

SHAREHOLDERS' AGREEMENT AND PROCEDURAL LEGAL TRANSACTION: INSTRUMENTS FOR FLEXIBILITY AND PREVENTION OF CORPORATE CONFLICTS IN BRAZIL

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Abstract: This article explores the application of shareholders' agreements and procedural legal transactions as effective instruments for the prevention and

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resolution of conflicts in the corporate sphere. Through a theoretical and qualitative approach, employing a bibliographic research method based on Article 190 of the Brazilian Code of Civil Procedure of 2015, the discussion highlights how these tools promote private autonomy, allowing parties to customize procedural aspects. The study presents practical examples, such as mediation clauses, arbitration, forum selection, and confidentiality agreements, which enhance speed and efficiency in litigation while safeguarding corporate assets and governance. It is analyzed that, in addition to reducing costs and uncertainties, such conventions contribute to the stability of business relationships and strengthen organizational structures. Finally, it is concluded that the integrated adoption of shareholders' agreements and procedural legal transactions is essential to ensure the longevity and success of corporate entities in a competitive environment.

Keywords: *Shareholders' agreement; Procedural legal transaction; Corporate conflicts; Corporate governance; Code of Civil Procedure.*

1. Introduction

The inevitability of conflicts in the corporate environment makes it essential to seek effective mechanisms for their prevention and resolution. In the context of Brazilian law, the appropriate application of the Brazilian Code of Civil Procedure (CPC) offers valuable tools to promote faster and more efficient solutions. Companies of all sizes, from startups to large corporations, frequently face exhausting and costly litigation that could be avoided through well-structured shareholder agreements and the strategic use of procedural legal transactions.

It is not uncommon for articles of association and shareholder agreements to lack clear provisions regarding both the rules of coexistence among partners and procedural mechanisms capable of addressing potential disputes. This normative gap not only exposes the company to unnecessary risks but also compromises its stability and continuity. The choice of this topic reflects the intention to explore and highlight the relevance of the procedural legal transaction, as provided for in Article 190 of the

CPC, as a tool for conflict prevention and the preservation of healthy business relations.

The shareholder agreement, combined with the application of procedural legal transactions, grants the parties significant autonomy in defining how disputes will be handled. Practical examples include the inclusion of arbitration clauses, which allow conflicts to be resolved outside the judiciary in a faster and more confidential manner, or the pre-determination of jurisdiction for disputes, benefiting shareholders domiciled in different states and avoiding unnecessary travel costs. Such preemptive decisions not only provide greater predictability and efficiency in conflict resolution but also protect assets, preserve corporate relationships, and safeguard the economic viability of the company.

This article aims to demonstrate that, through well-drafted shareholder agreements and the strategic use of procedural legal transactions, it is possible to minimize the impact of disputes on the company, strengthen its governance, and ensure the continuity of its activities. By exploring these legal tools, the article seeks to contribute to the dissemination of practices that promote conflict prevention and the protection of the corporate environment, ensuring a balance between the autonomy of the parties and the legal certainty necessary for business success.

2. The Procedural Legal Transaction and the Shareholders' Agreement: Instruments for the Realization of Private Autonomy

The legal transaction is a fundamental category of private law, characterized by the central role of the will of the parties involved in an agreement of intentions. It is not merely the execution of an act but a process in which legal effects are determined, to a large extent, by private autonomy. Unlike other legal acts whose consequences arise exclusively from statutory provisions, the legal transaction grants the parties the prerogative to shape both the content and the effects of the act in

accordance with their legitimate interests. Thus, voluntariness is not limited to the formalization of the act but also extends to the legal consequences that arise from it.³

The procedural legal transaction, in turn, constitutes an extension of this autonomy within the procedural sphere, allowing the parties to stipulate specific effects within a judicial process. Its formalization may occur either before or during the course of proceedings, provided that the agreements made do not contravene public order norms or inalienable rights and that they directly affect the procedural conduct of the case, i.e., the procedural aspect of the matter. Essentially, the procedural legal transaction reflects a modification within the procedure, tailoring it to the parties' intent to align it with their needs.⁴, granting it a dynamic and adaptable character.

Historically, the Brazilian legal system allowed procedural legal transactions only in limited scenarios, such as the choice of jurisdiction. However, legislative evolution has led to greater flexibility and broader applicability of these transactions. Article 190 of the Brazilian Code of Civil Procedure of 2015 (CPC/2015) formalized this transformation by expressly recognizing the validity of such agreements, enabling parties to establish conventions on broad procedural aspects, provided they respect legal boundaries. This provision acknowledges the procedural nature of these agreements, fostering legal certainty and process efficiency.

