Twelfth International Scientific Conference
SOCIAL CHANGES IN THE GLOBAL WORLD
Faculty of Law, Goce Delcev - Stip

UDK: 347.44:347.72.031(497.115)

CONDITIONAL SHARE OWNERSHIP BY SHAREHOLDER-MANAGER: LEGAL ANALYSIS OF THE INCORPORATION AGREEMENT AND THE COMPANY CHARTER UNDER KOSOVO'S LEGAL FRAMEWORK

Luljeta PLAKOLLI-KASUMI
Professor Assistant
Faculty of Law of the University of Prishtina

Abstract:
The conditional awarding of shares to shareholder-manager is a mechanism that can be found in business agreements, particularly in startups, private equity transactions and corporate governance arrangements. This paper examines the legal validity and enforceability of agreements under the Kosovo legal framework that provides a shareholder-manager to own shares upon the condition of the fulfilment of certain business targets. While these mechanisms are meant to align managerial performance with shareholder interests, their legality under the current legislative framework in Kosovo is questionable.

This research discusses the use of the corporate charter and the incorporation agreement in setting out the terms of share ownership. It explores the legality of having such provisions in the company's constituting documents and determines how judicial bodies, such as courts and arbitration tribunals, may interpret these provisions. Besides, this paper explores the primary risks and advantages for companies and shareholder-managers, including protection against poor performance, the threat of shareholder disagreements, and the enforceability of vesting and cliff-period structures.

The paper presents a comparative analysis of corporate governance norms in the European Union (EU) and private equity practices in the United States (U.S.), highlighting best practices for the design of conditional share ownership agreements. It also discusses the role of commercial courts and arbitration in resolving disputes arising from such agreements, assessing whether the legal framework in Kosovo provides sufficient guarantees for contractual certainty and business stability. The research concludes with practical suggestions for businesses, investors and attorneys, recommending legislative clarifications and contract drafting techniques to make shareholder agreements both legally effective and enforceable. Consolidating the legal framework on conditional share ownership is bound to foster a more investor-friendly and stable business environment in Kosovo, thereby stimulating heightened corporate transparency, accountability and long-term sustainable value creation.

Keywords: *business law, shareholder, manager, share-based compensation, vesting, EU, Kosovo.*

I. Introduction

1.1 Background and Research Questions

In contemporary corporate governance, the convergence of managerial and ownership arrangements has created intricate issues of law. This is a function of the inherent principal-agent relationships, where managers as agents tend to possess private information and autonomy, potentially in conflict with the interests of shareholders (Forges, Koessler & Salamanca, 2024, pp.1-3, 6). The theory that has been well developed in economic models for mechanism design and incentive compatibility increasingly becomes applicable as firms more and more identify equity ownership with performance, without a corresponding legal framework for facilitating such mechanisms.

Kosovo's Law on Business Organisations (LBO) represents the statutory foundation to back the structuring of corporations, but it is practically silent regarding the enforceability of conditional or performance-dependent share ownership. The LBO differentiates between the charter and the incorporation agreement without, however, showing a clear division of the conditions relevant in these legal documents. Such uncertainty exposes companies and stakeholders trying to establish elaborate ownership structures to potential legal risks. In the absence of this clarity in law, shareholders tend to look up to the Law on Obligational Relationships (LOR) for the understanding of contractual freedom, principles of good faith and conditional obligations.

This issue has considerable relevance given that Kosovo's efforts towards economic and legal integration with the European Union (EU) continue to gather momentum. Aligning the remuneration of company directors with their performance is a priority of the European Commission's extensive attempt to encourage the sustainable long-term viability of businesses throughout the European Union (Kotnik et al., 2017, 1). The Shareholder Rights Directive II (Directive (EU) 2017/828, Articles 9a and 9b) establishes binding obligations for listed companies to develop transparent remuneration policies aligned with long-term shareholder value. These standards have been implemented in domestic law by numerous nations, including Germany and France. For instance, the Stock Corporation Act (Aktiengesetz-AktG, Sections 87(1), 87(2), 120a and 160) and Corporate Governance Code of Germany (Deutcher Corporate Governance Kodex, Recommendations G.1, G.3, G.4 and G.10), among others, contain exhaustive rules pertaining to executive remuneration and shareholder involvement, respectively. Similarly, France's Commercial Code (Code de commerce, Articles L.22-10-8, L.22-10-26) makes disclosure of remuneration arrangements and shareholder agreements obligatory.

In contrast, Kosovo's regulatory environment falls short in providing clear-cut guidelines for the resolution of conflicts arising out of such agreements through courts and arbitration institutions. Thus, this paper will investigate the relationship between Kosovo's legal system and the corporate governance rules of the EU. This study will elucidate and provide practical guidance to such questions by examining the legal pros and cons of conditional share ownership agreements. It will analyse structuring such arrangements in a manner that would be compatible with Kosovo's existing legal order and suggest reforms to strengthen enforceability and equity. In doing so, the research aims to navigate businesses, lawyers and policymakers through the challenges of performance-based share ownership in Kosovo's business landscape.

