market trends suggest a shift toward single-class equity structures, particularly for companies seeking broad institutional investor support and pricing stability in public markets. This indicates that while the Dutch legal framework permits significant latitude in structuring shareholder rights, compatibility with market standards and investor expectations may require substantive amendments to the articles of association and the unification of share classes. Legal permissiveness does not, in itself, ensure market acceptability, and structural simplification has become a practical necessity for companies pursuing public listing on regulated exchanges.

For NVs, the power to determine the destination of profits rests with the general meeting of shareholders.³¹³ Usually, the management board makes a proposal for the appropriation of profits, which requires the approval of the supervisory board, if one is present, although the articles can empower the board to reserve profits.³¹⁴ For BVs, the general meeting also decides on profit distribution³¹⁵, but the management board has a crucial role in approving distributions based on the distribution test.³¹⁶

³¹³ Dutch Civil Code Book 2, art.105(1).

³¹⁴ *Ibid.*, 2:101(6).

³¹⁵ *Ibid.*, 2:216(1).

³¹⁶ *Ibid.*, 2:216(2).

However, this flexibility is framed by crucial overriding principles and limitations, driven by the need to protect creditors and define the fundamental nature of a share, with some differences between NVs and BVs:

- Capital maintenance rules: The “balance sheet test” remains a primary constraint for both forms. For NVs, Art. 2:105(2) BW permits distributions only if shareholders’ equity exceeds paid-up capital plus mandatory reserves. A similar test applies to BVs under Art. 2:216(1) of which stipulates that distributions can only be made to the extent that the company’s equity (or net assets) exceeds the reserves that must be maintained by law or the articles of association.
- Distribution test: For BVs, Art. 2:216(2) BW explicitly requires the management board to approve a distribution only if the company can continue to pay its due debts after the distribution (a mandatory “distribution test”). Directors can be held liable for improper distributions in both forms.³¹⁷

This flexibility was significantly enhanced for private companies with the introduction of the Flex BV Act, effective from October 1, 2012.³¹⁸ The Act explicitly allowed BVs to issue shares with voting rights but no dividend rights, and vice versa, thereby facilitating a much clearer separation of economic and control rights than is permissible for public NVs, which are still prohibited from issuing shares that are entirely excluded from profit participation.³¹⁹

Although Dutch corporate law permits share classes with tailored financial rights, such flexibility invites scrutiny. The 2024 Assessment Framework for Preference Shares emphasises that fixed dividends must reflect a businesslike return, particularly where no residual rights exist.³²⁰ In estate planning contexts, this has led to divergent case law. On 10 March 2022, the District Court of The Hague upheld the tax authority’s view that a 4.25% fixed dividend was too low, recharacterizing the structure as partly taxable.³²¹ Conversely, the Arnhem-Leeuwarden Court of Appeal ruled on 7 May 2024 that a 1% dividend was justified where the founder retained

³¹⁷ *Ibid.*, 2:9.

³¹⁸ Wet van 15 juni 2012 tot wijziging van het Burgerlijk Wetboek en enige andere wetten in verband met de vereenvoudiging en flexibilisering van het bv-recht, Stb. 2012, 300, <https://zoek.officielebekendmakingen.nl/stb-2012-300.html>

³¹⁹ Dutch Civil Code Book 2, Article 2:105(9)

³²⁰ “KG:003:2024:11 Beoordelingskader preferente aandelen,” Kennisgroepen Belastingdienst, accessed May 17, 2025, <https://kennisgroepen.belastingdienst.nl/publicaties/kg003202411-beoordelingskader-preferente-aandelen/>

³²¹ “The Hague District Court, March 23, 2022, ECLI:NL:RBDHA:2022:2453,” [rechtspraak.nl](https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2022:2453&showbutton=true&keyword=ECLI%253aNL%253aRBDHA%253a2022%253a2453&idx=1), accessed May 17, 2025, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2022:2453&showbutton=true&keyword=ECLI%253aNL%253aRBDHA%253a2022%253a2453&idx=1>.

economic value and risk was minimal.³²² These cases confirm that the decisive factor is not legal form but whether the arrangement ensures a fair, economically sound allocation of value.

Dutch corporate law has historically provided a flexible framework for share class regulation, enabling companies to tailor financial rights, especially through preference shares with varied dividend entitlements, a practice prevalent in private equity and venture capital. This adaptability, however, is balanced by crucial creditor protection mechanisms such as capital maintenance rules and distribution tests. A key distinction persists: NVs cannot issue shares entirely devoid of profit participation, unlike BVs, which gained more flexibility with the 2012 Flex BV Act allowing for a clearer separation of economic and control rights. Despite this legal latitude, there's ongoing scrutiny to ensure that such tailored financial rights offer fair, economically sound returns, reflecting a continuous effort to reconcile contractual freedom with economic fairness and creditor safeguards.

4.3. A Dynamic Path to Liberalization: The Lithuanian Case Study

In contrast to the sustained permissive approach of the UK and the Netherlands, Lithuania's regulatory journey has been more dynamic, marked by significant shifts between flexibility and prescription. The country's first post-independence Law on Joint Stock Companies of 1990 established a remarkably flexible framework.³²³ This foundational law established that preference shareholders typically had priority in receiving dividends before ordinary shareholders.³²⁴ Furthermore, this law specified that preference shares could be issued with either a cumulative or a non-cumulative dividend, the amount of which was to be defined in advance.³²⁵ Article 35(3) of the law explicitly prohibited setting a specific dividend amount for ordinary shares. Therefore, it can be concluded that the original wording of the ABI allowed companies to issue preference shares with freely defined dividend calculation methods.

For cumulative preference shares, the 1990 ABI guaranteed the shareholder's right to the specified dividend amount, ensuring that if profits were insufficient for full payment, the unpaid sum would be carried forward to subsequent financial years.³²⁶ Conversely, for non-cumulative

³²² "Arnhem-Leeuwarden Court of Appeal, May 14, 2024, ECLI:NL:GHARL:2024:4438," [rechtspraak.nl](https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHARL:2024:4438&showbutton=true&keyword=ECLI%253aNL%253aGHARL%253a2024%253a4438&idx=1), accessed May 17, 2025,

<https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHARL:2024:4438&showbutton=true&keyword=ECLI%253aNL%253aGHARL%253a2024%253a4438&idx=1>

³²³ Lietuvos Respublikos akcinių bendrovių įstatymas (Republic of Lithuania Law on Stock Corporations), Nr. I-425, adopted July 30, 1990, *Lietuvos aidas*, August 10, 1990, Nr. 57-0 (repealed July 20, 1994), accessed via <https://e-seimas.lrs.lt/portal/legalActEditions/lt/TAD/TAIS.423>.

³²⁴ *Ibid.*, art. 35(2).

³²⁵ *Ibid.*, art. 35(6).

³²⁶ *Ibid.*, art. 35(7).

preference shares, any unpaid dividend or its part was not to be carried over.³²⁷ Article 35(5) addressed situations of insufficient profit, stipulating that if profits were not enough to cover the specified dividend for all preference shares, then all preference shares with different dividend rates would receive a proportionally smaller dividend. While the 1990 ABI set a cap that the total nominal value of preference shares could not exceed 1/3 of the company's share capital, Article 35(4) also indicated a degree of flexibility, stating a company could not issue preference shares if its articles of association did not specify the additional rights conferred or any limitations on voting rights, alongside the procedure for amending such rights. Lithuania's 1990 company law diverged from the UK's contemporaneous approach by directly codifying key preference share dividend features, such as the choice between cumulative and non-cumulative dividends and their consequences, and by imposing statutory quantitative limits like the 1/3 cap on preference share capital. The UK, in contrast, relies more heavily on the company's articles for such specifics, with courts interpreting and developing guiding principles.

As was mentioned, article 35(4) of the 1990 ABI stipulated that a company cannot issue preferred shares if its articles of association do not specify the additional rights they grant or restrictions on voting rights, as well as the procedure for changing rights (revocation of privileges). Coupled with this, Article 10(7) of the 1990 ABI established a general rule for distributing a liquidated company's assets. Crucially, Article 10(7) also mandated that if the company's shares grant different rights, then those rights must be taken into account in the distribution of assets. Therefore, by allowing companies to specify additional rights for preferred shares in their articles of association, the early legislative framework permitted the creation of preference share classes with expressly defined entitlements, including liquidation preference or participation rights. This same framework also made it possible to issue fully non-participating preference shares in a liquidation. The law's flexibility allowed a company to state in its articles that these shares had no claim on assets beyond their nominal value, and this restriction was legally enforceable during the distribution of the company's assets.

