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The Lock-Up Clause in a Polish Limited Liability Company: A Legal and Economic Analysis in the Context of Private Equity and Venture Capital Investments

ABSTRACT

The dynamic growth of Poland's investment market, particularly for private equity and venture capital, requires effective legal mechanisms that safeguard investor interests and ensure the stability of ownership structures in limited liability companies. One of the key issues in this context is the temporary exclusion of share transferability, implemented through so-called lock-up clauses. These provisions, incorporated into companies' articles of association, are designed to restrict shareholders' ability to dispose of their shares for a defined period (typically 3 to 5 years), thereby supporting corporate governance and strengthening investor confidence. This article provides an interdisciplinary analysis of the functions and legal admissibility of lock-up clauses from the perspective of commercial law and economics. In particular, it examines whether, and under what conditions, it is legally permissible to exclude the transferability of shares in the articles of association of a Polish limited liability company.

KEYWORDS: lock-up clause; share transfer restrictions; limited liability company; corporate governance; investment protection

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INTRODUCTION

According to the latest industry report summarizing data for 2024, Poland emerged as the leading market for private equity and venture capital investments in Central and Eastern Europe, accounting for 44% of the total investment value across the region. In the case of venture capital alone, Polish entities were involved in 25% of all transactions (Invest Europe, 2024). The analysis covered 18 countries in total, including Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Ukraine.

In this context, the legal structure of a business entity in Poland is crucial because such entities are primary targets of the investments mentioned above. While sole proprietorships remain the dominant form of business in the Polish market, among commercial law entities, the limited liability company (*spółka z ograniczoną odpowiedzialnością*) continues to attract the greatest interest. According to data from the Central Information Office of the National Court Register, as of the end of 2024 there were 687,554 registered commercial companies in Poland, of which as many as 602,307 were limited liability companies (Ministerstwo Sprawiedliwości, 2025). This means that limited liability companies represented 87.6% of all registered companies in the country.

The widespread popularity of the limited liability company stems not only from its favorable legal framework, but also from its long-standing familiarity among market participants. It is worth noting that in 2021 the Polish legislator introduced a new type of capital company, called the simple joint-stock company (*prosta spółka akcyjna*). The rationale behind this legislative development was to create a modern and flexible corporate form tailored to the needs of a rapidly evolving innovation sector (Opalski, 2019) particularly entities operating in the technology industry, commonly referred to as start-ups (Teker et al., 2016). Although from a legal standpoint the simple joint-stock company offers an interesting

Table 1. Number of Registered Commercial Companies in Poland as of the end of 2024 (based on the report by the Central Information Office of the National Court Register).

Form of company	Number of registered entities
General partnership (*spółka jawna*)	32,396
Professional partnership (*spółka partnerska*)	2,466
Limited partnership (*spółka komandytowa*)	34,675
Limited joint-stock partnership (*spółka komandytowo-akcyjna*)	3,697
Limited liability company (*spółka z ograniczoną odpowiedzialnością*)	602,307
Simple joint-stock company (*prosta spółka akcyjna*)	3,021
Joint-stock company (*spółka akcyjna*)	8,977
European company (*spółka europejska*)	15

alternative, it has yet to gain broader market acceptance. As of the time of writing, the traditional limited liability company remains the dominant form in practice, as confirmed by 2024 data. The reasons for this dominance can be attributed primarily to the operational simplicity of the Polish limited liability company, both from a corporate governance and accounting perspective. An additional advantage of the limited liability company is the relatively straightforward procedure for transferring shares, an operation that, from an economic perspective, often amounts to the sale of an enterprise operated by the company. Through such a transaction, the purchaser effectively acquires control over the company, not only its assets, but also its contractual relationships, workforce, and other integral components of the business enterprise. This is made possible by the fact that, by virtue Article 12 the Commercial Companies Code (*Kodeks spółek handlowych*, consolidated text: Journal of Laws of 2024, item 18, as amended; hereinafter CCC), a limited liability company possesses legal personality and thus has both legal capacity and the capacity to perform legal acts. As a separate legal entity, the company is empowered, through its management board, to hold rights and obligations and to make legally binding declarations of intent.