To this end, this research paper explores the following main questions:

1. To what extent does the Kosovo Law on Business Organisations permit or limit conditional share ownership structures?
2. Can the Law on Obligational Relationships be used to promote the enforceability of performance-based ownership arrangements in shareholder agreements or statutes?
3. In what ways is Kosovo's approach different from EU corporate governance norms and best practices?
4. What modifications or clarifications can Kosovo's law introduce to mitigate uncertainty and safeguard the interests of parties to conditional ownership transactions?

By examining these questions, this paper aims to conduct a legal examination of conditional share ownership under the framework of the corporate and contract law of Kosovo, identify areas of uncertainty and suggest ways for legal improvement.

1.2 Methodology and Scope of the Study

The doctrinal legal research method is employed in this paper, and consideration is given to the examination of primary and secondary sources of law relevant to corporate governance and contractual freedom in the context of Kosovo. The Law No. 06/l-016 on Business Organisations and Law No. 04/L-077 on Obligational Relationships are the key laws that regulate the corporate establishment and contractual freedom in Kosovo. Secondary sources include academic literature, comparative legal views and the regulatory acts of the EU.

The subject matter of this research is the legal framework within the Republic of Kosovo and comparative analyses are only drawn from individual member states within the EU. This research highlights the harmonisation of Kosovo's law with the European legal norms, illustrating Kosovo's strategic interest in becoming an EU member state and in achieving legal harmonisation. The analysis is not grounded in empirical evidence or real-world case studies due to the absence of publicly available legal precedents on conditional share ownership in Kosovo. Instead, it seeks to provide a theoretical and normative exploration of how such agreements may be structured and interpreted within Kosovo's existing legal framework. It also seeks to identify practical challenges and areas requiring legislative or judicial clarification to enhance legal certainty and strengthen investor confidence.

II. Kosovo's Legislative Framework

2.1 Law on Business Organisations

The primary law regulating corporate entities in the Republic of Kosovo is Law on Business Organisations (Law No. 06/L-016). This law prescribes the rules for the founding, internal structure and termination of different forms of business organisations, including Sole Proprietorships, Partnerships, Limited Liability Companies (LLCs) and Joint Stock Companies (JSCs). For the purposes of this paper, conditional share ownership and the role of managers and shareholders, LLCs and JSCs are especially relevant due to their ability to support sophisticated governance and ownership arrangements.

One of the defining features of the LBO is its distinction between the statutory framework (charter) and the incorporation agreement. As provided in articles 5 and 9 of the LBO, the statute governs the organisational rules of the entity, including voting rights, governance arrangements, quorum requirements and classes of stock, while the incorporation agreement governs the contractual relationship among shareholders. The incorporation agreement covers capital contributions, profit distribution and transfer restrictions. This dual framework makes a convenient legal distinction, whereas the statute is publicly registered and designed to have *erga omnes* effect (against third parties), and the incorporation agreement is a private contract binding only between the parties. The incorporation agreement can, in theory, provide for non-standard ownership arrangements, including conditional share ownership, performance-linked equity and clawback provisions, all devices widely employed in shareholder-manager compensation schemes.

Despite its structural flexibility, the LBO does not say whether shareholding may be made conditional on factors like employment length, performance milestones or responsibilities of management. This is a serious legal uncertainty. For example, if a shareholder is granted shares "subject to continued service as CEO for three years", it is unclear under Kosovo law whether such a condition crates suspensive ownership (where there is ownership only upon the fulfilment of the condition), constitutes a restriction on rights created contractually as contrasted with ownership itself, or may be considered unenforceable by virtue of the absence of express normative recognition. This uncertainty is further complicated by the principle of shareholder parity established within the LBO. Article 6 of the LBO indicates that all shareholders are entitled to equivalent rights commensurate with their shareholdings, except when otherwise stipulated. Although this does leave some room for contractual departure, it is doctrinally questionable whether conditions impacting just one shareholder's ownership would be enforceable without registering in the statute. This is particularly troublesome in JSCs, where public interest and formal governance requirements are more strictly enforced.

To some extent, the LBO does allow for limited or qualified rights, most significantly in LLCs. Articles 93 and 94 of the LBO permit conditions or approval requirements to be placed on the transfer of ownership interests, suggesting that shares can be made subject to specific conditions or approval requirements, as long as these are properly defined in the statute or IA.

The flexibility provided in the governance of LLCs enables members to define their internal structure, voting requisites and member responsibilities via the operating agreement, thus providing an opening for conditional share structures. But such liberal laws do not address conditional ownership on the basis of future performance or employment directly. This situation necessitates that companies write such clauses with utmost caution to escape invalidation. The silence of the LBO in relation to conditional ownership is that companies must resort to private law principles, principally the LOR, to interpret and enforce such clauses. This reliance reinforces the legal risk and uncertainty, especially where disputes arise and courts must interpret whether conditional ownership provisions are valid, binding and enforceable within the corporate context Therefore, while the LBO is formally flexible, its generality creates practical limitations, especially in matching corporate form with modern governance needs such as incentive-based equity stakes for founder-managers or professional managers.

