

[Home](#) > [European Business Organization Law Review](#) > [Article](#)

# Specific Investments, Opportunism and Corporate Contracts: A Theory of Tag-along and Drag-along Clauses

Articles | Published: 28 February 2015

Volume 11, pages 423–458 (2010) [Cite this article](#)

 [Save article](#)

[View saved research](#) >




[European Business Organization](#)

[Law Review](#)

[Aims and scope](#) →

[Submit manuscript](#) →


[Ma Isabel Sáez Lacave](#) <sup>1</sup> & [Nuria Bermejo Gutierrez](#)<sup>1</sup>

 582 Accesses  11 Citations  8 Altmetric  1 Mention [Explore all metrics](#) →

## Abstract

*This paper is designed to analyse the effectiveness of tag-along and drag-along arrangements. These are of widespread use in corporate reality, in particular among private companies. And yet, despite their recurrence in normal practice, they have not to date attracted the interest of the legal literature. The paper intends to confirm the validity of three essential intuitions about these arrangements that redefine the ordinary understanding of them. The first is that they constitute ‘anti-opportunism’ mechanisms inasmuch as they are arrangements in principle designed to respond to ex post conflicts of interest*

between liquidity and stability. They are, then, contractual tools that aim to protect one shareholder from opportunistic behaviour on the part of another in companies where both have made heavy specific investments. These clauses are particularly pertinent in settings such as joint ventures or venture capital companies, which tend to involve such investments. The second intuition is that these arrangements constitute self-defence tools that are, additionally, relatively self-enforceable. Specifically, self-defence adopts the form of a put option in tag-along arrangements or a call option in drag-along arrangements, to the benefit of shareholders exposed to expropriation risk. These tools are relatively self-enforceable because their implementation entails no third-party involvement. The third intuition is that their typical location is that of shareholders' agreements and not bylaws, since they define inter-shareholder relations (involving all or some of them) rather than corporate structure or machinery.

 This is a preview of subscription content, [log in via an institution](#)  to check access.

### Access this article

[Log in via an institution](#) →

### Subscribe and save

Springer+

from €37.37 /Month

- Starting from 10 chapters or articles per month
- Access and download chapters and articles from more than 300k books and 2,500 journals
- Cancel anytime

[View plans](#) →

### Buy Now

[Buy article PDF 39,95 €](#)

[Institutional subscriptions](#) →

## Similar content being viewed by others



**Shareholder Conflicts in Close Corporations between Theory and Practice: Evidence from Italian Private Limited Liabili...**

Article | 19 November 2019



**Marketing When Insiders are Locked in: An Abstract**

Chapter | © 2020



**The Corporate Design of Investments in Startups: A European Experience**

Article | Open access  
19 December 2022

## Explore related subjects

Discover the latest articles, books and news in related subjects, suggested using machine learning.

[Business Law](#)

[Common Contract Law](#)

[Corporate Crime](#)

[Organized Crime](#)

[Public-Private Partnership](#)

[Self incompatibility](#)

## References

Aghion, P., P. Bolton and J. Tirole, 'Exit Options in Corporate Finance: Liquidity versus Incentives', 8 *Review of Finance* (2004) pp. 327–353.

Aghion, P., M. Dewatripont and P. Rey, 'Renegotiation Design with Unverifiable Information', 62 *Econometrica* (1994) pp. 257–282.

Allen, J.W., and G.M. Phillips, 'Corporate Equity Ownership, Strategic Alliances,

and Product Market Relationships', 55 *The Journal of Finance* (2000) pp. 2791-2815.

Álvarez Vega, J.M., 'La sociedad conjunta', in J. M<sup>a</sup>. Álvarez Arjona and A. Carrasco Perera, eds., *Régimen jurídico de las adquisiciones de empresas* (Pamplona, Aranzadi 2001) pp. 309 et seq.

Amihud, Y., M. Kahan and R.K. Sundaram, 'The Foundations of Freezeout Laws in Takeovers', 59 *Journal of Finance* (2004) pp. 1325-1344.

Armour, J., H. Hansmann and R. Kraakman, 'What Is Corporate Law?', in R. Kraakman, J. Armour, P. Davis, L. Enriques, G. Hertig, K. Hopt, H. Kanda and E. Rock, *The Anatomy of Corporate Law. A Comparative and Functional Approach*, 2nd edn. (Oxford University Press 2009).