It follows that the further development of the investment market in Poland requires a deeper understanding of practical challenges associated with the limited liability company. One of the most critical issues in this context concerns the transferability of shares, as share transfers constitute the principal legal mechanism through which control over a company is conveyed.

The disposition of shares lies at the core of private equity and venture capital transactions. The present study focuses on the possibility of introducing contractual limitations of the transferability of shares for a specified period of time, through the implementation of so-called lock-up clauses in the articles of association of a Polish limited liability company.

Lock-up clauses play a pivotal role in structuring ongoing relationships between investors and existing shareholders. Their primary function is to establish a general prohibition on share transfers for a predetermined duration, typically ranging from three to five years. Such provisions are intended to foster stability, align long-term interests, and mitigate premature exit risks.

The aim of this article is to conduct an interdisciplinary analysis of the function of lock-up clauses from both legal and economic perspectives, with particular emphasis on the question of their admissibility under Polish company law. This issue is highly relevant to business practice, as despite the widespread use of lock-up clauses in the articles of association of a limited liability company, their legal validity remains contested in the legal scholarship.

THE LOCK-UP CLAUSE: ITS CONCEPT AND PURPOSE

A lock-up clause may be defined as a contractual provision that temporarily restricts the transferability of shares (Opalski, 2018). This concise definition aptly captures the essence of the legal mechanism in question.

The introduction of a lock-up clause into the articles of association of a limited liability company serves to prevent shareholders from disposing of their shares – regardless of the legal form or basis of the transaction. The restriction typically applies to diverse acts of disposition, including but not limited to sale and donation agreements. It is important to emphasize, however, that the scope of prohibited transactions may, in principle, be unlimited, owing to the principle of freedom of contract enshrined in Article 353^1 of the Polish Civil Code (*Kodeks cywilny*, consolidated text: Journal of Laws of 2024, item 1061, as amended; hereinafter CC). In its standard formulation – aligned with the cited definition – a lock-up clause also excludes the possibility of encumbering shares, for example, by establishing a pledge or usufruct. In other words, the lock-up clause disables a shareholder's right to dispose of shares, irrespective of how the transfer instrument is labeled. What matters is the legal effect of the transfer, specifically, whether it results in a full transfer of legal title, as in the case of a sale, or a partial one, such as through the creation of a pledge.

A lock-up clause, understood in this way, is commonly used in the articles of association of limited liability companies whose shares are the subject of private equity and venture capital investments (Morawczyński, 2017). In order to fully appreciate the practical relevance of lock-up clauses in the investment practice, it is useful to first outline the key features of private equity and venture capital transactions.

Private equity investments typically target mature companies that are already operating in the market and recognized by customers. The aim of such investments is to support further growth, whether through scaling, market expansion, or simply by stabilizing operation via the injection of additional capital (Przybylska-Kapuścińska & Łukowski, 2014). This is achieved through the participation of investors, such as investment funds, which acquire shares in the company and influence its strategic direction through their financial resources, know-how, and managerial expertise (Ljungqvist, 2024). In certain cases, the investor acquires full (i.e. 100%) control over the company, in which case the issue of lock-up clauses is irrelevant. However, more commonly, the investor purchases only a portion of shares and must therefore cooperate with the remaining shareholders, most often the company's founders, who typically retain key positions within its governing bodies, such as the management board or supervisory board. These individuals hold critical institutional knowledge concerning the company's operations, market, and client base. For this reason, it is in the investor's interest to ensure the continued involvement of such shareholders, at least during the initial post-investment phase, when the investor is still learning the internal dynamics of the company and integrating into its day-to-day functioning.

Venture capital investments are characterized by a significantly higher level of risk compared to private equity. They typically involve companies at an early stage of development, often before achieving a stable market position. Their values are largely derived from an innovative, pioneering, or otherwise original concept (Cumming et al., 2022). Global examples include companies such as Uber and Airbnb, while Polish examples include Booksy. In venture capital transactions, the continued involvement of the founders in the company's operations is of critical importance. Founders are those who hold the core idea, have a vision for growth, and are personally motivated to pursue it – yet they often lack the capital required to scale. This is where external investors come into play. Consequently, the founders' retention within the ownership structure is fundamental to ensuring investment security. The inclusion of a lock-up clause in the company's articles of association increases investor confidence in the project. Acting as a form of assurance that the founders will remain involved during the most crucial phase of the company's growth. It should also be noted that in the literature, venture capital is sometimes classified within the broader category of private capital (Fałat-Kilijańska, 2012). However, for the purposes of our analysis, venture capital and private equity will be treated as distinct categories, according to the distinctions outlined above.