This evolution in procedural law reflects not only the practical needs of the parties but also the maturation of the legal system as a whole. In line with the teachings of Montesquieu⁵, Kelsen⁶ and Savigny⁷, it is observed that law, in its essence, must be adaptable to the particularities of each society and to the historical and cultural transformations it undergoes. Procedural legal transactions, therefore,

³ WAMBIER, Luiz Rodrigues; TALAMINI, Eduardo. Curso avançado de processo civil: teoria geral do processo, volume 1. 16. ed. reformulada e ampliada de acordo com o Novo CPC. São Paulo: Editora Revista dos Tribunais, 2016, p. 513.

⁴ Ibidem, p. 514.

⁵ MONTESQUIEU, Charles de Secondat. O Espírito das Leis. São Paulo: Saraiva, 2003. p. 21.

⁶ KELSEN, Hans. Teoria Pura do Direito. São Paulo: Martins Fontes, 1998. p. 78.

⁷ SAVIGNY, Friedrich Carl von. Sistema do Direito Romano Atual. Campinas: Bookseller, 2001. p. 15.

are a clear example of how law evolves to meet contemporary demands without detaching itself from its theoretical foundations. Notably, the procedural legal transaction emerged from a necessity identified over time, eventually becoming codified in our legal system. The Code of Civil Procedure, through Article 190, came to recognize that such agreements hold a procedural nature, regardless of when they are formalized.

In the corporate field, the shareholders' agreement emerges as a strategic instrument of corporate governance and conflict prevention. It can be understood as a preemptive pact that regulates relationships among shareholders, establishing clear rules for situations that could potentially generate disputes. By outlining procedures for matters such as the sale of equity interests, the withdrawal of shareholders, or the making of strategic decisions, the agreement functions as a kind of technical manual, mitigating uncertainties and preventing litigation.

In addition to its preventive function, the shareholders' agreement stands out as a conflict resolution tool. The inclusion of mediation or arbitration clauses, for instance, enables the swift and confidential resolution of disputes, avoiding public exposure and the lengthy timelines associated with state judiciary systems. Such mechanisms promote more efficient conflict management, preserving the company's resources and energy for its growth and development.

Furthermore, the agreement may stipulate the need for qualified majorities for more sensitive decisions, preventing any single shareholder from making unilateral decisions. This type of provision is particularly relevant in family businesses or limited liability companies, where emotional ties can complicate understanding during times of crisis⁸.

However, the shareholders' agreement is not limited to conflict resolution; it is also a fundamental tool of corporate governance. It can detail the roles of each shareholder, profit distribution policies, conditions for the exit of shareholders,

⁸ PRADO, Gustavo; GOUVEIA, Marcelo. Resolução de conflitos societários: o papel do acordo de sócios. São Paulo: Juruá, 2021. p. 129.

among other factors essential to ensuring the smooth operation of the company. By clearly defining the responsibilities of each shareholder and the decision-making processes, the agreement facilitates a more harmonious and results-focused operation. After all, when the rules are clear, the work environment becomes more streamlined and centered on achieving objectives⁹, directly influencing improved operational outcomes.

Still within the scope of procedural legal transactions, Article 190 of the CPC/2015 allows shareholders to adjust procedural aspects according to their specific needs. It is possible to stipulate in advance, for instance, the competent jurisdiction for adjudicating disputes, differentiated procedural deadlines, alternative methods of service and notification, as well as rules for convening meetings. This procedural flexibility is particularly advantageous for companies that require agility and efficiency in resolving judicial matters, contributing to the continuity of their operations in times of adversity.

Finally, it is acknowledged that the synergy between the shareholders' agreement and the procedural legal transaction represents a milestone in the realization of private autonomy in the business context. When strategically designed and tailored to the specific needs of the business, these instruments not only prevent and resolve conflicts but also structure corporate governance, fostering stability and the sustainable growth of organizations. As such, they become indispensable elements for business success in an increasingly dynamic and challenging legal and economic landscape.

3. The Importance of Flexibility in Business Relations

Flexibility in business relations has been established as an important mechanism for ensuring efficiency and legal certainty in an economic environment shaped by globalization and the increasing complexity of commercial transactions.