A significant modification to the dividend rules came with the amendments to the ABI effective from April 17, 1998.³²⁸ This amending law, through its changes to Article 35(4) introduced a specific cap on the dividend that could be assigned to preference shares. Under these amendments, the dividend for preference shares must be expressed as a percentage of the share's nominal value, and the company's articles of association had to set this rate as a concrete,

³²⁷ *Ibid.*, art. 35(8).

³²⁸ Lietuvos Respublikos akcinių bendrovių įstatymo pakeitimo ir papildymo įstatymas (Republic of Lithuania Law on Amendment and Supplementation of the Law on Stock Corporations), Nr. VIII-666, adopted February 24, 1998, published in *Valstybės žinios*, March 11, 1998, Nr. 23-591, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.54006?jfwid=-eiiqbezng>.

unchangeable figure. The dividend for preference shares also was restricted, not permitted to exceed the greater of either three times the average interest rate of Lithuanian Government securities for the last quarter or double the dividend of ordinary shares as of the date of the general meeting that adopted the articles establishing these preference share rights.

The subsequent Law on Joint Stock Companies of July 13, 2000, which became effective on January 1, 2001, largely carried forward the established principles for preference share dividends.³²⁹ The dividend restrictions introduced in 1998 appear to have remained in effect under this version of the law. Yet this version of the ABI in regard to of liquidation priorities for preference shares preserved the possibility to assign specific rights for liquidation preferences.

The dividend landscape for preference shares was altered again in 2004.³³⁰ A key change introduced by these amendments was the removal of the statutory cap on the maximum dividend amount for preference shares that had been imposed in 1998.³³¹ However, while this specific cap was lifted, the amendments did not remove the requirement for a fixed amount of the preference share dividend as a percentage of the nominal value of the share, and overall, they reflect a shift towards a more restrictive *numerus clausus* (closed list) approach to the regulation of preference share rights under the new Article 42 of the ABI. This meant that, in practice, companies were generally limited to issuing preference shares with fixed dividends (either cumulative or non-cumulative), thereby constraining the flexibility to design more diverse or performance-linked dividend structures.³³² Article 73(13) confirmed this limitation in the liquidation context by providing that, after settling with creditors, only accrued cumulative dividends were to be paid in priority to preference shareholders, while the remaining assets were to be distributed among all shareholders according to the nominal value of their shares. As a result, the law no longer permitted companies to attach other property rights such as priority in liquidation or participation in surplus to preference shares.

Notably, this legislative decision to narrow the permissible rights attached to preference shares finds no basis in the explanatory note accompanying the draft law.³³³ While the explanatory memorandum refers to the need to align national legislation with European Union directives, none

³²⁹ Lietuvos Respublikos akcinių bendrovių įstatymas (Republic of Lithuania Law on Companies), Nr. VIII-1835, July 13, 2000 (consolidated version effective September 1, 2024), accessed September 18, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/hDVVVanBGN?jfwid=vyiyu24w>.

³³⁰ Lietuvos Respublikos akcinių bendrovių įstatymo pakeitimo įstatymas (Republic of Lithuania Law on the Amendment of the Law on Stock Corporations), Nr. IX-1889, adopted December 11, 2003, published in *Valstybės žinios*, December 30, 2003, Nr. 123-5574, accessed September 18, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.224234?jfwid=8ozxm2sd0>.

³³¹ *Ibid.*, art 42(6).

³³² *Ibid.*, art 42(6-7).

³³³ “Akcinių bendrovių įstatymo pakeitimo įstatymo projekto AIŠKINAMASIS RAŠTAS, Nr. IXP-2878, 2003 m. rugsėjo 26 d. (Explanatory Memorandum on the Draft Law Amending the Law on Joint-Stock Companies, No. IXP-2878, September 26, 2003),” e-seimas.lrs.lt, accessed May 18, 2025,, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.218400>.

of the listed instruments relate to share class structures or the scope of rights attachable to preferred shares. Thus, there appears to be no objective justification for this restriction, particularly in the European context. For example, France in 2004 introduced *actions de préférence*, enabling companies to issue shares with customized rights³³⁴, while from 2000s in Poland companies were permitted to issue preference shares with special rights as well.³³⁵ These developments during the 2000s reflect a regional trend towards enhancing the legal framework for issuing shares with differentiated rights, which stands in clear contrast to Lithuania's restrictive approach.

Minor adjustments concerning the payment of interim dividends for preference shares with cumulative rights were later introduced in March 1, 2012.³³⁶ This law specifically supplemented Article 42 of the ABI with a new paragraph 10, which stipulated that if a company declared dividends for a period shorter than a financial year, the amount allocated for such dividends must first be used to pay any arrears of cumulative dividends from previous financial years and the cumulative dividend for the current interim period to the owners of such preference shares.

The most recent and significant shift towards liberalizing preference share dividend regulation became effective on May 1, 2023.³³⁷ The explanatory note to these amendments explicitly stated the intention to allow companies greater freedom.³³⁸ Crucially, companies are now expressly empowered to establish the method for calculating the dividend for preference shares within their articles of association, as per the amended Article 42(2) of the ABI. This reform enabled companies to create more tailored and potentially variable dividend arrangements for different classes of preference shares, moving away from the previous default towards fixed

³³⁴ “Code de commerce, Article L228-11 (version in force since April 24, 2024),” [legifrance.gouv.fr](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000049720022), accessed May 18, 2025, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000049720022.

³³⁵ “Polish Commercial Companies Code of September 15, 2000 (English translation), art. 351(1),” accessed May 18, 2025, <https://supertrans2014.wordpress.com/wp-content/uploads/2014/06/the-commercial-companies-code.pdf>.

³³⁶ Lietuvos Respublikos Seimas (Seimas of the Republic of Lithuania), “Lietuvos Respublikos akcinių bendrovių įstatymo 18, 20, 28, 32, 34, 37, 38, 42, 59 ir 60 straipsnių pakeitimo ir įstatymo papildymo 60¹ straipsniu įstatymo projektas” (Draft Law on Amending Articles 18, 20, 28, 32, 34, 37, 38, 42, 59 and 60 of the Law on Stock Corporations of the Republic of Lithuania and Supplementing the Law with Article 60¹), TAPIS.109036, accessed via <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/TAPIS.109036>.

³³⁷ Lietuvos Respublikos Seimas (Seimas of the Republic of Lithuania), “Akcinių bendrovių įstatymo Nr. VIII-1835 2, 15, 17, 21, 27, 28, 29, 30, 30(1), 32, 34, 37, 37(2), 40, 42, 45, 47, 47-1, 51, 56 ir 78 straipsnių, priedo pakeitimo ir įstatymo papildymo 46-1 straipsniu įstatymo projektas” (Draft Law on Amending Articles 2, 15, 17, 21, 27, 28, 29, 30, 30(1), 32, 34, 37, 37(2), 40, 42, 45, 47, 47-1, 51, 56 and 78 of the Law on Stock Companies of the Republic of Lithuania No. VIII-1835, Amending the Annex and Supplementing the Law with Article 46-1), registered June 22, 2022 (identifier: [be906bc0f23f11ecbfe9c72e552dd5bd](https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/be906bc0f23f11ecbfe9c72e552dd5bd)), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/be906bc0f23f11ecbfe9c72e552dd5bd>.

³³⁸ Lietuvos Respublikos Seimas (Seimas of the Republic of Lithuania), “AIŠKINAMASIS RAŠTAS dėl Akcinių bendrovių įstatymo Nr. VIII-1835 2, 15, 17, 21, 27, 28, 29, 30, 30(1), 32, 34, 37, 37(2), 40, 42, 45, 47, 47(1), 51 ir 78 straipsnių, priedo pakeitimo ir įstatymo papildymo 46(1) straipsniu įstatymo projekto” (Explanatory Note on the Draft Law XIVP-1854 Amending Articles 2, 15, 17, 21, 27, 28, 29, 30, 30(1), 32, 34, 37, 37(2), 40, 42, 45, 47, 47(1), 51 and 78 of the Law on Stock Companies No. VIII-1835, Amending the Annex and Supplementing the Law with Article 46(1)), June 22, 2022, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/25521d90f24011ecbfe9c72e552dd5bd?jfwid=13igiurvwq>.

dividends and aligning with the needs of modern businesses seeking diverse investment. Additionally, the amendments to Article 42(2) of the ABI increased the permissible proportion of preference shares without voting power in a company's share capital from 1/3 to 1/2.

It is worth asking whether allowing companies to tailor dividend rights for preference shares is enough, considering that the rule limiting non-voting shares to 1/2 of the company's share capital remains. During an analysis of jurisdictions like the UK, USA, the Netherlands, and Sweden, such limits were not found. In the author's opinion, the introduced flexibility is a step forward toward a more adaptable regulatory framework, but it remains questionable whether, by not removing the 1/2 barrier, the current elimination of barriers is sufficient to enable the establishment and operation of high value-added companies or to attract meaningful investment.