Bebchuk, L.A., 'Takeover Bids below the Expected Value of Minority Shares', 24 *Journal of Financial and Quantitative Analysis* (1989) pp. 171-184.

Bebchuk, L.A., 'Efficient and Inefficient Sales of Corporate Control', 109 *Quarterly Journal of Economics* (1994) pp. 957-993.

Becker, G., 'A Theory of Marriage: Part I', 81 *Journal of Political Economy* (1973) pp. 813-846.

Becker, G., 'A Theory of Marriage: Part II', 82 *Journal of Political Economy* (1974) pp. 11-26.

Black, B.S., and R.J. Gilson, 'Venture Capital and the Structure of Capital Markets: Banks versus Stock Markets', 47 *Journal of Financial Economics* (1998) pp. 243-277.

- Bresnahan, T.F., and S.C. Salop, 'Quantifying the Competitive Effect of Production Joint Ventures', 4 *International Journal of Industrial Organization* (1986) pp. 155-175.
- Broughman, B., and J. Fried, 'Renegotiation of Cash Flow Rights in the Sale of VC-Backed Firms', 95 *Journal of Financial Economics* (2010) pp. 384-399.
- Bukart, M., D. Gromb and F. Panunzi, 'Why Higher Takeover Premia Protect Minority Shareholders', 106 *Journal of Political Economy* (1988) pp. 172-204.
- Cadman, J., *Shareholders' Agreements*, 4th edn. (London, Thomson 2004).
- Calabresi, G., and A.D. Melamed, 'Property Rules, Liability Rules, and Inalienability: One View of the Cathedral', 85 *Harvard Law Review* (1972) pp. 1089 et seq.
- Chemlab, G., M.A. Habib and A. Ljungqvist, 'An Analysis of Shareholder Agreements', 5 *Journal of the European Economic Association* (2007) pp. 93-121.
- Chung, T-Y., 'Incomplete Contracts, Specific Investments, and Risk Sharing', 58 *Review of Economic Studies* (1991) pp. 1031-1042.
- Cumming, D.J., 'Contracts and Exit in Venture Capital Finance', 21 *Review of Financial Studies* (2008) pp. 1947-1982.
- Cumming, D.J., and S. Johan, 'Preplanned Exit Strategies in Venture Capital', 52 *European Economic Review* (2008) pp. 1209-1241.
- Dyck, A., and L. Zingales, 'Private Benefits of Control: An International Comparison', 59 *Journal of Finance* (2004) pp. 537-600.

Easterbrook, F.H., and D.R. Fischel, *The Economic Structure of Corporate Law* (London/Cambridge, Harvard University Press 1991).

Embid Irujo, J.M., and F. Martínez Sanz, 'Libertad de configuración estatutaria en el Derecho español de sociedades de capital', 7 *RdS* (1996) pp. 11-30.

Epstein, R.A., *Simple Rules for a Complex World* (Cambridge-London, Harvard University Press 1995).

Feen, G.W., N. Liang and S. Prowse, 'The Private Equity Market: An Overview', 6 *Financial Markets, Institutions and Instruments* (1997) pp. 1-105.

Fernández de la Gándara, L., entry 'Pacto parasocial', in *Enciclopedia Jurídica Básica*, t. III (Madrid, Civitas 1995) pp. 4712 et seq.

García de Enterría, J., *La opa obligatoria* (Madrid, Civitas 1996).

P. Gompers, 'Optimal Investment, Monitoring, and the Staging of Venture Capital', 50 *Journal of Finance* (1995) pp. 1461-1489.

Gompers, P., and J. Lerner, 'The Use of Covenants: An Empirical Analysis of Venture Shareholdership Agreements', 39 *Journal of Law & Economics* (1996) pp. 463-498.

Gompers, P., and J. Lerner, *The Venture Capital Cycle*, 2nd edn. (Cambridge (Mass) and London, MIT Press 2004).

Grossmann, S.J., and O.D. Hart, 'Takeover Bids, the Free Rider Problem and the Theory of the Corporation', 11 *Bell Journal of Economics* (1980) pp. 42-64.

