

Extended information rights under a shareholders' agreement

Cantonal Court of Valais, decision C1 23 134 of June 3, 2024 (RVJ / ZWR 2025, 189)

I. INTRODUCTION

In a decision dated 3 June 2024, the Cantonal Court of Valais addressed the question whether a shareholders' agreement may grant a shareholder **contractual information rights extending beyond** the statutory rights provided under Swiss corporate law.

The Court held that, in the specific circumstances of the case, a shareholder who was party to a shareholders' agreement could validly request extensive information from another shareholder, where the latter had access to such information in his capacity as director of the company.

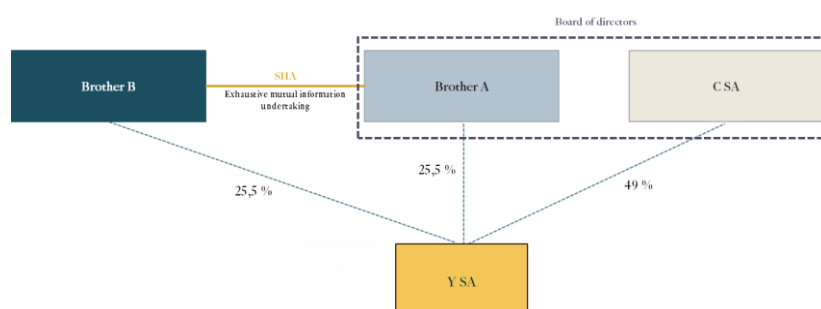
The decision is particularly relevant for private companies, where shareholders' agreements frequently provide for information rights that go beyond the statutory minimum.

II. FACTS

The case concerned a family-owned Swiss stock corporation. Two brothers, A and B, each held 25.5% of the shares. The remaining 49% were held by a third shareholder, C SA. The company was therefore not a listed or widely-held company, but a private, closely-held company with a personal character.

A and C SA were represented on the board of directors, whereas B was not. In 2017, A and B entered into a shareholders' agreement. Under this agreement, the parties undertook to inform each other, in a timely manner, of all matters relating to the company. Each party was also granted a right to inspect the complete accounting records, audit documents and all other business records of the company.

B subsequently requested extensive information and access to a large number of documents relating to the company. A refused. B then brought proceedings against A on the basis of the shareholders' agreement.



III. ANALYSIS

As a first step, the Cantonal Court confirmed that the relevant clause of the shareholders' agreement granted B broad contractual information rights.

The Court considered that the wording of the clause was clear. The parties had agreed to inform each other of "all matters" relating to the company and to grant access to complete accounting, audit and business records. Such wording went significantly beyond the statutory information rights of an ordinary shareholder.

As a second step, the key issue was not only the interpretation of the shareholders' agreement, but also whether such extended information rights were permissible under Swiss corporate law.

The Court acknowledged that contractual information rights may be subject to limits. In particular, where the person required to provide information is also a member of the board of directors, he remains bound by his statutory duties as director. These duties include the duty of care and loyalty towards the company, the obligation to protect business secrets and the duty to treat shareholders equally.

In other words, a director who is party to a shareholders' agreement cannot simply ignore his corporate law duties by relying on his contractual obligations. In certain circumstances, mandatory legal reasons could justify a refusal to disclose information, for example where disclosure would breach the company's legitimate confidentiality interests or the principle of equal treatment of shareholders.

However, in the case at hand, the Court found that no such mandatory reason prevented disclosure.

First, the shareholders' agreement itself contained a confidentiality undertaking. The parties were required to preserve the strictest confidentiality vis-à-vis third parties with respect to the company's business activities, clients, business objectives and strategic goals.

Second, the Court attached significant weight to the company's particular shareholding and governance structure. There were only three shareholders. Two of them effectively had access to the relevant information through their representation on the board of directors. B was the only shareholder without board representation and therefore the only shareholder without direct access to comprehensive information on the company.

In that context, the principle of equal treatment did not operate as an argument against disclosure. On the contrary, the Court considered that equal treatment supported B's right to receive the information, since otherwise he would have been the only shareholder deprived of such knowledge.

The Court also emphasized that the company was a closed, personal company with a very limited number of shareholders. It referred to the exceptional nature of the company's structure. This point is important, as it suggests that the reasoning should not automatically be transposed to larger companies with a broader shareholder base.

IV. PRACTICAL TAKEAWAYS

This decision confirms that shareholders' agreements may validly provide for information rights extending beyond the statutory rights of shareholders, at least in closely-held companies and provided that such rights are carefully structured.

From a practical perspective, such clauses are common and often useful. In venture capital and private equity transactions, investors holding a certain percentage of the share capital frequently negotiate specific information rights. These rights may include periodic financial reporting, access to budgets, business plans, board materials or other operational information. They are part of the commercial balance negotiated among shareholders, alongside other preferential rights such as liquidation preferences, veto rights, anti-dilution protection, tag-along rights or exit-related protections.

The decision is helpful in confirming that such contractual arrangements are not, as a matter of principle, incompatible with Swiss corporate law. However, the enforceability of extended information rights will depend on the circumstances.

In particular, such information is usually to be provided by a director, and this might conflict with her/his director's statutory duties. A shareholders' agreement cannot override mandatory corporate law rules. The company's legitimate confidentiality interests, business secrets and the principle of equal treatment of shareholders remain relevant limits to extended information rights granted to certain shareholders under a shareholders' agreement.

That being said, where all shareholders are parties to the shareholders' agreement, it may be difficult for a director to rely on the equal treatment principle to refuse information rights that all shareholders have accepted contractually, even if those rights are granted only to certain shareholders.

In many financing rounds, differentiated rights reflect the economic and commercial bargain between shareholders. A larger investor may receive broader information rights because of its investment size, role or negotiated position, while smaller shareholders accept this differentiated treatment by signing the shareholders' agreement.

The position may be more delicate where not all shareholders are parties to the shareholders' agreement. This may occur, for example, where key investors and founders are party to a main shareholders' agreement, while certain employee shareholders participate only through separate arrangements.

In such cases, if the main shareholders' agreement grants specific information rights to certain shareholders only, it may be advisable to ensure that the non-party shareholders are made aware of these rights and, where appropriate, acknowledge their existence. This may help reduce the risk of subsequent objections by the board of directors based on equal treatment.

The decision therefore also illustrates a broader drafting point: where possible, including all shareholders in a single shareholders' agreement may provide greater legal certainty. Although this can make the agreement heavier from a documentation and negotiation perspective, it helps ensure that all shareholders are aware of, and have accepted, the governance and information rights granted to specific categories of shareholders.

In conclusion, the decision is reassuring for the practice of granting extended information rights in shareholders' agreements. It also serves as a reminder that these rights should be drafted with care, in particular by including appropriate confidentiality undertakings and by considering whether all shareholders are, or should be, bound by the relevant contractual framework or have acknowledged such extended information rights.

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