2.2 Law on Obligational Relationships

In the absence of detailed statutory regulations on conditional share ownership under the LBO, the Law on Obligational Relationships (Law No. 04/L-077) is the key legal instrument for determining the validity, interpretation and enforceability of performance-dependent equity-related contracts. The LOR, based on European civil law principles, regulates all contractual and obligational relationships in Kosovo and thereby offers a general and principled framework that can be used to legally constitute and interpret rights concerning conditional ownership. The fundamental basis of the LOR is the doctrine of party autonomy, enshrined in Article 2, that the parties are not precluded from determining the terms of their legal relationships unless expressly prohibited by law or contrary to public policy or morality. The provision essentially gives parties a carte blanche to negotiate and agree on bespoke or non-standard shareholding structure such as arrangements which: delay the effective transfer of shares until certain conditions are met, limit or withhold shareholders' rights (such as dividends or voting) until performance criteria are achieved, and reallocate shares in response to the occurrence of triggering events (such as resignation, termination for cause).

Those agreements are typically evidenced in incorporation agreements or shareholders' agreements, which are enforceable under the LOR subject to compliance with general contract conditions such as mutual consent (Article 14, LOR), legal capacity and lawful object. This legal leeway, nonetheless, needs to be read in conjunction with other LBO provisions, notably the equality of shareholders and the hierarchy between the statute and shareholder agreements, questions that give rise to interpretive tension, which the LOR serves to temper.

One of the most notable features of the LOR addressing equity ownership concerns its approach to conditional obligations. Articles 59 to 63 give power to the parties to make legal acts such as contracts, transfers and obligations subject to future and uncertain conditions. These conditions may be suspensive or resolutory. Suspensive conditions are circumstances under which the legal effect, i.e., ownership or right, comes into being only when the condition expressed takes place. Resolutory conditions are circumstances whereby the legal effect is immediately effective but is invalidated upon the occurrence of the condition. This model is reminiscent of typical structures for startup and executive compensation plans, including equity vesting or reverse vesting schemes. For example, a clause providing that "shares shall vest quarterly over a two-year period, subject to continued employment" is precisely in line with the definition of a suspensive condition.

Notably, Article 63 of the LOR provides additional protection to the conditional beneficiary (in this case, a shareholder-manager) by providing that if the other party impedes the fulfilment of a condition in a lack of good faith, the law will consider the condition as fulfilled. This is a provision that might safeguard managers from strategic terminations in bad faith to deprive them of vested shares, therefore increasing the fairness and determinability surrounding such contracts.

The other vital element of the LOR is its interpretive framework established under articles 85-88, which compels court to interpret contracts in line with the actual intention of the parties, the object of the agreement and the principle of good faith. These provisions are most relevant when the condition share provisions are unclear or contentious. For example, a provision that a manager "shall be entitled to equity participation upon satisfactory performance" would leave it to a court to determine what 'satisfactory' is, terms not clarified under the LBO. Under the LOR, this uncertainty would be removed by reference to the surrounding circumstances, customary practices in the industry and reasonable expectations of the parties. In addition, Article 10 mandates that parties shall exercise good faith not just in performing contractual obligations but also during the process of negotiations. Such a rule may serve as a safeguard against exploitative acts in shareholder dealings, such as altering corporate structures or creating negative performance reports to nullify equity rights.

While the LOR explicitly permits and legitimises conditional equity arrangements, its application in corporate setting is attended by jurisprudential uncertainty. The courts of Kosovo lack experience with performance-based shareholder arrangements, and there is no established body of case law explicating how LOR principles function within the corporate governance frameworks of the LBO. Moreover, since the LBO remain the *lex specialis* of corporate relations, the question arises whether contractually valid equity terms are enforceable intra-corporately, e.g., whether a shareholder's rights can be conditionally restricted without being statutory codified. This highlights the pragmatic risk that even if a clause is enforceable under the LOR, it may be deemed ineffective in the corporate context if it conflicts with the statutory regime of shareholder equality, transparency and public disclosure in JSCs.

III. Conditional Share Ownership in Practice

3.1 Definition, Advantages and Disadvantages of Conditional Shares for Shareholder-Managers

In today's private companies, share-based compensation has been utilised ever more frequently as a performance-incentivising and key employee retention tool. The change mirrors overall economic and strategic priorities, such as global competition for talent and the necessity to align individual contribution with enterprise appreciation. Increasingly, EU member states have established tax-privileged equity sharing schemes for startups and Small and Medium Sized Enterprises (SMEs) with the express purpose of strengthening entrepreneurial spirit, staff retention and performance (Carberry et al., 2023, pp. 292-293).

Where those to whom such equity is issued are also bestowed with executive and operational roles, the resulting instrument, conditional shares to shareholder-managers, marries a legal and economic form. These shares constitute more than mere ownership rights; they are operating incentives that include specific conditions (Jensen & Murphy, 1990). Managerial ownership is the proportion of the firm's stock that is owned by members of the management team who are directly engaged in making corporate decisions. When managers are owners, they exercise top-level control over policy and strategy decisions, thereby being the beneficiaries and decision-makers in the company (Agustia et al., 2013, pp.68).