The 2023 amendments to the ABI clarified and broadened a company's ability to tailor preference shares with liquidation priority. The previous version of the law, in Article 73(13), already stipulated that if shares grant unequal rights, those rights must be taken into account during liquidation. The newly amended Article 42(8) expands on this by allowing the issuance of any form of preference share (beyond the four default combinations of cumulative/non-cumulative dividends with or without voting rights) as long as the articles of association authorize it. This supports the argument that, following the 2023 amendments, it is theoretically possible to issue various types of shares, such as participation preference shares.

Amendments of the 2023 ABI reflects a deliberate shift toward greater flexibility in corporate capital regulation by streamlining the framework for the reclassification of shares. The draft envisaged that preference shares could be transformed not only into ordinary shares, but also directly into preference shares of a different category, subject to a resolution of the general meeting of shareholders.³³⁹ In doing so, the reform sought to dispense with the previously mandatory two-step procedure, under which shares first had to be converted into ordinary stock before being reissued as another class of preference shares.

This liberalization trend is set to continue. Amendments to the ABI have been formally adopted and are scheduled to come into force in July 2026 will amend the ABI to further enhance corporate flexibility, reduce administrative burdens, and modernize the legal framework for capital management. Set to enter into force on July 1, 2026, the amendments reflect a strategic effort to increase the attractiveness of Lithuania as a favourable business jurisdiction by resolving practical legal challenges and streamlining corporate procedures.

The reform continues to refine the rules governing shareholder rights and payouts, building upon the theme of flexibility. The amendment to Article 42 makes the rule on dividend

³³⁹ *Ibid.*

priority for preference shareholders a dispositive, rather than mandatory, provision.³⁴⁰ This allows companies to stipulate a different order of dividend payments in their articles of association, a change motivated by the recognition that modern investment structures, particularly in high-growth sectors, may prioritize other rights such as share conversion over immediate dividend priority.³⁴¹ This increased flexibility empowers companies to create share classes that are more precisely tailored to the expectations of different investor profiles.

The draft law proposes amendments to Articles 49(1), 52(1), and 56(2) to reinforce the protection of the rights of all shareholder classes, particularly those with non-voting preference shares. The amendments establish a single, consistent principle: any decision to increase or reduce share capital, or to issue convertible bonds, now requires separate approval from the shareholders of each class whose class-specific rights are directly affected. This change resolves the previous legal framework, which was fragmented and inconsistent across different corporate actions. Previously, the rules were often ambiguous, sometimes requiring a vote from all share classes regardless of impact, while at other times only protecting preference shareholders in very specific circumstances rather than as a general rule. The new standard replaces this confusing system with a clear and predictable principle: if a decision affects the rights tied to a class of shares, that class gets a separate vote.³⁴² Thus, when the share capital is increased through the issue of new shares that may alter the rights of existing holders of preference shares, such as their entitlement to dividends, their priority in the distribution of assets upon liquidation, or their voting rights, the consent of the holders of preference shares as a distinct class becomes necessary.

In conclusion, Lithuania's regulation of preference shares has not been a straight line toward liberalization, but a dynamic, non-linear path marked by significant shifts in legal philosophy. The journey began with a remarkably flexible framework in 1990 that granted companies broad contractual freedom to define both dividend and liquidation rights. However, this was followed by a period of increasing prescription, culminating in the 2004 reforms which imposed a restrictive *numerus clausus* model. This change critically eliminated the ability to create liquidation preferences, putting Lithuania's company law at a competitive disadvantage when compared to regional peers like Poland and forward-moving jurisdictions like France. The recent reforms, particularly those in 2023, represent a decisive reversal of that policy, consciously restoring the essential tools of contractual freedom to modernize the framework. This complex

³⁴⁰ Law on Companies of the Republic of Lithuania, as amended by Law No. XV-386 of 30 June 2025, Akcinių bendrovių įstatymo Nr. VIII-1835 2, 15, 17, 19, 20, 24, 26, 261, 262, 28, 31, 32, 33, 34, 38, 39, 42, 451, 452, 461, 49, 51, 52, 531, 54, 55, 56, 57, 58, 59, 60, 601, 74, 76, 77 ir 78 straipsnių pakeitimo ir įstatymo papildymo 42¹ straipsniu įstatymas, 30 June 2025, No. XV-386 (to enter into force 1 July 2026).

³⁴¹ Lietuvos Respublikos akcinių bendrovių įstatymo pakeitimo aiškinamasis raštas, 2025, § 4.6, Ekonomikos ir inovacijų ministerija, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/draft/XXXX>.

³⁴² *Ibid.*

evolution is a clear illustration of a jurisdiction responding to the pressures of regulatory competition. The restrictive period inadvertently created barriers to attracting sophisticated venture capital and private equity, which rely heavily on bespoke instruments like preference shares with liquidation priority. The recent and ongoing legislative changes are a direct attempt to close this competitive gap and reposition Lithuania as an attractive destination for high-growth companies and international investment. Yet, this push is moderated by path dependency; the retention of statutory limits, such as the 1/2 cap on non-voting shares, shows that Lithuania continues to balance its embrace of market-oriented flexibility with a cautious, civil-law tradition of maintaining certain mandatory protections. This regulatory journey ultimately showcases a deliberate effort to align Lithuanian law with the demands of modern capital markets, where corporate autonomy is a fundamental component of an investor-friendly legal system.

5. REGULATING REDEEMABLE SHARES

Redeemable shares represent a significant instrument of corporate finance. They offer corporate flexibility, while capital maintenance rules are intended to protect the interests of creditors.³⁴³

This chapter undertakes a comparative legal analysis of the frameworks governing redeemable shares to explore how different jurisdictions navigate this crucial balance. The examination will encompass the distinct evolutionary path of the United Kingdom and the harmonised rules for public limited liability companies under European Union directives. It will also cover the innovative national regimes for private companies in Member States such as the Netherlands, Belgium, and Lithuania.

By contrasting these approaches the analysis will demonstrate the ongoing divergence between traditional legal capital rules and more dynamic solvency-focused safeguards. This reveals distinct philosophies on how best to reconcile corporate autonomy with the imperative of creditor protection.

5.1. Redeemable Share Regulation and Capital Maintenance in the United Kingdom

Redeemable shares are directly linked to the principle of capital maintenance, as their regulation is designed to ensure that the return of capital to shareholders does not undermine creditor protection. The capital maintenance doctrine constitutes a core principle of company law and originated as a judicially developed mechanism aimed at protecting the interests of creditors. Following the introduction of limited liability, the courts increasingly recognized the need to preserve a company's capital as a safeguard against shareholder distributions that could prejudice creditor claims.³⁴⁴ The English courts, most notably in the House of Lords decision of *Trevor v. Whitworth* (1887), had established a general prohibition against a company purchasing its own shares. This prohibition was rooted in the rationale that such a purchase would constitute an unauthorized reduction of the company's capital, a fund considered crucial for the protection of its creditors.³⁴⁵ The rule was foundational for protecting creditor interests by proscribing a company's depletion of capital. This landmark judicial decision thus forged the primary path for the doctrine of capital maintenance within UK company law, a doctrine whose principles are paramount in shaping the subsequent statutory regulation on redeemable rights.

³⁴³ Jadoou and Abu Ghazaleh, "Stocks Redemption," 4954.

³⁴⁴ Ogochukwu C. Nweke, "Evolution and Impact of Capital Maintenance in UK Company Law," *Beijing Law Review* 14, no. 4 (2023): 2003.

³⁴⁵ Irving J. Levy, "Purchase by an English Company of Its Own Shares," *University of Pennsylvania Law Review* 79, no. 1 (1930): 52-53.

The first statutory allowance for a form of share redemption emerged with the Companies Act 1929, which permitted companies to issue redeemable preference shares.³⁴⁶ Section 46 recognized as the first general statutory provision in the UK for the issue of redeemable preference shares, provided the company was authorised to do so by its articles of association. This provision stipulated that such redemptions had to be funded either from profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption. A key requirement of the 1929 Act, aimed at maintaining the capital base, was that if shares were redeemed otherwise than out of the proceeds of a fresh issue, an equivalent sum to the nominal amount of the redeemed shares had to be transferred out of profits (otherwise available for dividend) to a “capital redemption reserve fund”, which was then treated, for capital reduction purposes, as if it were paid-up share capital of the company.³⁴⁷

This development, however, was not without controversy. Shortly after the Act’s introduction, legal scholar Irving J. Levy criticised the potential consequences of permitting redemptions from distributable profits without first addressing past capital losses. He observed that “the same arguments which militate against the use of such funds for dividends both from the standpoint of creditors and of remaining shareholders apply with the same force against their use for redemption.”³⁴⁸ Levy’s concern was that companies might present current earnings as available profits while overlooking unrepaired capital losses from earlier periods. His analysis suggests that a formal tightening of the definition of “profits available for dividend” would be necessary to ensure that redemptions do not undermine the capital-maintenance principle in substance, even if formally compliant with the statute.