Grossmann, S.J., and O.D. Hart, 'The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration', 94 *Journal of Political Economy* (1986) pp. 691-719.

Hart, O., and J. Moore, 'Incomplete Contracts and Renegotiation', 56 *Econometrica* (1988) pp. 755-785.

Hart, O., and J. Moore, 'Property Rights and the Nature of the Firm', 98 *Journal of Political Economy* (1990) pp. 1119-1158.

Hellmann, T., 'The Allocation of Control Rights in Venture Capital Contracts', 29 *Rand Journal of Economics* (1998) pp. 57-76.

Hennart, J.F., 'A Transaction Costs Theory of Equity Joint Ventures', 9 *Strategic Management Journal* (1988) pp. 361-374.

Johnson, S., R. La Porta, F. López de Silanes and A. Schleifer, 'Tunneling', 90 *American Economic Review* (2000) pp. 22-27.

Kaplan, S., F. Martel and P. Strömberg, 'How Do Legal Differences and Experience Affect Financial Contracts', 16 *Journal of Financial Intermediation* (2007) pp. 273-311.

Kaplan, S., and P. Strömberg, 'Financial Contracting Meets the Real World: An Empirical Analysis of Venture Capital Contracts', 70 *The Review of Economic Studies* (2003) pp. 281-316.

Kent, D.H., 'Joint Ventures vs. Non-Joint Ventures: An Empirical Investigation', 12 *Strategic Management Journal* (1991) pp. 387-393.

Kershaw, D., and W. Witz, 'Protecting the Various Interests in the Joint Venture', in E. Micheler and D.D. Prentice, *Joint Ventures in English and German Law* (Oxford/Portland, Hart Publishing Ltd. 2000) pp. 42 et seq.

Klein, B., entry 'Hold-up', in P. Newmann, ed., *New Palgrave of Law and Economics*, Vol. II (London, Peter Newman 1998) pp. 241 et seq.

Klein, B., R. Crawford and A. Alchian, 'Vertical Integration, Appropriable Rents and the Competitive Contracting Process', 21 *Journal of Law and Economics* (1978) pp. 297-326.

Klein, B., and K.B. Leffel, 'The Role of Market Forces in Assuring Contractual Performance', 89 *Journal of Political Economy* (1981) pp. 615-641.

La Porta, R., F. López de Silanes, A. Schleifer and R.W. Vishny, 'Legal Determinants of External Finance', 53 *Journal of Finance* (1993) pp. 1131 et seq.

La Porta, R., F. López de Silanes, A. Schleifer and R.W. Vishny, 'Investors Protection and Corporate Governance', 58 *Journal of Financial Economics* (2000) p. 3 et seq.

Lerner, J., 'Venture Capitalists and the Oversight of Private Firms', 50 *Journal of Finance* (1995) pp. 301-318.

Lerner, J., 'The Syndication of Venture Capital Investments', 23 *Financial Management* (1994) pp. 16-27.

Mariti, P., and R.H. Smiley, 'Co-operative Agreements and the Organization of Industry', in P.J. Buckley and J. Michie, eds., *Firms, Organizations and Contracts* (Oxford, Oxford University Press 1996) pp. 276 et seq.

- McConnell, J.J., and T.J. Nantell, 'Corporate Combinations and Common Stock Returns: The Case of Joint Ventures', 40 *Journal of Finance* (1985) pp. 519-536.
- Milgron, P., and J. Roberts, *Economía, organización y gestión de la empresa* (Barcelona, Ariel 1993).
- Mohanram, P., and A. Nanda, *When Do Joint Ventures Create Value?*, Working Paper (1998), available at: <<http://www.ssrn.com>>.
- Nöldeke, G., and K.M. Schmidt, 'Option Contracts and Renegotiation. A Solution to the Hold-Up Problem', 26 *RAND Journal of Economics* (1995) pp. 163-169.
- Nöldeke, G., and K.M. Schmidt, 'Sequential Investment and Options to Own', 29 *RAND Journal of Economics* (1998) pp. 633-653.
- Paz-Ares, C., 'El *enforcement* de los pactos parasociales', 5 *Actualidad Jurídica Uría* (2003) pp. 19 et seq.
- Paz-Ares, C., 'La sociedad general: caracterización del contrato de sociedad', in R. Uría and A. Menéndez, eds., *Curso de Derecho mercantil*, t. I, 2nd edn. (Madrid, Civitas 2006) pp. 469 et seq.
- Paz-Ares, C., 'Sociedad colectiva: cambio de socios', in R. Uría and A. Menéndez, eds., *Curso de Derecho Mercantil*, t. II, 2nd edn. (Madrid, Civitas 2006) pp. 685 et seq.
- Paz-Ares, C., 'Principio de eficiencia y derecho privado', in *Estudios homenaje al profesor Manuel Broseta Pont*, t. III (Valencia, Tirant lo Blanch 1995) pp. 2843 et seq.