Fundamentally, a conditional share is a share whose ownership or the rights attached to it, such as voting, dividends or transferability, are postponed, limited or reversible, contingent upon whether specified pre-agreed conditions are met (LexisNexis Glossary, 2025). Such conditions can be related to tenure, performance or behaviour. These shares are typically granted or promised in a contractual setting, the rationale being to align managerial conduct with shareholder value.

Other terms used for conditional shares are stock-based compensation or share-based compensation. In academic and legal practice, these terms are used employed interchangeably. The term conditional shares, seems more appropriate for Kosovo's legal framework as these shares are subject to suspensive or resolute conditions, which are contractual provisions that postpone or negate the absolute transfer of ownership rights.

Coming back to conditional shares, what separates them from standard shareholder agreements or management contracts is the immediate effect on the ownership trajectory. Rather than issuing full rights at the time of issue, the company retains legal avenues to defer, suspend or revoke rights if certain results are not met. This creates a dynamic framework of corporate involvement, where ownership is not solely a right but also an assessment of continuous contribution (Bennet et al., 2019, 2). Doctrinally, they function on two levels: they are fundamentally equity vehicles, albeit one influenced by private contractual norms. They fall between corporate law, which specifies the nature of shares, and obligation law, which stipulates how parties can organise rights concerning them.

Although conditional shares are employed mainly to link ownership to performance or ongoing services, they also contribute to how control is structured in a firm. As De la Bruslerie (2023) describes in his examination of dual-class shares, most private firms employ a special share structure to give founders or managers greater control than their ownership stake would otherwise provide. Conditional shares can accomplish the same thing, but in a more performance-based and flexible manner. Rather than relinquishing control to begin with, they enable a shareholder-manager to vest in ownership and control over time, contingent upon measurable contributions to the business. This serves to link control to actual value creation and sidesteps the drawbacks of rigid, disproportionate shareholdings. Compensating managers with direct share ownership subject to conditions, as opposed to cash bonuses or options, results in long-term performance and reduces the incidence of conflicting interests (Paula, 2023). Recent empirical evidence also provides backing for the alignment of equity ownership with performance, especially when the founders or managers have large stakes. Lauterbach (2024) points out that founder-CEOs in private and public companies exhibit different behavioural tendencies, which are frequently manifested in greater risk tolerance, innovation focus and strategic control.

Yet, conditional shares are not without risk. Ambiguous conditions or vague performance criteria may trigger litigation or dispute. If not well designed, they may cause uncertainty regarding rights and obligations, particularly if the deal is not documented in the company's charter. In addition, concentrated manager ownership, particularly when not conditioned on ongoing performance, has been shown to harm internal control and oversight. Managerial ownership concentration is frequently associated with diluted governance structures, with a higher probability of control abuse (Ong et al., 2024, p. 12313; Benmelech et al., 2010, 1771; Misamore, 2016).

3.2 Conditional Share Ownership in the European Union

The regulation of conditional share ownership in the European Union is largely determined by the revised Shareholder Rights Directive (SRD II, Directive (EU) 2017/828). Although the Directive does not include an exact definition of 'conditional shares', it establishes a legal framework that requires transparency, accountability and involvement of shareholders in the formulation of executive remuneration, including equity-related aspects.

Article 9a of SRD II requires companies to develop a clear, consistent and understandable remuneration policy that is aligned with the long-term interest and sustainability of the firm. This entails disclosure of the proportionate ratio of fixed to variable remuneration, the performance measures and metrics behind variable compensation, the vesting and deferral periods and the situations in which clawback mechanisms can be invoked (Ferrarini &Ungureanu, 2024, pp. 43-50). Conditional share ownership, where equity rights are only provided after the satisfaction of certain performance or tenure conditions, is obviously covered by these rules. While the Directive does not specify exact conditions, it requires that such terms be disclosed, explained and made available for shareholder examination.

SRD II provides for binding or advisory shareholder votes on remuneration policies. The member states have discretion in implementation (Ferrarini & Ungureanu, 2024, p.44). This mechanism enables the shareholders to assess and determine the allocation of conditional equity awards, thus ensuring that such incentives are warranted and explicitly aligned with the company's performance. From a legal standpoint, SRD II does not establish a distinct classification of conditional shares but nevertheless mandates disclosures and procedural safeguards that in effect regulate how such investment instruments are triggered and managed (Ferarrini & Ungureanu, 2024, pp.36-46). By integrating performance-based equity into the broader corporate governance framework and stakeholder participation, the EU law ushers in a form of conditional share ownership that is contractualised and transparent. National legislation addressing corporations then implements these principles in the form of detailed mechanisms, including shareholder backing, disclosures in annual reports and corporate governance codes. This results in a harmonised, yet still regionally diverse, system of conditional equity ownership throughout the EU.