The issue remained unresolved under the Companies Act 1948, which did not introduce a statutory requirement for companies to restore prior capital losses before redeeming shares from current profits. Section 58 continued to permit redemption from “profits of the company which would otherwise be available for dividend”, but the Act did not define those profits in a manner that required adjustment for historical capital deficiencies. The introduction of the “true and fair view” standard in section 149(1), requiring that financial statements reflect the company’s actual financial position and performance, aimed to strengthen the quality of corporate reporting.³⁴⁹

³⁴⁶ Jadoou and Abu Ghazaleh, *Stocks Redemption*, 4954.

³⁴⁷ *Companies Act 1929* (19 & 20 Geo. 5, c. 23), s. 46, accessed September 18 https://www.legislation.gov.uk/ukpga/Geo5/19-20/23/pdfs/ukpga_19290023_en.pdf

³⁴⁸ Levy, “Purchase by an English Company of Its Own Shares,” 67.

³⁴⁹ “Companies Act 1948, ss. 58, 149(1),” [legislation.gov.uk](https://www.legislation.gov.uk/ukpga/Geo6/11-12/38/enacted), accessed May 19, 2025, <https://www.legislation.gov.uk/ukpga/Geo6/11-12/38/enacted>.

However, this standard was not framed as a rigid rule but rather as a guiding principle that allowed judgment, which in practice led to varying interpretations.³⁵⁰

The Companies Act 1981, through Section 45(1) repealed Section 58 of the Companies Act 1948, which had previously restricted the issuance of redeemable shares exclusively to preference shares.³⁵¹ This legislative change significantly broadened the scope by allowing companies to designate any class of shares, including ordinary shares, as redeemable. Additionally, the amendment introduced a stipulation that redeemable shares could only be issued if the company had at least one non-redeemable share in issue.³⁵² Nonetheless, 1981 Act offered further creditor protection through section 53, which ordered a transfer to the capital redemption reserve whenever shares were redeemed out of profits, and through section 54, which obliged an LTD redeeming out of capital to obtain a solvency declaration from the directors and approval by special resolution.

Most notably, The Companies Act 1981 introduced the possibility for shares to be redeemed at the option of the company.³⁵³ As Lord Mackay of Clashfern explained during the parliamentary debate, “the general legal prohibition in this country of a company buying its own shares is very nearly 100 years old, as it was established by a case in 1887. In this particular aspect of company law, we have been somewhat out of step with the position in the United States and in Europe, where the purchase of own shares is generally permitted.”³⁵⁴ This reform thus marked a deliberate departure from the long-standing rule in *Trevor v Whitworth* (1887), aligning UK law more closely with modern corporate finance practice by allowing companies to issue redeemable shares not only at the option of shareholders, but also at the option of the company. The same framework was carried over almost verbatim into the consolidated Companies Act 1985.³⁵⁵

The Companies Act 2006 continues and refines this regulatory approach, forming the core of the contemporary framework.³⁵⁶ The statute sets out distinctions for limited companies. Shareholders of a PLC establish the power to issue redeemable shares by passing a special resolution (75 percent majority of the votes cast), whereas an LTD follows the same procedure

³⁵⁰ FasterCapital, “True and Fair View: Presenting a True and Fair View in Financial Statements,” FasterCapital, accessed May 19, 2025, <https://fastercapital.com/content/True-and-Fair-View--Presenting-a-True-and-Fair-View-in-Financial-Statements.html#Historical-Evolution-of-the-True-and-Fair-View-Concept>.

³⁵¹ “Companies Act 1981, s 45(1) and 62(2)” legislation.gov.uk, accessed May 20, 2025, https://www.legislation.gov.uk/ukpga/1981/62/pdfs/ukpga_19810062_en.pdf.

³⁵² *Ibid.* s 45(2).

³⁵³ *Ibid.* s 45(1).

³⁵⁴ “House of Lords Debate, Companies (No. 2) Bill [H.L.], March 19, 1981, vol. 418, cc. 739-814,” Hansard, UK Parliament, accessed May 19, 2025, <https://hansard.parliament.uk/lords/1981-03-19/debates/707c6557-e743-40da-9c14-972eef3a8e1b/Companies%28No2%29BillHl>.

³⁵⁵ “Companies Act 1989 (c. 40), Part V,” legislation.gov.uk, accessed May 21, 2025, <https://www.legislation.gov.uk/ukpga/1989/40/part/V/enacted>

³⁵⁶ “Companies Act 2006 (c. 46),” legislation.gov.uk, accessed May 21, 2025, <https://www.legislation.gov.uk/ukpga/2006/46/contents>.

only if its articles restrict this power and it wishes to remove that restriction or if it is varying the rights attached to shares.³⁵⁷ Therefore, PLC may issue redeemable shares only where its articles expressly permit the class (as amended by special resolution).³⁵⁸ Once that authority is in place the redemption terms can be established in three different ways. First, the articles themselves may spell out the price, redemption date and notice requirements, in which case the directors simply allot the shares in accordance with that wording.³⁵⁹ Second, the articles may delegate the power to determine those terms to the directors, allowing directors to decide the details and issue the shares.³⁶⁰ Third, if the articles neither fix the terms nor delegate the task, the shareholders can pass an ordinary resolution (unless the articles require a special resolution) that confers the necessary authority on the directors, after which the directors set the terms and proceed with the allotment.³⁶¹ In all scenarios the directors ultimately effect the issue of the redeemable shares, acting under the general allotment authority.³⁶²

Within an LTD the statutory starting point is permission rather than prohibition. Section 684(2) grants an inherent power to issue redeemable shares unless the articles have withdrawn or limited that right, so where the articles are silent or permissive the directors may resolve to allot the class without a prior shareholder vote. Directors act under the general authority to allot shares that a single-class private company holds automatically,³⁶³ or under an authority conferred by ordinary resolution in accordance with section 551(1) where the capital structure is more complex. Shareholders become involved through an ordinary resolution where the articles neither fix the redemption terms nor authorise the directors to determine them. Thus, unlike a PLC, an LTD may issue redeemable shares unless its articles expressly remove or restrict that power. Where the articles are silent the directors may resolve to issue the shares under the statutory default, but if more than one class is already in issue the directors must first obtain the allotment authority required by the articles or secure it by an ordinary resolution.

The Companies Act 2006 also differentiates the capital maintenance framework for financing the redemption of redeemable shares. PLC may redeem its redeemable shares only out of its distributable profits or from the proceeds of a fresh issue of shares made for that specific purpose.³⁶⁴ By contrast, an LTD may finance a redemption out of capital, provided it follows the procedures set out in Chapter 5.³⁶⁵ This involves making a payment out of capital under section

³⁵⁷ *Ibid.* s 21(1).

³⁵⁸ *Ibid.*, s 551(1)(a).

³⁵⁹ *Ibid.*, s 685(4).

³⁶⁰ *Ibid.*, s 685(1)(a).

³⁶¹ *Ibid.*, s 685(1)(b).

³⁶² *Ibid.* s 551.

³⁶³ *Ibid.* s 550.

³⁶⁴ *Ibid.* s 550 687(2).

³⁶⁵ *Ibid.* s 550 687(1).

709(1), ensuring every director signs a director's statement under section 714(1) and the shareholders pass a special resolution (not less than 75% of the votes cast) authorising the payment out of capital.³⁶⁶ Consequently, a PLC is confined to using its profits or fresh-issue proceeds for redemption, whereas an LTD may rely on these sources or, alternatively, on its own capital once these statutory safeguards designed to protect creditors are satisfied. Upon redemption, the shares are treated as cancelled under section 688 and the issued share capital is reduced by the nominal amount of the shares redeemed.

The Act also sets out separate provisions for any amount paid above nominal value. A premium may arise on issue if the company first allots redeemable shares above nominal value and section 610 records that excess in the share premium account while the nominal amount is recorded as share capital. In either circumstance section 687(2) requires that the nominal amount and any premium be financed only from distributable profits or from the cash raised by a fresh issue of shares, unless, in the case of a premium on redemption, it is paid out of the share premium account in accordance with section 687(4). Whenever any part of the redemption price, whether nominal amount or premium, is met from distributable profits, section 733 obliges the company to transfer a sum equal to the nominal value of the redeemed shares into the capital redemption reserve.