With this in mind, we can identify the key functions performed by a lock-up clause in the articles of association of a limited liability company.

First, there is the protective function. The clause safeguards the company's continuity by ensuring that the founders – who possess essential knowledge not only about the company itself but also about the market and clients – remain engaged. Their continued involvement after the initial investment (regardless of its form) serves to protect both the interests of the company and the viability of the entire investment project, which might otherwise fall through.

Second, we speak of a stabilizing function: the lock-up clause helps solidify the company's ownership structure and facilitates the conditions necessary for long-term cooperation among shareholders. The prohibition on share transfers during the lock-up period allows shareholders to develop mutual understanding, align expectations, and assess one another's management style and priorities. This stabilization process enables the articulation of shared goals and governance principles in practice, thereby significantly reducing the risk of internal conflict.

Third, there is the investment function. As a synthesis of two preceding functions, it lays the groundwork for an effectivel implementation of structural changes and pursuit of the company's growth strategy, which represents the primary objective of both investors and founders. The lock-up clause reinforces ownership stability, allowing all shareholders to focus on the realization of the investment project.

INVESTMENT PRACTICE

Before I present a detailed legal analysis of the lock-up clause, let me present a model formulation of such a provision. Drawing on my professional experience, the following simplified version can be proposed: "For a period of four years from the date of introduction of this provision into the company's articles of association, the shareholders shall not be entitled to dispose of their shares."

Naturally, transactional practice allows for multiple variations of such clauses (Morawczyński, 2017). These may include, for instance, differentiated lock-up periods for individual shareholders or mechanisms that determine the possibility of a share transfer by the prior consent of a specified party, typically the investor. In the latter case, from a legal standpoint, we are not dealing with a prohibition on disposition *per se*, but rather with a restriction of the right to dispose of shares, contingent upon the fulfillment of a condition precedent (i.e. obtaining the requisite consent).

The lock-up clause originates from transactional practice rooted in common law jurisdictions and has been effectively transplanted into European legal systems, including the Polish legal order. This reception has occurred mainly under the influence of foreign investment funds and international law firms operating in Poland. This phenomenon is not unique to our country though. Similar challenges, extending beyond the lock-up clause itself, have been observed in countries like Germany (Mazur & Szlęzak, 2024). The adaptation of such mechanisms of continental legal systems presents considerable difficulties, especially in terms of their legal qualification and compatibility with domestic institutions of private law.

LOCK-UP CLAUSES IN LEGAL SCHOLARSHIP

In the Polish corporate law scholarship, it is commonly emphasized that the right to dispose of shares constitutes one of the fundamental ownership rights associated with share (Herbet, 2015). A share, as a distinct type of subjective right (*prawo podmiotowe*), is classified as a property right (*prawo majątkowe*) (Zdanikowski, 2011), and is therefore, as a rule, transferable.

Moreover, Article 182 § 1 CCC[1] expressly permits restrictions on the transfer of shares. Based on this provision, some scholars have argued that if the law provides for restrictions on share transfers within the articles of association, then, *a contrario*, a complete prohibition – even if temporary – would be unlawful.