3.3 Legal Framework Governing Conditional Share in Germany and France

3.3.1 Germany

In Germany, executive compensation, as well as share-based incentives, are regulated mainly by the German Stock Corporation Act (Aktiengesetz, AktG). Under Section 87 AktG, the supervisory board is charged with setting the compensation of management board members (dual governing structure), including the Chief-Executive Officer (CEO). Such compensation may include fixed and variable elements, if they are commensurate with the responsibilities and performance of the board member as well as the financial position of the company. Although AktG does not specifically refer to share-based compensation, it allows for variable compensation schemes, which may include equity-based incentives, to align the interests of executives with those of shareholders. The release of shares under compensation plans requires the existence of conditional capital. Pursuant to Section 192(2) No. 3 AktG, a company can decide to conditionally increase its share capital to issue shares to members of the management board and employees. This needs a decision of the general meeting, determining the terms and conditions on which the shares are to be issued, such as performance conditions and vesting periods. These resolutions have to be registered with the commercial register in order to take effect. In granting new shares for compensation reasons, existing shareholders generally have subscription rights (Bezugsrechte). Section 186(3) and Section 203(2) AktG, provide for the exclusion of such rights in certain circumstances, e.g., if the capital increase does not exceed 10% of the current share capital and the issue price is not substantially lower than the market price. This enables the introduction of share-based compensation schemes without disproportionately diluting the interests of existing shareholders. The German Commercial Code (Section 285 and Section 314, HGB) and the German Corporate Governance Code (Deutscher Corporate Governance Kodex (DCGK) provide for extensive disclosure of executive compensation. The corporations are required to disclose the compensation structure and the amount of remuneration, including equity-based elements, in the annual financial reports. DCGK suggests that variable remunerations should be determined according to multi-year evaluations and aligned with the sustainable development of the company, fostering openness and responsibility for executive compensation. The introduction of share-based compensation plans necessitates the amendment of the company's articles of association to permit the issuance of shares for this purpose. Such an amendment has to be adopted by the general meeting by a qualified majority. The articles should specify the extent of the authorization, such as the maximum number of shares to be issued, the eligibility and the performance conditions. This legal setup gives the shareholders a voice regarding important decisions that concern the capital structure of the company (Beck et al., 2020, 791-792).

3.3.2 France

In France, the governance of conditional share ownership for managers is informed by a mix of statutory law, corporate governance codes and EU legislation, most recently the Shareholder Rights Directive II. French law had already established detailed provisions that regulated the granting of performance-based equity pay, particularly in listed firms (Bessonnat et al. 2018, pp. 74-75). The core legal basis for awarding performance shares is found in Articles L225-197-1 to L225-197-5 of the French Commercial Code. As articulated in these articles, the Code embodies a coherent corpus of law that addresses the grant of free shares to managers and employers of the corporation, pursuant to performance, service duration and retention criteria. The articles constitute the statutory foundation for conditional equity ownership within a French corporate law context and represent an essential component in harmonising executive incentive with secure corporate governance practice. Article L224-197-1 empowers the extraordinary general meeting of shareholders to sanction the award of free shares, either new issues or drawn from existing shares to employees or to certain categories of employees. The resolution shall be upon e report presented by the board and auditors, thereby guaranteeing procedural protection. Two-time limits are stipulated by the article as mandatory: a minimum of two-year period of acquisition, during which the shares are not vested and are conditional; and a two-year minimum holding period post-vesting, where the beneficiaries are obligated to retain the shares.

The Code further grants the board of directors (or executive board) the authority to set eligibility criteria and performance conditions for the allotment of shares. Notably, the maximum share capital that can be allocated under this procedure is 10% and the period of authorisation for such allotments should not exceed 38 months. Article L225-197-3 highlights that rights under free shares are non-transferable during the acquisition period. Nonetheless, in case a beneficiary dies before vesting, the inheritance will be claimable by the heirs within six months, hence offering ease of succession rights. Article L225-197-4 prescribes strict disclosure requirements. The corporation must submit every year to the ordinary general assembly a special report specifying the number and value of shares issued to directors, including those in related companies.

IV. Conditional shares in Kosovo: Enforceability and Legal Challenges

4.1 Case study of conditional shares in Kosovo

This case study presents an anonymised examination of a Kosovo LLC ('Company X'), established under Law No. 06/L-016 on Business Organisations, with a share capital of €100,000 between different shareholders, some of whom contributed by way of goodwill and also in cash.

[1] The examination of the governance arrangements, ownership structures and share distribution mechanisms provides important insights into the enforceability and legal ambiguities of conditional share ownership under Kosovo's context.

Pursuant to Article 8.7 of the bylaws of the company, the CEO (managing director) was granted a 10% interest in the company, contingent upon remaining employed for two years, unless terminated for cause. This was performance-based vesting provision, akin to conditional shareholding typically found in private equity or leveraged buyout deals. The firm termed this ownership as an incentive for long-term dedication to its strategic and operational advancement. Nevertheless, the act failed to provide specific directions on enforcement mechanisms, like the consequences of premature termination. It also failed to differentiate between terminations carried out for good cause and those carried out with no good cause, leaving shareholder rights in the event of breach uncertain. Following a serious internal governing crisis, the managing director was voted out of office by the shareholders for gross misconduct, which included breach of trust, financial mismanagement and failure to execute the business plan. This was presented in a resolution of the board of 28.10.2024, referencing specific failures such as concealment of accounting data, wilful underperformance, refusal to work with staff and board and failure to strategically engage with customers and projects. It is interesting that the director tried to create continuing rights to the 10% stock under the original statute, even though the revocation was "for cause".