As LTD is not confined to the sources in section 687(2) to financing a redemption solely out of profits available for distribution or the proceeds of a fresh issue of shares made for the purposes of the redemption. Redeemable shares may be redeemed by means of a payment out of capital based on the directors' statement of twelve-month solvency and authorized by a special resolution.³⁶⁷ It may be questioned whether in an LTD the combination of the requirement that the accounts from which distributable profits are calculated must be no more than 3 months old³⁶⁸ at the date of the directors self-certified statement³⁶⁹ and, the absence of any obligation to give prior notice to creditors³⁷⁰, and the brief five week window in which a creditor or shareholder may apply to the court³⁷¹ affords protection equivalent to that enjoyed by creditors of a PLC where redemption of shares out of capital is not permitted in the same way and where a reduction of share capital generally can proceed only after a court confirmed special resolution.³⁷²

The answer to this question probably lies, first, in the purpose of redeemable shares in private companies. As Gower observes, "In particular, the aim was to permit entrepreneurs to

³⁶⁶ *Ibid.* s 713(1).

³⁶⁷ *Ibid.* s 714(3), 716(1).

³⁶⁸ *Ibid.* s 712(5).

³⁶⁹ *Ibid.* s 714(3).

³⁷⁰ *Ibid.* s 721(1).

³⁷¹ *Ibid.* s 721(2)(a).

³⁷² *Ibid.* s 641(1)(b)

withdraw assets from their company to fund their retirement rather than by selling control to a larger competitor.”³⁷³

Secondly, it is necessary to assess whether the statutory safeguards provide adequate protection for creditors when the redemption is funded out of the company’s capital. Those safeguards include the directors’ exposure to criminal liability for any misleading directors’ statement,³⁷⁴ their civil liability if, within one year of the payment, the company is winding up,³⁷⁵ and the compulsory auditor report³⁷⁶ that verifies the permissible capital payment and confirms that nothing discovered in the audit renders the directors’ assurances unreasonable.³⁷⁷

Consequently, restricting an LTD to the court confirmed reduction of share capital procedure for all redemptions (as opposed to just those financed out of capital in a manner not permitted for PLCs) and withholding the statutory power to redeem shares by payment out of capital would impose cost and delay disproportionate to its limited administrative resources. Adding the judicial step would grant creditors only marginal incremental protection beyond already existing capital payment regime.

The evolution of redeemable share regulation in the United Kingdom demonstrates a clear movement from judicial strictness to statutory accommodation. Early judicial interpretation treated share capital as a fixed pool that could not be diminished for the benefit of shareholders, and any form of redemption was therefore regarded as inconsistent with creditor protection. Statutory reform gradually relaxed this position. The Companies Act 1929 introduced a cautious opening by permitting redeemable preference shares subject to specific funding conditions, while later legislation expanded the possibility of redemption to other share classes and imposed compensating safeguards such as the creation of a capital redemption reserve, solvency statements, and independent audit requirements. The Companies Act 2006 now brings these strands together by differentiating between public and private companies, giving private companies broader discretion to redeem out of capital while still subjecting the process to procedural checks. The present framework reflects a policy choice that combines commercial flexibility with creditor security, allowing redemption to operate as a legitimate financing tool so long as it is carried out within a structured regime designed to preserve the principle of capital maintenance in substance.

³⁷³ Davies et al., *Gower's Principles of Modern Company Law*, para 17-012.

³⁷⁴ Companies Act 2006 (c. 46), 715(1).

³⁷⁵ “Insolvency Act 1986 (c. 45), s. 76,” [legislation.gov.uk](https://www.legislation.gov.uk/ukpga/1986/45/section/76), accessed May 22, 2025, <https://www.legislation.gov.uk/ukpga/1986/45/section/76>.

³⁷⁶ Companies Act 2006 (c. 46), s. 714(6).

³⁷⁷ Davies et al., *Gower's Principles of Modern Company Law*, para. 17-014.

5.2. European Union Company Law Pertaining to Redeemable Shares

The regulation of share classes, with a particular emphasis on shares that are either issued as redeemable has been also a focal point of corporate law evolution across the European Union and its Member States. The Second Company Law Directive embedded an ambition to harmonise national company law so that public limited liability companies observe equivalent safeguards when they are formed and when their capital is maintained, increased, or reduced. The recitals emphasised that company capital was the security of creditors and that the rules must prevent unjustified distributions that eroded that capital, including limits on a company's acquiring its own shares.³⁷⁸ Although the first notable instrument did not mention redeemable shares directly, its goal was to stop unjustified distributions arising from a company's acquisition of its own shares.

A decisive policy turn came with Directive 2006/68/EC. The amending measures, prompted by recitals stressing that companies should be able to react promptly to market movements, accordingly, broadened the window for own-share operations and lifted the blanket ban on financial assistance within the limit of distributable reserves "to enhance flexibility and reduce the administrative burden" while still protecting shareholders and third parties.³⁷⁹ Contemporary scholarship described it as a compromise striking "an adequate balance between flexibility and certainty".³⁸⁰

Directive 2012/30/EU subsequently established the Union redeemable-share clause as Article 43 and gathered the fragmented capital-maintenance provisions into one instrument.³⁸¹ Those provisions were transported verbatim into Article 82 of Directive (EU) 2017/1132 codification. Specifically, Article 82 outlines the conditions under which redeemable shares may be lawfully issued and subsequently redeemed.³⁸² These conditions, applicable to public limited-liability companies, include the requirement that redemption be authorised by the company's statutes or instrument of incorporation before the shares are subscribed. Furthermore, these shares must be fully paid up, and the redemption can be affected only by using sums available for

³⁷⁸ "Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards for public limited liability companies," EUR-Lex, accessed May 22, 2025, <https://eur-lex.europa.eu/eli/dir/1977/91/oj/eng>.

³⁷⁹ Council Directive 2006/68/EC of 6 July 2006 amending Directive 77/91/EEC, recitals 4–5," EUR-Lex, accessed May 22, 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0068>.

³⁸⁰ Giovanni Strampelli, "Rendering (Once More) the Financial Assistance Regime More Flexible," SSRN, accessed May 22, 2025, <https://ssrn.com/abstract=3003749>.

³⁸¹ "Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards for public limited liability companies," EUR-Lex, accessed May 22, 2025, <https://eur-lex.europa.eu/eli/dir/2012/30/oj/eng>.

³⁸² Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), art 82," EUR-Lex, accessed May 12, 2025, <https://eur-lex.europa.eu/eli/dir/2017/1132/oj/eng>.

distribution in accordance with Article 56(1 – 4) of Directive (EU) 2017/1132. An amount equal to the nominal value or, in the absence thereof, the accountable par of all the redeemed shares must be included in a reserve that cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital. This reserve may be used only for increasing the subscribed capital by capitalising reserves. Redemption may also be affected by using the proceeds of a new issue made with a view to affecting such redemption.

Article 56 of Directive (EU) 2017/1132 treats the amount paid on a redemption of shares as a “distribution,” so the balance-sheet limits that govern dividends apply equally to redemptions. A company may not redeem shares if, by reference to its latest approved annual accounts or after the payment is made, its net assets would fall below the sum of its subscribed capital and any reserves that are legally or statutorily non-distributable. The funds that may be applied are restricted to the profits shown in those accounts, together with profits carried forward and sums released from freely distributable reserves, after deducting accumulated losses and the transfers required by law or the statutes. Where the redemption is proposed between financial-year ends, the directors must draw up interim accounts to confirm that adequate distributable profits are available. Thus, Article 56 ensures that the consideration for redeemable shares can be sourced only from realised, distributable profits, thereby safeguarding the company’s fixed capital.

Article 60 of the Directive (EU) 2017/1132 lays down a harmonised baseline for share redemptions by public limited companies. It obliges the general meeting to approve every redemption and, within the same resolution, to stipulate three elements: the maximum number of shares that may be acquired, the consideration (expressed as a fixed price or price corridor) and a mandate period that may not exceed five years (e.g. UK statutory law does not impose price corridor nor time limits). Redemptions are permissible only in respect of fully paid-up shares and only where, immediately afterwards, the company’s net assets are at least equal to its subscribed capital together with any statutory or contractual reserves. The Directive empowers Member States to impose additional safeguards. They may, *inter alia*, restrict the proportion of capital that may be redeemed (subject to a minimum threshold of ten per cent of subscribed capital), require that the authorisation parameters be embedded in the company’s constitutional documents, mandate supplementary disclosure, oblige certain companies to cancel the redeemed shares and create an unavailable reserve of equivalent amount, or introduce any further measures necessary to protect creditors.

The EU capital-maintenance doctrine, now codified in Directive (EU) 2017/1132, addresses only public limited companies³⁸³ and obliges Member States to transpose minimum rules

³⁸³ Directive (EU) 2017/1132, art. 1.

on redeemable shares. A public company may issue a redeemable class only if its articles expressly authorise the instrument, the redemption price or a clear pricing formula is set in advance, the shares are fully paid, and the redemption must occur within five years of the issue. In addition, the consideration for the buy-back must come either from distributable profits or from the proceeds of a new share issue, so that the company's net assets do not fall below the statutory minimum capital and equal-treatment principles are respected.