Perdices, A., “‘Llévame contigo” (Las cláusulas de venta conjunta de acciones y de participaciones)’, published at:

<<http://www.uam.es/centros/derecho/privado/mercanti/investigacion/aph-%20llevame.pdf>>.

Perdices, A., *Cláusulas restrictivas de la transmisión de acciones y de participaciones* (Madrid, Civitas 1997).

Robinson, D.T., and T.E. Stuart, *Financial Contracting in Biotech Strategic Alliances*, Working Paper (2002), available at: <<http://www.ssrn.com>>.

Rock, E.B., and M.L. Watcher, ‘Waiting for the Omelette to Set. Match Specific Assets and Minority Oppression’, in R.K. Morck, ed., *Concentrated Corporate Ownership* (Chicago, The University of Chicago Press 2000) pp. 201 et seq.

Sáez Lacave, M.I., *Los pactos parasociales de todos los socios en derecho español. Una cuestión en manos de los jueces*, 2009, published at: <<http://www.indret.com>>.

Sahlman, W., ‘The Structure and Governance of Venture Capital Organizations’, 27 *Journal of Financial Economics* (1990) pp. 473–521.

Satrústegui Menchaca, B., ‘Adquisiciones especiales (II)’, in J.M<sup>a</sup>. Álvarez Arjona and A. Carrasco Perera, eds., *Régimen jurídico de las adquisiciones de empresas* (Pamplona, Aranzadi 2001) pp. 469 et seq.

Schmidt, K.M., entry ‘Contracts Renegotiation and Option Contracts’, in P. Newmann, ed., *New Palgrave of Law and Economics*, Vol. I (London, Peter Newman 1998) pp. 432–436.

Schwartz, A., entry 'Incomplete Contracts', in P. Newmann, ed., *New Palgrave of Law & Economics*, Vol. II (London, Peter Newman 1998) pp. 277-283.

Scott, R.E., and G.G. Triantis, 'Embedded Options and the Case against Compensation in Contract Law', 104 *Columbia Law Review* (2004) pp. 1428 et seq.

Williamson, O., *The Economic Institutions of Capitalism* (New York, Free Press 1995).

Yarrow, G.K., 'Shareholders Protection, Compulsory Acquisition and the Efficiency of the Takeover Process', 34 *Journal of Industrial Economics* (1985) pp. 3-16.

## Author information

---

### Authors and Affiliations

**School of Law, Autonomous University of Madrid, Germany**

Ma Isabel Sáez Lacave & Nuria Bermejo Gutierrez

### Corresponding author

Correspondence to [Ma Isabel Sáez Lacave](#).

## Additional information

---

The authors wish to thank Cándido Paz-Ares, Jesús Alfaro, Fernando Gómez and Stefano Lombardo for their helpful comments. We also thank the audience of the EALE 2006. This research is supported by a research grant from the Ministerio de Ciencia e Innovación (DER 2008-04779/JURI).

## Rights and permissions

---

## About this article

---

### Cite this article

Lacave, M.I.S., Gutierrez, N.B. Specific Investments, Opportunism and Corporate Contracts: A Theory of Tag-along and Drag-along Clauses. *Eur Bus Org Law Rev* **11**, 423–458 (2010).

<https://doi.org/10.1017/S1566752910300061>

Published

28 February 2015

DOI

<https://doi.org/10.1017/S1566752910300061>

Issue date

September 2010

### Keywords

[tag-along](#)

[drag-along](#)

[specific investments](#)

[opportunistic behaviour](#)

[shareholders' agreements](#)

## Search

Search by keyword or author



## Navigation

Find a journal

Publish with us

---