This led to several legal and pragmatic questions:

- Is conditional share-ownership revocable retroactively in the event of non-compliance with conditions?
- Does Kosovo law provide a statutory basis to construe such clauses in the same way as European vesting schemes?
- Can the shareholders recover conditionally issued shares under civil law, or does the statute need to be amended?

There was no clawback provision or contractual mechanism for the return of the 10% equity upon dismissal. Hence, despite being removed, the ex-CEO remained a recorded shareholder, short of voluntary withdrawal or independent court action to remove him. The documents also failed to include mechanisms often found in jurisdictions that have sophisticated conditional share structures such as buy-back rights for the company in case of breach of condition, or the automatic cancellation of unvested shares.

4.2 Potential Conflicts Between the Company's Statute and Incorporation Agreement

In the framework of the anonymised case of 'Company X', several discrepancies and interpretative doubts arise if one juxtaposes the statute with the incorporation agreement. While both documents are pivotal to the company's legal personality and activity within the context of the Kosovo LBO, they may at times vary in form, emphasis or operational detail, creating practical concerns about internal governance, shareholders' interests and enforceability of executive stipulations such as conditional shareholding.

The statute is the official document submitted to the Kosovo Business Registration Agency (KBRA) and is the company's official declaration of rules. The incorporation agreement, while signed by all founding shareholders, is contractual in nature, with mutual expectations that are not entirely expressed in the statute. According to the LBO, in the event of a conflict, the statute takes precedence unless the issue is a matter of rights or obligations that are exclusively contractual (Art. 33, LBO). This distinction creates difficulty where shareholders rely on the incorporation agreement to define management terms, such as share-based incentives, without fully incorporating these aspects within the statute. For instance, in Company X, while the incorporation agreement acknowledges the appointment and expectations of the managing director, the binding terms, such as the provision for conditional

[1] Authors note: All information derived from the case study is based on confidential company documents that are not publicly available. The company and individuals have been anonymised, and the use of these materials complies with ethical research standards. The documents are in the author's possession and available for confidential review upon request.

equity at 10%, find mention only in the statute (Article 8.7) without any contractual specifics or mutual sanction under those specific provisions.

The incorporation agreement names the first managing director and stipulates his overall responsibilities (Art. 8); however, it does not include explicit terms on dismissal conditions or misconduct sanctions. The statute, however, allows for removal on good cause but does not clarify the fate of conditionally issued shares in case of termination. This variance can lead to ambiguous interpretations, especially if a removed executive challenges the forfeiture of equity rights not explicitly addressed in the incorporation agreement. Such structural uncertainty manifested itself in the dismissal of the managing director in this case. The statute specified that withdrawal within two years would invalidate 10% equity right (Art. 8.7), but since the incorporation agreement failed to reproduce or clarify the provision, the former director contested the effect of the dismissal on ownership grounds of lack of clarity and failure to specify revocation. Both the statute and the incorporation agreement omitted an integration clause that would specify which document would have priority in the event of a conflict; nor do they include a dispute resolution mechanism, i.e., arbitration or court jurisdiction clauses, that is tailored for governance of shareholder dispute.

As a result, the company was exposed to legal uncertainty in implementing the conditions of shareholding, internal conflict between the shareholders regarding the binding effect of the agreement of incorporation and reliance on overarching corporate legal doctrine that does not clearly distinguish the contingent character of equity from the absolute status of shareholders once shares have been registered. By permitting the director to stay registered in the shareholders' registry and to take part in meetings following removal, with no formal invalidation of the 10% equity or share transfer, the company stood to create corporate estoppel. This problem is compounded by the fact that, while the statute refers to conditional shares, there was no express provision in either document that would allow for a buy-back or automatic cancellation in the event of dismissal. In addition, there was no evidence to suggest that such conditionality had been recorded in the company's internal share register. Therefore, the inconsistency between the planned contractual arrangements (incorporation agreement) and the actual governance structure (statute) erodes the enforceability of internal decisions and may render subsequent litigation or restructuring more difficult.

4.3 Legal Gaps

The tensions generated by the case study and legislative integration examined in previous sections reveal a wider normative issue, which is the lack of a definite legal framework in Kosovo on conditional share ownership, particularly in privately held companies and governance structures based on performance metrics. This section respond to the four primary research questions first set out in the paper in a systematic manner and delineates the legal and practical deficiencies that undermine the enforceability and predictability of such arrangements.

The LBO does not define conditional share ownership, nor is there a prohibition thereon. Rather, the law leaves considerable contractual freedom in the determination of the rights and duties between the shareholders and executives, including in the form and transferability of the shares (e.g., articles 33 and 34 LBO). In theory, this flexibility would facilitate the insertion of performance-based or time-based vesting conditions in the corporate articles of incorporation or shareholders' agreements. In practice, however, the law does not give guidance on how and when these conditions are applicable or expire, and it does not provide for vesting forfeiture or clawback provisions. Furthermore, the law offers no accommodation for equity incentive plans, especially when coupled with board-approved Key Performance Indicators (KPIs) or employment tenure. This silence limits legal certainty with regards to conditional share schemes. In the case being examined, for instance, despite the fact that the statute contained a performance condition (2-year non-withdrawal rule), its enforceability remained questionable because there was no legal provision that governed retraction or forfeiture of shares in case of breach of such condition.