The European framework on redeemable shares demonstrates a gradual departure from the early emphasis on strict capital preservation towards a more flexible regime that accommodates modern corporate finance practices. By embedding redemption rules within the broader capital-maintenance doctrine, EU law reflects a deliberate compromise: on one hand, redemption is accepted as a legitimate financial technique for public limited companies; on the other hand, its use is constrained by procedural safeguards such as reserve creation, distributable profits tests, and shareholder approval. The successive directives reveal a shift in policy priorities. The Second Company Law Directive prioritised uniformity and creditor protection, while the 2006 amendments and later codifications sought to introduce greater flexibility in response to economic pressures and market integration. Yet the framework remains incomplete. It applies only to public companies, leaving the regulation of private companies to national law, which produces divergences in practice. Moreover, while Member States retain discretion to impose additional safeguards, this discretion risks undermining the very harmonisation the directives aimed to achieve. In this respect, the EU regime can be described as a minimum-harmonisation model that preserves creditor interests formally but delegates much of the substantive balance between flexibility and protection to the domestic level.

5.3. National Approaches and Trends in Redeemable Share Regulation

Since EU capital-maintenance doctrine places no equivalent constraints on private companies, national legislators retain wide discretion. The European Commission recognised this already in 2008, when it considered fully harmonising the rules for private limited liability companies, and concluded that such an exercise “would entail a significant and probably disproportionate intrusion in Member States’ legislations.”³⁸⁴ Instead it proposed the *Societas Privata Europaea* with an authorised capital of one euro, expressly departing from the traditional

³⁸⁴ “Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts, COM(2008) 396 final, Explanatory Memorandum, point 4.i ('Subsidiarity and proportionality'),” EUR-Lex, accessed May 24, 2025, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52008PC0396>.

minimum-capital model to make cross-border start-ups easier and cheaper.³⁸⁵ The accompanying impact assessment observed that in Denmark, Finland and Sweden creditors were already focusing on cash-flow and liquidity rather than on nominal capital, indicating that scrapping a fixed capital floor need not diminish creditor protection.³⁸⁶ This shows an early recognition at EU level that static capital rules were becoming outdated and that forward-looking solvency measures could provide a functional substitute.

Several jurisdictions have used that discretion to expand contractual freedom, for example by abolishing fixed minimum capital and relying instead on functional safeguards. A common replacement is a cash-flow or solvency test applied before the company may redeem or purchase its own shares. This marks a policy shift from symbolic capital rules to substantive financial capacity tests, raising the question whether Member States that cling to older models risk competitive disadvantage.

Netherlands is renowned for the flexibility of its private company legislation. Before the Flex-BV reform took effect on 1 October 2012 a BW,³⁸⁷ redeemable shares were subject to the classic capital maintenance regime. Former BW required a minimum paid-up capital and mandated par-value shares.³⁸⁸ Any share class with a redemption right had to be set out in the articles, and changing those rights demanded a notarial amendment passed with the qualified majority.³⁸⁹ Withdrawal of redeemable shares was effected by a capital-reduction resolution,³⁹⁰ and the redemption price could be funded only from the “free reserves” shown in the most recent approved balance sheet.³⁹¹ Hence the redemption process was tied both to formal capital rules and to a balance-sheet test.

From 1 October 2012 the Flex-BV reform removed the statutory minimum capital and the par-value requirement for BVs.³⁹² Due to this corporate flexibility the Netherlands is often called the Delaware of Europe, its courts willingly take on cross-border corporate disputes, and its laws draw in both foreign founders and established international firms.³⁹³

³⁸⁵ *Ibid.*, art. 20

³⁸⁶ *Ibid.*, Chapter IV: Capital.

³⁸⁷ Lexology, Flexibilization of Dutch B.V. law as per 1 October 2012, accessed September 18, 2025, <https://www.lexology.com/library/detail.aspx?g=0db1a1ee-fe6d-49d5-8051-a41bec6237b1>.

³⁸⁸ Burgerlijk Wetboek Boek 2, art. 2:178(2) (version December 2011), accessed September 18, <https://maxius.nl/burgerlijk-wetboek-boek-2/01-12-2011>.

³⁸⁹ *Ibid.*, arts. 2:178(1) and 2:231(2).

³⁹⁰ *Ibid.*, art. 2:208.

³⁹¹ *Ibid.*, art. 2:216(1).

³⁹² Burgerlijk Wetboek Boek 2, art. 2:178 (version October 2012), accessed September 18, <https://maxius.nl/burgerlijk-wetboek-boek-2/01-10-2012>.

³⁹³ Hans De Wulf, AN INTRODUCTION TO AND EVALUATION OF THE 2019 BELGIAN COMPANIES ACT – PREPARING FOR THE PREVIOUS WAR?, WP 2023-11 (Ghent: Financial Law Institute, Ghent University, 2023), 6, <https://financiallawinstitute.ugent.be/wp-content/uploads/2023/07/2023-11.pdf>.

With this flexibility safeguards are needed. One of them is that a BV may create a redeemable share class only by altering its articles. The general meeting must adopt the amendment with the majority required by its existing articles and if the change affects a class that class must also approve.³⁹⁴ The amendment has legal effect only when set out in a notarial deed executed in Dutch before a civil law notary.³⁹⁵ After such authority exists the general meeting may by ordinary resolution decide the concrete redemption terms or later adjust them if the articles delegate that power provided that each redemption complies with the capital reduction procedure and the solvent distribution test.³⁹⁶

Book 2 BW then permits the articles to create any class of redeemable shares and, if the articles delegate that power, the general meeting may determine or later amend the redemption terms by ordinary resolution.³⁹⁷ Article 2:216 BW introduced the distribution test, which blocks any redemption or buy-back unless equity will still cover all undistributable reserves and the board can reasonably foresee that the company will meet its debts for at least the next twelve months. Directors who breach this rule are jointly and severally liable and shareholders who knowingly take an unlawful payment may be compelled to repay it.³⁹⁸ Article 2:207 BW was amended so a BV may acquire its own shares only if the articles permit or the general meeting authorizes and at least one voting share remains outstanding. In practice this means that Dutch law combines extreme formal flexibility with tough personal liability for directors, signalling a conscious shift from ex ante capital constraints to ex post accountability.

Belgium through its comprehensive 2019 *Code des sociétés et des associations* (BCCA), offers a contemporary example of such national implementation, particularly by reforming the regime for private companies (BVs) with the main goal of rolling back Belgian gold-plating of EU company law Directives and, as part of this reform, abolishing the concept of legal capital for private companies.³⁹⁹ The 2019 reform aimed to make the Belgian BV an exportable legal form, modelled on the Dutch BV.⁴⁰⁰ By contrast, the public company (NV) experienced almost no substantive change in the field of redeemable shares. The 2019 BCCA simply abolished the former

³⁹⁴ Dutch civil code 2 (version 1 October 2012), art. 2:231.

³⁹⁵ *Ibid.*, art. 2:234(2)

³⁹⁶ *Ibid.*, arts. 2:208, 2:216(2).

³⁹⁷ *Ibid.*, art. 2:208a.

³⁹⁸ *Ibid.*, art. 2:216.

³⁹⁹ Wulf, *AN INTRODUCTION TO AND EVALUATION OF THE 2019 BELGIAN COMPANIES ACT – PREPARING FOR THE PREVIOUS WAR?*, 2.

⁴⁰⁰ *Ibid.*, 8.

statutory 20 % ceiling⁴⁰¹ and now lets the extraordinary general meeting set the maximum number of shares that may be redeemed within each five-year mandate.⁴⁰²

The situation is very different for the Belgium BV. Following the 2019 reform, a Belgian BV may, by qualified majority shareholders resolution establish redeemable share class in its articles of association. The articles themselves, or a qualified majority shareholders resolution, can fix the maximum number of such shares, the price range, and the period for which the buy-back authorisation is valid. Redeemable shares may be bought back only if they are fully paid.⁴⁰³ This approach contrasts with the statutory position in UK LTD's, where the articles may authorize the directors to determine the terms of any redeemable shares, or, if the articles contain no such authorisation, the shareholders can confer it by ordinary resolution. There is no statutory obligation to impose a time limit on that authority. Thus, the BCCA adopts a stricter, defensive approach by entrusting the decision to a shareholder super-majority rather than leaving it to the directors' contractual discretion. Belgium's choice therefore represents a deliberate policy of defensive shareholder protection, favouring collective control through super-majorities over director discretion.