⁹ MOTTA, Gustavo. *Governança Corporativa e Conflitos de Interesse: Desafios e Soluções*. Rio de Janeiro: FGV, 2020. p. 89

The American jurist Michael E. Solimine addressed this topic in a pioneering manner in his work *Forum-Selection Clauses and the Privatization of Procedure* (1992), highlighting how the customization of contractual procedures, through clauses such as forum selection, choice of applicable law, and waiver of jury trials, has become a common practice in business relations. According to Solimine, the adoption of customized procedural regimes can reduce costs, mitigate uncertainties, and ensure greater predictability in managing disputes between parties¹⁰.

These practices are particularly relevant in the context of shareholder agreements and commercial contracts. In the business environment, predictability and efficiency are strategic factors, and the customization of legal procedures emerges as a response to the growing demands for flexibility and security. The inclusion of procedural clauses in contracts for mergers, acquisitions, and licensing exemplifies how companies can minimize risks and costs associated with judicial disputes while safeguarding their commercial interests. When well-structured, the use of such clauses provides an effective means of resolving conflicts, serving as a crucial instrument in the context of shareholder agreements, which should strategically address the management of potential disputes¹¹.

In the context of shareholder agreements, procedural customization plays an even more strategic role. These agreements, in addition to regulating the rights, duties, and responsibilities of shareholders, are often used as tools to prevent and manage conflicts efficiently. Through the so-called procedural legal transaction, shareholders can preemptively establish procedural parameters tailored to the particularities of their corporate relationship. For instance, they can stipulate the competent jurisdiction for future disputes, differentiated deadlines, conflict resolution methods, and even specific forms of service and notification. This approach grants shareholders greater autonomy while transforming potential

¹⁰ SOLIMINE, Michael E. *Forum-Selection Clauses and the Privatization of Procedure*. Cornell Law Review, v. 67, p. 721-761, 1992.

¹¹ *Negócios processuais*. Coordenadores: Antonio do Passo Cabral, Pedro Henrique Nogueira. 2. ed. ver., atual. e ampl. Salvador: Ed. JusPodivm, 2016. (Coleção Grandes Temas do Novo CPC, v. 1; coordenador geral, Fredie Didier Jr.), p. 143.

controversies and disputes into more manageable scenarios aligned with business needs. Such flexibility is therefore essential for companies that face recurring legal challenges and aim to align their expectations and interests strategically¹².

In addition to the direct economic benefits, procedural flexibility offers invaluable strategic advantages. Companies that can tailor their contracts and procedures to the dynamics of their businesses are better equipped to face the challenges of a globalized market. By eliminating procedural uncertainties and reducing the time and costs associated with conflict resolution, parties can focus their efforts on developing business strategies and expanding their operations. According to Gaukrodger and Gordon, in their study published by the Organisation for Economic Co-operation and Development (OECD), the legal predictability fostered by well-drafted agreements is one of the most significant factors for business success in competitive economic environments¹³.

In the modern context, contractual and procedural flexibility is more than a convenience; it is a strategic necessity. The customization of procedures in shareholder agreements, when grounded in a well-defined procedural legal transaction, represents a significant competitive advantage. Companies that leverage these procedural tools intelligently can not only avoid lengthy and costly litigation but also foster an environment of cooperation and trust among shareholders, which directly contributes to strengthening corporate governance and ensuring operational success.

Thus, procedural and contractual flexibility, applied strategically and supported by solid theoretical foundations such as those presented here, proves indispensable for the efficient management of business relationships in the contemporary landscape. Private autonomy, when exercised clearly and in compliance

¹² BAPTISTA, Luiz Olavo. *Arbitragem Comercial Internacional*. 2. ed. Rio de Janeiro: Forense, 2020, p. 37.

¹³ GAUKRODGER, David; GORDON, Kathryn. *Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community*. Paris: OECD Publishing, 2012. Disponível em: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2207366. Acesso em: 20 dez. 2024.

with the legal framework, becomes a crucial instrument for driving business growth and sustainability, enabling companies to carry out their core activities securely within an increasingly dynamic and challenging legal and economic environment.

4. The Procedural Legal Transaction in the Corporate Context

The procedural legal transaction constitutes a valuable tool for flexibility in the corporate sphere, allowing parties to tailor the procedural framework to the specific needs of their business relationships. As provided for in Article 190 of the Brazilian Code of Civil Procedure (CPC), parties can establish procedural agreements covering aspects such as the production of evidence, extension or reduction of procedural deadlines, preselection of expert witnesses, and the definition of channels for service and notification, among other elements. This contractual autonomy is particularly advantageous in corporate contexts where parties already have a well-defined dynamic and seek customized solutions for potential disputes.