On the other hand, the Law on Obligational Relationships (LOR) renders shareholder agreements more enforceable to a certain degree. The LOR regulates contracts and mutual obligations, and it can offer a secondary legal framework to enforce conditions of ownership clauses, especially where parties have specifically consented to such terms, the condition is specified and not against public order, and there is a definitive causal link between performance and equity acquisition (Articles 59-64 LOR). Yet, using LOR in such situations is not without risk. As shown in the case study, the allotment of shares was not envisaged as a contract but as a statutory right-thus outside strict obligational relationship. There is limited jurisprudence of Kosovo courts implementing LOR principles to equity incentives and no precedents have been identified that cover performance-based share awards. Accordingly, although LOR may potentially facilitate enforceability, its operation is still uncertain and discretionary, depending to a large extent on the courts' readiness to construe corporate and obligational provisions cumulatively.

Kosovo's legal response to shareholding and corporate governance diverges from EU best practice in a number of fundamental ways. Compared to the EU's Shareholder Rights Directive II (Directive 2017/828), the Kosovo law does not mandate that corporations adopt formal compensation policies or disclose equity linked compensation based on executive performance. EU member states supplemented their commercial codes with corporate governance codes, which set out soft-law norms for conditional equity awards. Kosovo does not have any such guidance whatsoever. Moreover, EU practices provide for transparency through annual reports, shareholder voting rights on pay, and ex-ante/ex-post approval mechanisms. None of these are included in Kosovo law. EU regimes frequently incorporate safeguards such as clawback provisions and cooling-off periods in either legislative or governance regulations, but companies in Kosovo need to devise such protections on their own, without the advantages of legal mechanisms or precedents on hand for enforcement.

In order to enhance legal certainty and adhere to best practices, Kosovo should implement some reforms and introduce certain clarifications. First and foremost, it is recommended to enact a statutory definition or recognition of 'conditional shares', including performance-based vesting and forfeiture provisions. KBRA must provide alternative templates as an integral component of the business registration and statute approval procedure. Amendments to the LBO must incorporate definite provisions relating to executive remuneration and equity-based incentives, drawing from experience of SRD II and best practices from EU member states. The interaction between contract-based rights (LOR) and legislative shareholding, particularly where share are provided as consideration for performance or tenure, must be clarified. Last but not least, Kosovo courts must be encouraged to provide detailed judgments on equity-based ownership cases, to increase legal predictability and institutional learning.

Conclusions and Recommendations

The express regulation of conditional ownership is not found in Kosovo's LBO, yet it is not expressly prohibited either. Its permissibility is inferred from the contractual freedom enjoyed by shareholders and founders of the company. Company charters (statutes) and incorporation agreements, as evidenced in the case study, tend to overlook significant contingencies, like the impact of unmet or violated conditions, resulting in disputes and undermining their enforceability.

The LBO has marginal accommodation for conditional arrangements, although this is theoretic in the absence of express statutory incorporation or court practice that validates such application.

Kosovo's legal framework varies significantly from EU corporate governance standards, particularly regarding transparency of executive pay, shareholder authority and formalised equity incentives. The absence of clearly defined procedures, conflict resolution mechanisms and buy-back or clawback provisions in governing documents undermines the efficacy of conditional share ownership as a means of management performance-ownership reward alignment. In order to fill the noted gaps and bring Kosovo's corporate governance in line with international standards, the following policy and legal measure are recommended:

- Establish the legal recognition of conditional shares in LBO through a definition of conditional shares, ownerships, permitted conditions, forfeiture and penalties in case of default.
- Insist that any conditional obligations or rights over the ownership of shares are stated in both the incorporation agreement and statute in order to achieve consistency, prevent disputes and identify intention of the parties.
- Prepare and disseminate model provisions on conditional shares, repurchases and forfeiture to assist founders and drafters in preparing statutes and shareholders' agreements.

- Empower the KBRA to examine and identify ambiguous or contradictory provisions throughout the registration process.
- Offer interpretative guidelines from relevant authorities on the application of the LOR to shareholder agreement and conditional performance clauses.
- Encourage Kosovo's Commercial Court to develop case law on equity-based compensation disputes to increase predictability.
- Develop non-binding regulatory frameworks such as Corporate Governance Code for private companies based on EU approaches.
- Implement compulsory legal requirements for automatic cancellation or reversal of conditionally held or unvested shares, buy-back provisions exercisable by the company or shareholders in case of violation of conditions, disclosure requirements pertaining to performance-related equity.

These suggestions would be a step towards not just certainty, but also toward better corporate governance, investor, trust and the professionalisation of executive management of Kosovo's expanding private sector. As equity-based compensation becomes more common in entrepreneurial and investment circles, providing a clear legal way forward for conditional share ownership is as much an economic as it is a legal necessity.

REFERENCES:

Agustia D., Dianawati W., Indah D.R.A. (2017). Managerial Ownership, Corporate Social Responsibility Disclosure and Corporate Performance. *Management of Sustainable Development*, Vol. 10, No.2, 67-71, 68.