Following the abolition of the BV statutory minimum capital, the BCCA replaced the traditional capital buffer⁴⁰⁴ with a dual safeguard that applies to every distribution, including the price paid on a share redemption. First, the net-asset (solvency) test requires that, immediately after the payment, the company's equity remain at least equal to its subscribed capital plus all non-distributable reserves.⁴⁰⁵ Second, the liquidity test obliges the board to draw up and file a reasoned report confirming that, for at least the next twelve months, the company will be able to meet its debts as they fall due in light of its reasonably foreseeable development.⁴⁰⁶ Together, these ex-ante checks provide a forward-looking, cash-flow-based assessment of the company's capacity to return capital, ensuring that redemptions and other payouts cannot proceed if they would compromise the company's financial capability. Belgium thus trades the symbolism of fixed capital for substantive creditor protection, embedding a model that is both more dynamic and arguably more onerous for directors.

⁴⁰¹ "Repurchase of treasury shares," Colruyt Group, accessed May 22, 2025, <https://www.colruytgroup.com/en/investor-relations/stakeholder-information/repurchase-treasury-shares>.

⁴⁰² "Code des sociétés et des associations du 23 mars 2019, art. 5:145 (Belgian Code of Companies and Associations of March 23, 2019, art. 7:215(1)), ejustice.just.fgov.be, accessed May 22, 2025, https://www.ejustice.just.fgov.be/cgi_loi/article.pl?language=fr&lg_txt=f&type=&sort=&numac_search=&cn_searc_h=2019032309&caller=SUM&&view_numac=2019032309f#LNK0234

⁴⁰³ *Ibid.*, art. 5:145.

⁴⁰⁴ "Code des sociétés (Texte coordonné au 30 janvier 2001), art. 214 (Belgian Companies Code (Coordinated text as of January 30, 2001), art. 214)," WIPOLex, accessed May 22, 2025, <https://wipo.int/edocs/lexdocs/laws/fr/be/be205fr.pdf>.

⁴⁰⁵ *Ibid.*, art 5:142 (net-asset test).

⁴⁰⁶ *Ibid.*, art 5:143 (liquidity test).

In Lithuania the current ABI contains no rule that lets a company issue redeemable shares. Upcoming amendments, scheduled to enter into force on 1 July 2026, will introduce a legal framework allowing both public and private companies to issue redeemable shares provided that their articles of association expressly authorise such instruments and set out the redemption procedure.⁴⁰⁷ Lithuania's reform introduces redeemable shares to widen the menu of financing tools, strengthen control over capital structure, and help firms respond faster to shifting market conditions. The Explanatory Note frames this as both an investor-protection and flexibility measure, since a time-limited equity instrument with a defined exit can match investor preferences while letting boards calibrate leverage and payouts within clear safeguards.⁴⁰⁸

A comparative policy rationale is explicit. EU company law leaves it to Member States to decide whether to allow redeemables, and several advanced jurisdictions already do so. Lithuania aims to converge with that practice in order to attract capital and keep local issuers competitive.⁴⁰⁹ The Note also records that the Bank of Lithuania has encouraged legal recognition of redeemables, linking them to quicker capital adjustments and to price-stabilization needs following an IPO.⁴¹⁰ This is presented as a practical use case rather than a theoretical benefit.

The Note ties the instrument to governance discipline. If shareholders choose to authorize redeemables in the articles, they must also hard-wire the redemption mechanics, and if capital-increase decisions are delegated for a limited period to management bodies, shareholders are told to pre-set tight limits on rights, timing, and price rules so that any delegated issuance still reflects their interests.⁴¹¹ This blends flexibility with ex ante constraint.

On the legal design, the draft statute inserts a dedicated article on redeemable shares and pairs it with creditor-protection mechanics. Companies may issue redeemables only if the articles authorize them and spell out conditions and procedure.⁴¹² Redeemables can be ordinary or preference in class terms, but the company must already have a non-redeemable ordinary class in issue and conversion into or out of the redeemable status is barred. A special reserve equal at least to the aggregate nominal value of the redeemables is required unless redemption is funded from a fresh share issue. Only fully paid shares may be redeemed. If liquidation has been decided, redemption is blocked. The price must be paid within twelve months of the redemption date unless the articles impose a shorter period. Same-class holders must be treated on equal terms, self-share purchase rules do not apply, and after redemption the company must cancel the shares and reduce

⁴⁰⁷ Law Amending the Law on Companies of the Republic of Lithuania No. XV-386, art. 42¹.

⁴⁰⁸ Explanatory Note to the Draft Law Amending the Law on Companies of the Republic of Lithuania, §4.1.

⁴⁰⁹ *Ibid.*

⁴¹⁰ *Ibid.*

⁴¹¹ *Ibid.*

⁴¹² Law Amending the Law on Companies of the Republic of Lithuania No. XV-386, art. 42¹.

capital or face a court-ordered cancellation. These rules align the instrument with capital-maintenance principles while giving companies a predictable route to issue and retire time-limited equity

Analytically, the package pursues three objectives at once. First, it expands financing choice in line with EU practice and regional competitors, which can lower issuance frictions for growth-stage and listed firms. Second, it hardens creditor and minority safeguards through mandatory reserves, full-payment and equal-treatment rules, and a cancellation-with-capital-reduction requirement that prevents disguised distributions. Third, it builds governance guardrails by forcing article-level specificity and warning shareholders to calibrate any delegation of issuance powers. The mix signals a policy preference for functional flexibility with formal capital discipline rather than a pure balance-sheet test model.

Lithuania's decision to apply a uniform redeemable share regime to both public and private companies can be defended on grounds of legal certainty and creditor protection, yet it sits uneasily with comparative trends. Public companies face dispersed ownership, market trading, and disclosure duties that justify heavier ex ante capital safeguards. Private companies typically operate with concentrated ownership and negotiated creditor relationships.⁴¹³ Treating both forms identically risks over regulation of private firms and underutilization of an instrument.

A comparison with the Netherlands and Belgium shows a different policy calibration. Those systems emphasize functional solvency and liquidity tests backed by strong director liability rather than formal capital locks. The UK gives private companies the option to redeem out of capital subject to solvency statements and shareholder approval, which allows fast balance sheet adjustment where creditors are not prejudiced in substance. Lithuania's reserve-based model with mandatory cancellation and a strict no conversion rule privileges formal capital integrity over timing flexibility. This choice secures a clear rule set, but it narrows the range of financing strategies available to private issuers.

The uniform approach has several practical downsides for private companies. First, the need to prefund a dedicated reserve equal at least to nominal value ties up distributable profits and raises the effective cost of capital. In venture backed or growth stage companies, where cash is better deployed into operations, that constraint can chill the use of redeemables as a bridge or investor exit tool. Second, mandatory cancellation and capital reduction after redemption imposes procedural steps that delay execution and add professional fees, which matters less in a listed context but weighs heavily on smaller private firms. Third, the prohibition on converting existing

⁴¹³ Dignam and Lowry, *Company Law*, para. 1.15., 1.16.

shares into redeemables removes a pragmatic pathway often used in reorganizations and shareholder exits, forcing fresh issuances that may be tax inefficient or governance intensive.

Governance implications present a trade-off. Requiring article-level authorisation and detailed mechanics enhances shareholder control, but for private companies with aligned owners, these safeguards can become an administrative burden. Where negotiations between shareholders and lenders already manage risk, a more enabling model that permits solvency-based redemption, subject to director responsibility and minority protections, can offer equivalent creditor safety with lower transaction costs. While Lithuania's model provides certainty, it is less flexible and thus less attractive to the private companies that would otherwise benefit most from redeemable shares.

CONCLUSIONS

1. The research has confirmed that the evolution of European share class regulation is not a linear process of convergence but is defined by a persistent tension between global regulatory competition and national path dependency, resulting in hybrid legal models. The analysis demonstrates that while pressure from flexible jurisdictions like Delaware compels European nations to liberalize, the reforms are filtered through distinct legal traditions. For instance, the United Kingdom's response to competitive pressures, such as in its recent Listing Rules review, relies on market-led adjustments and private ordering, which is characteristic of its common law path. In contrast, civil law jurisdictions like Germany and France, while also legalizing dual-class shares, have done so by creating prescriptive, rule-based legislative frameworks that reflect their tradition of state-led regulation.

2. The thesis demonstrates that the legalization of shares with enhanced voting rights in Europe should not be seen as deregulation. Instead, this process marks the development of a new regulatory model based on structured permission. Comparative analysis of recent reforms in major jurisdictions shows that the flexibility to introduce multiple voting share structures is consistently matched by legislators imposing sets of mandatory safeguards. For example, the adoption of a 10:1 maximum voting ratio in countries such as Germany and Italy establishes a widely recognized threshold for limiting the gap between control rights and economic interests. The research highlights required time-based sunset provisions in France and Germany, as well as transfer restrictions that limit long-term concentration of control, ensuring that founder influence does not become permanent. In addition, statutory rules often restrict enhanced voting rights for crucial decisions, including auditor appointments and related-party transactions, by reinstating the one-share-one-vote principle. Taken together, these safeguards show that Europe has not entered a deregulatory race, but has instead formed a sophisticated regulatory balance where flexibility is integrated with strong accountability measures.