A significant example of this flexibility is the ability to stipulate procedural confidentiality to protect strategic company information, such as trade secrets or sensitive financial data. This mechanism is widely adopted by companies seeking to avoid public exposure of their operations, ensuring greater confidentiality in their disputes¹⁴. However, it is essential to note that the validity of such agreements is subject to limits within the legal framework. Fundamental rights, such as the right to adversarial proceedings and due process, are inalienable. The judge, in turn, has a duty to ensure that the agreement was entered into under conditions of equality, safeguarding against any undue advantage being taken by one of the parties¹⁵.

Another key point worth highlighting is the use of the corporate charter as a vehicle to incorporate such procedural agreements. For instance, clauses that

¹⁴ ALMEIDA, Gregório Assis de. *Negócio Jurídico Processual: Autonomia Privada no Processo Civil Brasileiro*. São Paulo: Saraiva, 2018, p. 33.

¹⁵ MARCONDES, Carolina. *Cláusulas processuais em contratos empresariais*. São Paulo: Revista dos Tribunais, 2018, p. 342.

stipulate alternative methods of notification, like corporate emails, or the preselection of specialized experts for certain procedural matters, can significantly contribute to swifter and more efficient legal proceedings. These provisions exemplify the potential of the procedural legal transaction to save time and resources, all while minimizing interruptions to business activities¹⁶. After all, in the fast-paced corporate world, who wouldn't prefer resolving disputes with the efficiency of a well-oiled machine rather than navigating the labyrinth of prolonged litigation? It's like upgrading from a dial-up modem to fiber optics—smooth, efficient, and built for speed.

The case law of the Superior Court of Justice (STJ) in Brazil has shown receptiveness to the validity of such agreements, provided they respect legal boundaries. In REsp 1.733.290/SP, the STJ upheld the validity of a clause that limited the production of evidence in a corporate dispute, reaffirming the parties' autonomy to tailor procedural rules to their specific needs. However, the court emphasized that such agreements must not infringe upon fundamental rights, such as access to justice and the right to adversarial proceedings. This decision highlights the balance the judiciary seeks to maintain between honoring procedural flexibility and safeguarding essential legal protections¹⁷.

Therefore, the procedural legal transaction in the corporate sphere emerges as a strategic tool for resolving potential future business disputes. From common examples, such as the choice of jurisdiction, to more complex stipulations, such as procedural confidentiality or differentiated deadlines, these agreements provide predictability and efficiency. However, their application must always adhere to the limits established by the Code of Civil Procedure (CPC), respecting fundamental rights and remaining under judicial supervision to ensure that the power to shape the process is exercised responsibly.

¹⁶ FIGUEIRA, Eduardo. *Negócios Jurídicos Processuais no Direito Societário Brasileiro*. 2. ed. Rio de Janeiro: Forense, 2020, p. 289.

¹⁷ SUPERIOR TRIBUNAL DE JUSTIÇA. REsp 1.733.290/SP. Relator: Min. Marco Aurélio Bellizze. Publicado em: 19 fev. 2021.

5. Conclusion

A The interaction between the shareholders' agreement and the procedural legal transaction represents a significant innovation in the legal corporate landscape, promoting both private autonomy and efficiency in resolving corporate disputes. By allowing parties to shape procedural aspects of litigation—such as deadlines, jurisdiction, methods of evidence production, and confidentiality mechanisms—these tools not only optimize the relationship between shareholders but also contribute to a more efficient management of judicial processes.

REsp 1.733.290/SP exemplifies how the Brazilian legal framework recognizes and validates the parties' autonomy in customizing procedural rules, provided legal boundaries, such as the right to adversarial proceedings and due process, are respected. This jurisprudential acknowledgment highlights the importance of such agreements in expediting and ensuring predictability in legal proceedings by offering the judge a clear roadmap aligned with the parties' interests, enabling greater focus on substantive issues.

Furthermore, the adoption of procedural agreements within shareholders' agreements not only facilitates conflict resolution but also prevents unnecessary litigation by structuring clear and objective procedures. Companies that incorporate these practices into their governance demonstrate strategic foresight, ensuring that potential disputes do not undermine their stability and allowing them to maintain focus on growth and efficient business operations.

Thus, the combined use of the shareholders' agreement and the procedural legal transaction underscores the transformative potential of private autonomy in the corporate context. These tools provide a robust and modern alternative for dispute resolution, benefiting both the parties involved and the judiciary. With qualified legal counsel, companies can strategically explore these possibilities, respecting legal limits and fostering a more efficient, stable, and transparent business environment. This approach not only marks an advancement in corporate governance but also reinforces

the importance of a judiciary that values party autonomy and procedural efficiency as pillars of modern justice.

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