Beck D., Friedl G., Schafer P. (2020). Executive compensation in Germany. *Journal of Business Economics*, Vol. 90, 787-824, 791-792. https://doi.org/10.1007/s11573-020-00978-y.

Benmelech E. Kandel E., Veronesi P. (2010). Stock-based Compensation and CEO (Dis)Incentives. *The Quarterly Journal of Economics, Vol. 125, Issue 4*, 1769-1820, 1771. https://doi.org/10.1162/qjec.2010.125.4.1769.

Bennet B., Garvey G., Milbourn T., Want Z. (2019). Why do Firms Use Equity-based Pay? Managerial Compensation and Stock Price Informativeness. *Fisher College of Business Working Paper No. 2019-03-012, p.2.* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3125875.

Bessonnat Y., Flandin G. and Grude Ph. (2018). France. In *Executive Remuneration Review*. Kohn A. & Cooper J. (eds.). Seventh Edition. Tom Barnes, United Kingdom

Carberry, E., et al. (2023). *PEPPER V Report: Benchmarking trends and policies in employee share ownership in the EU*. Inter-University Centre Split/Berlin for European Commission DG MARKT. Retrieved from https://www.pepper5.org.

Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), Part III, Section 4100-1, Book 1, as amended by Article 11 of the Act of 18 July 2017 (Federal Law Gazette Part I p. 2745), Book 2, as amended by Article 14 of the Act of 22 December 2020 (Federal Law Gazette Part I p. 3256), Book 3, as amended by Article 5 of the Act of 7 August 2021 (Federal Law Gazette Part I p. 3311), Book 4, as amended by Article 184 of the Act of 19 June 2020 (Federal Law Gazette Part I p. 1328) and Book 5, as amended by Article 184 of the Act of 19 June 2020 (Federal Law Gazette Part I p. 1328). Retrieved from: https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html#p0921.

Confidential corporate documents (2024). Internal statute, incorporation agreement, shareholder decisions and board resolutions of Kosovo-based LLC, anonymized and on file with the author.

De La Bruslerie H. (2023). Multiple class shares and double voting rights: Literature review and research prospects. *Finance Controle Strategie*, 26-3.https://idref.fr/026955857.

European Union. (2017). *Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement*. Official Journal of the European Union.

Federal Republic of Germany. *Aktiengesetz [Stock Corporation Act]*. Retrieved from https://www.gesetze-im-internet.de/aktg/.

Ferrarini G. &Ungureanu M.C. (2024). *Executive Remuneration*: A Comparative Overview II. Law Working Paper No. 814/2024. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5040008.

Forges, F., Koessler, F., & Salamanca, A. (2024). Interacting mechanisms: A perspective on generalized principal–agent problems. *Journal of Mathematical Economics, 114*, 103023. https://doi.org/10.1016/j.jmateco.2024.103023.

French Republic. *Code de commerce [Commercial Code]*. Retrieved from https://www.legifrance.gouv.fr/codes/id/LEGITEXT000005634379/.

German Corporate Governance Code (Deutscher Corporate Governance Kodex 2022). Retrieved from https://www.dcgk.de/en/code.html.

Jensen, M. and Murphy, K. (1990). CEO Incentives-It's not how much you pay, but how. *Journal of Applied Corporate Finance*, 36-49.

Kotnik, P., & Sakinç, M. E., Gudurass D. (2017, updated 2018). Executive compensation in Europe: realized gains from stock-based pay. *Institute for New Economic Thinking Working Paper Series No. 78.* 1.

Lauterbach J.G. (2024). Family firms, founders and the cross-section of stock returns. *Journal of Family Business Strategy*. ISSN 1877-8585, https://doi.org/10.1016/j.jfbs.2024.100623.

Law No. 04/L-077 on Obligational Relationships, Official Gazette of the Republic of Kosovo No. 16/2012.

Law No. 06/L-016 on Business Organisations. Official Gazette of the Republic of Kosovo No. 9/2018.

LexisNexis (2025). Glossary. Retrieved from: https://www.lexisnexis.co.uk/legal/glossary/conditional-share-award.

Misamore, B. (2023, June 16th). Understanding Stock-Based Compensation. Harvard Business School. Retrieved from: https://online.hbs.edu/blog/post/understanding-the-linkedin-sale-and-stock-based-compensation.

Ong T.S., Zhou J., Heng The B. and Di Vaio A. (2024). Equity ownership concentration's impact on corporate internal control: the moderating effects of female directors and board compensation. *Environment, Development and Sustainability*. Vol. 26, 12309-12337, 12312. https://doi.org/10.1007/s10668-023-03795-9.

Paula, J. (2023, October 23). *The CEO Shareholder: Straightforward Rewards for Long-Term Performance*. Harvard Law School Forum on Corporate Governance. https://corpgov.law.harvard.edu/2023/10/23/the-ceo-shareholder-straightforward-rewards-for-long-term-performance/.

PwC (2022). Stock-based compensation guide. Retrieved from: https://viewpoint.pwc.com/dt/us/en/pwc/accounting_guides/stockbased_compensat/assets/pwcstockcompjan2022v2.pdf.