3. The research confirms that competition for venture capital investment is a key factor shaping reforms in preference share regulation. Comparative analysis reveals a clear contrast between the enabling, contract-based systems of the United Kingdom and the Netherlands, and the more restrictive *numerus clausus* framework adopted by Lithuania in 2004. The thesis shows that Lithuania's formalistic regime placed the country at a competitive disadvantage, as it prevented the development of important financing instruments like participating and convertible preference shares, which are essential to venture capital investors. Lithuania's 2023 legislative changes, which reinstated contractual freedom, stand as direct evidence of competitive forces at work. This progression demonstrates that a jurisdiction's ability to attract sophisticated investment

depends on its willingness to move away from rigid legal formalism toward a framework that allows greater flexibility.

4. The regulation of redeemable shares offers one of the clearest insights into the changing philosophy of creditor protection, since redemption involves a direct return of capital to shareholders and challenges the traditional EU capital maintenance doctrine. The analysis shows that this doctrine is not applied universally, as EU rules codify it specifically for public companies while the regulation of private companies is intentionally left to national lawmakers. This divergence has made it possible for some jurisdictions to design alternative models based on functional solvency. The Netherlands and Belgium provide examples of this shift by replacing rigid capital maintenance rules for private companies with solvency and liquidity tests that govern distributions such as share redemptions. These dynamic systems stand in contrast to the uniform and formalistic model that Lithuania plans to introduce. By applying a rigid, reserve-based framework with compulsory cancellation of redeemed shares to private companies, Lithuania risks creating a competitive disadvantage because this model imposes additional procedural costs and restricts profits that are essential for high-growth businesses. The comparative evidence confirms that traditional capital protection mechanisms are not indispensable for private companies and that a system focused on the actual capacity of a company to meet its liabilities provides a more effective balance between corporate flexibility and creditor protection.

RECOMMENDATIONS

Based on the conclusions of this research, which has identified the key trends and regulatory tensions in European share class regulation, the following recommendations are:

1. It is advisable for European jurisdictions to adopt a principled approach of structured liberalisation when reforming company law, relying on a comprehensive set of safeguards to reconcile flexibility with investor protection. The evidence indicates that the most effective reforms result from carefully integrating new, flexible instruments into established national frameworks. This is clearly reflected in the regulation of shares with enhanced voting rights. Rather than simply authorising such structures, legislators should establish a coherent framework that ensures legal certainty for both founders and minority shareholders. Such a framework should incorporate a defined maximum voting ratio to limit the divergence between control and cash-flow rights, the compulsory inclusion of sunset provisions to regulate the duration of enhanced control, and statutory restrictions preventing the use of multiple-vote shares for critical decisions where conflicts of interest are most likely to arise. Implementing this type of rule-based, comprehensive reform offers a balanced method of legal modernisation, one that encourages investment while safeguarding essential principles of corporate governance.

2. It is recommended that national legislators undertake active reform of the rules governing preference shares in order to provide companies with greater contractual freedom and to move away from restrictive statutory menu models. The analysis shows a clear shift towards enabling more sophisticated approaches to corporate finance, driven in part by the requirements of venture capital and private equity investors who rely on customised financial instruments. Jurisdictions that wish to support innovation and attract high-growth enterprises should therefore make sure that their company law expressly allows for the creation of preference shares with a broad range of tailored entitlements. These entitlements may include flexible dividend arrangements but also the capacity to provide for liquidation preferences and participation rights. The removal of unnecessary restrictions and the adoption of a permissive, contractarian framework represent a necessary policy choice for any country aiming to remain competitive in today's global economy.

3. It is recommended that jurisdictions differentiate their regulatory approach to redeemable shares for private and public companies, adopting more flexible, solvency-based frameworks for private undertakings. The research proves that the traditional, formalistic capital maintenance doctrine, while appropriate for public companies, is not essential for the effective protection of creditors in private companies and may create a competitive disadvantage. Instead of a uniform regime, legislators should implement functional, forward-looking safeguards for

private companies, such as the solvency and liquidity tests seen in the Netherlands and Belgium. This approach shifts the focus from preserving a static capital figure to ensuring a company's substantive capacity to meet its liabilities. Such a reform provides private undertakings with critical flexibility for capital management and investor exits without compromising creditor security, thereby striking a more efficient and modern balance between corporate autonomy and protection. This principle is particularly relevant to the forthcoming framework for redeemable shares in Lithuania. The current proposal to apply a uniform set of formalistic rules to private and public companies is a clear instance where a more nuanced approach is required to remain competitive. Specifically, it is proposed that the draft law be amended to exempt private companies (UAB) from the mandatory capital redemption reserve requirement. Instead, a redemption should be permitted subject to a director-certified solvency and liquidity test, confirming the company's ability to meet its liabilities for at least 12 months following the payment. This change would align Lithuania with more competitive European frameworks and grant its high-growth companies critical financial flexibility without materially weakening creditor protection.

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ABSTRACT

The master thesis examines the dynamic evolution of European share class regulation and its impact on corporate finance and governance. The paper begins with an exploration of the central tension driving legal reform: the intense global competition for capital pressuring nations to liberalize, constrained by historically rooted legal traditions and investor protection concerns. It highlights that this conflict results not in a uniform legal standard, but in a fragmented landscape of hybrid regulatory models. The author examines how different jurisdictions navigate this challenge and emphasizes that the most competitive legal frameworks are those that successfully balance the demand for corporate flexibility with the need for robust, clearly defined safeguards.

Further research provides a detailed analysis of the emerging regulatory frameworks for distinct share classes. The paper proposes that the legalization of dual-class shares is not deregulation, but a new model of “structured permission,” where founder control is permitted in exchange for mandatory safeguards like voting caps and sunset provisions. The author also explores the liberalization of preference share regulation, arguing that a jurisdiction’s ability to attract venture capital is directly linked to its willingness to abandon rigid statutory menus in favour of greater contractual freedom. Moreover, the paper critically evaluates the traditional doctrine of capital maintenance, underscoring the need for more flexible, solvency-based tests for private companies issuing redeemable shares, arguing that such functional approaches offer a superior balance of corporate autonomy and creditor security.

Keywords: share classes, regulatory competition, path dependency, dual-class shares, capital maintenance.

SUMMARY

This thesis, “Evolution and Contemporary Trends in Share Class Regulation,” is devoted to the analysis of the forces shaping modern European company law, focusing on the conflicting pressures of global regulatory competition and national legal traditions. The research reveals that this tension does not lead to convergence but instead creates unique hybrid legal models. It argues that the recent legalization of dual-class shares represents a new "structured permission" framework, where flexibility is exchanged for mandatory investor safeguards. Furthermore, the thesis examines the regulation of redeemable shares, advocating that modern, solvency-based tests provide a more efficient balance between corporate autonomy and creditor protection than traditional capital maintenance rules, particularly for private companies.

The research pursues the following objectives: 1) to establish the theoretical foundations of share class regulation by examining core legal concepts, contrasting regulatory models, and analysing the roles of regulatory competition and path dependency; 2) to identify and analyse the key international trends shaping the regulation of share classes with enhanced voting rights, focusing on the emergence of new protective mechanisms; 3) to determine how the rules governing preference shares in the United Kingdom, the Netherlands, and Lithuania have evolved towards greater contractual freedom under competitive pressure; 4) to evaluate how redeemable share regulation in EU and national law reflects the shifting balance between corporate flexibility and the doctrine of capital maintenance.

The first part of the thesis establishes the theoretical foundations for the research. It explains key legal concepts and introduces the analytical framework based on the theories of regulatory competition and path dependency. This section also provides a systematic typology of fundamental share classes, defining the economic and legal characteristics of ordinary, preference, and redeemable shares, as well as instruments that deviate from the one-share-one-vote principle. The second, analytical part of the research focuses on the contemporary regulatory trends for each of these classes. It includes a detailed comparative analysis of the regulation of shares with enhanced voting rights across Europe, identifying the rise of a “structured permission” model with mandatory safeguards like voting caps and sunset provisions. It then examines the liberalization of preference share rules in the UK, the Netherlands, and Lithuania, linking this evolution to the competition for venture capital. The structure concludes with an analysis of redeemable share regulation, contrasting the EU's formal capital maintenance doctrine with more flexible, solvency-based models emerging for private companies at the national level.