This position prevails in Polish legal scholarship. It is espoused, among others, by Janusz A. Strzępka and Ewa Zielińska, who argue that the right to dispose of shares is general and fundamental in nature, and that pursuant to Article 182 § 1 CCC it may be subject to certain limitations, but only as an exception. Accordingly, any broad or expensive interpretation that would permit a complete prohibition on transferability is considered impermissible (Strzępka & Zielińska, 2024). A similar view is expressed by Stanik (2024) and Herbet (2015). The latter further contends that if the articles of association of a limited liability company contain a clause excluding the transferability of shares, such a provision should not be deemed absolutely null and void. In Herbet's view, doing so would result in the absence of any restrictions on share transfers, contrary to the original intent of the shareholders. To reconcile this, he proposes that the provision excluding transferability be interpreted as falling within the scope of Article 182 §§ 1–3 CCC, thereby requiring the company's consent for a valid

[1] "Disposal of a share, a part of a share, or a fractional part of a share, as well as pledging a share, may be subject to the company's consent or otherwise restricted by the company deed" (own translation).

transfer (Herbet, 2004). In contrast, A. Nowacki does not directly address the issue of contractual prohibitions on transferability. Instead, he emphasizes that regardless of any contractual limitations, the limited liability company always retains the right to grant consent to a share transfer (Nowacki, 2018).

The prevailing position presented in legal scholarship has also been reflected in jurisprudence. A salient example is the judgment of the Polish Supreme Court of 1 December 2011 (case no. I CSK 132/11), in which the Court unequivocally held that Article 182 § 1 CCC permits only restrictions on the transfer of shares. Consequently, any contractual provisions excluding share transferability are contrary to statutory law and therefore null and void (Sąd Najwyższy, 2011). Importantly, the Supreme Court further held that even those contractual mechanisms which do not explicitly prohibit the transfer of shares – but which, in practice, make such transfers excessively difficult – may also be deemed unlawful. In the Court's view, such mechanisms violate the fundamental shareholder right to transfer shares. This interpretation has been endorsed in the literature by, among others, Borkowski (2013) and Dumkiewicz (2024).

A slightly view is taken by MateuszRodzynkiewicz, who, while generally acknowledging that a complete exclusion of share transferability is impermissible, accepts the possibility of temporarily suspending such a right. He notes that such provisions may indeed raise legal concerns; however, the duration of exclusion is of decisive importance. In his opinion, a clause excluding share transfers for a period of several years following the company's registration may be considered acceptable, whereas a prohibition lasting over a decade would likely violate the law (Rodzynkiewicz, 2018).

A more permissive interpretation is advanced by Adam Opalski, who explicitly supports the admissibility of contractually agreed, time limited exclusions on share transfers. He argues that a temporary exclusion does not equal going round Article

182 § 1 CCC, since a lock-up clause functions as a time-bound limitation that eventually expires. As such, it may, in fact, result in a more flexible and liberal model of share transferability than other commonly accepted mechanisms (Opalski, 2018), such as the requirement to obtain shareholder meeting approval by a qualified majority.

A CRITICAL ANALYSIS OF THE DOMINANT STANDPOINT

The dominant position in Polish legal scholarship and jurisprudence, which questions the admissibility of time-limited exclusion on share transferability, should not be accepted without reservation. At the outset, a clear distinction must be drawn between a permanent prohibition on share transfers and a temporary exclusion, as rightly emphasized by Rodzynkiewicz. A lock-up clause does not result in the indefinite freezing of a company's ownership structure; rather, it merely imposes a limitation on the freedom to dispose of shares.

While it is correctly observed that no shareholder should become a "prisoner of the company", the inclusion of a temporary lock-up provision does not give rise to such a legal situation. By its nature, a lock-up clause constitutes a form of restriction on the disposition of shares, and as such, it falls within the normative boundaries established by Article 182 § 1 CCC.

Consequently, it should be noted that the articles of association of a Polish limited liability company make for a hybrid legal relationship of both a contractual and organizational nature (Nita-Jagielski, 2015), to which the principle of freedom of contract applies (Article 353^1 CC in conjunction with Article 2 CCC). Shareholders are thus entitled to shape the internal functioning of the company in accordance with their needs, expectations, and importantly – their economic objectives. This autonomy includes the right to introduce restrictions on the transfer of shares, including mechanisms such as lock-up clauses.

Once the specified lock-up has expired – typically ranging from three to five years in transactional practice – shares regain their full transferability. This, of course, assumes that the company's articles of association do not impose additional restrictions on transferability, such as tag-along, drag-along, right of first refusal, or other contractual provisions regulating the transfer of shares (Szlęzak, 2022). It is worth emphasizing that the lock-up period is predetermined and accepted by the shareholders at the time of amending the company's articles. Most importantly, it serves the interests of both the company and its shareholders. This does not mean, however, that every lock-up clause should be automatically considered lawful. A critical factor is the length of the exclusion. Any period exceeding the standard practice of three to five years should be assessed individually in terms of its justification and commercial rationale. Longer durations may be permissible, but only in exceptional cases where they are fully warranted. For example, one might imagine that an extended lock-up period could be necessary in industries with uniquely long project cycles – such as the defense sector – where ownership stability is essential to fulfilling long-term contracts.

The position advanced in this article is not at odds with Article 182 § 1 CCC; conversely, it finds support in functional interpretation of the law and aligns with market realities. In support of this view, we can refer to the judgment of the Polish Supreme Court of 27 April 2021 (case no. V CSK 334/20), which addressed the admissibility of restricting the transferability of shares in a joint-stock company under Article 337 § 2 CCC[2] – the functional equivalent of Article 182 § 1 CCC in the context of limited liability companies.

[2] "The statute may condition the disposal of registered shares on the company's consent or introduce other forms of restrictions on their transferability" (own translation).

In that decision, the Supreme Court explicitly recognized that Article 337 § 2 CCC allows for a temporary exclusion of share transferability, for example by prohibiting the transfer of registered shares prior to a specified date (Sąd Najwyższy, 2021).

Considering the above, there appears to be no compelling arguments in favor of maintaining the dominant standpoint. A temporary exclusion of share transferability can serve to stabilize the company's ownership structure, an essential foundation for further corporate development. As discussed above, such stability fosters mutual trust among shareholders and within the company itself. Its positive effects extend to employees, business partners, and the broader socio-economic environment in which the company operates, including local communities and, in some cases, entire regions (Weber et al., 2022).

When interpreting legal constructs as significant as the lock-up clause, it is imperative not to lose sight of their practical dimension. In this context, a functional interpretation – which seeks to understand legal provision in light of the purpose, function, and systemic role, is of particular relevance (Grzybowski, 1985). This approach is especially appropriate for legal mechanisms with substantial practical impact, such as contractual limitations on the transferability of shares. A correct interpretation of these mechanisms directly affects the attractiveness of Polish companies to potential investors, especially in the context of private equity and venture capital.

Legal certainty, predictability, and flexibility in the structuring of corporate arrangements are fundamental factors for entities committing significant capital, including investment funds, banks, and other financing institutions (Wojciechowski, 2014). The law, therefore, must not be viewed merely as a tool of formal regulation, but also as a mechanism for supporting economic development. This is especially true of private law, which should provide a stable and transparent framework for business activity. The lock-up clause, as analyzed here, should be understood and evaluated precisely within this broader normative and economic context.

LEGAL CONSEQUENCES OF BREACHING A LOCK-UP CLAUSE

In the event of a breach of a lock-up clause – i.e., when a shareholder enters into a legal transaction transferring title to shares, such as sale or donation agreement – the transaction produces effects only within the obligational sphere, that is, between the seller and the buyer. However, it remains ineffective vis-à-vis the company. In other words, although a contractual relationship arises between the seller (shareholder) and the buyer, the transfer of title to the shares is not legally effective. The title to the shares remains with the original shareholder.

This qualification is based on Article 182 § 1 CCC in conjunction with Article 57 § 2 CC, which establishes the concept of obligations with extended effectiveness (*zobowiązanie o rozszerzonej skuteczności*) (Kubas, 1969). This means that certain contractual obligations, such as a lock-up clause incorporated into the company's articles of association bind not only the parties of the agreement (i.e., the shareholders), but also third parties (Opalski, 2018). Consequently, even if the seller or buyer notifies the company of the share transfer pursuant to Article 187 § 1 CCC, the company is under no obligation to acknowledge such notification. The legal rights attached to the shares, such as voting rights, right to participate in general meetings, and also the right to receive dividends, continue to belong to the original shareholder.

In practical terms, even where the buyer has paid the purchase price, submitted proof of the transaction made, and formally notified the company of the transfer of legal title, the original shareholder (the seller) continues to exercise all shareholder rights.

A different legal outcome applies where the lock-up clause is not incorporated into the company's articles of association but is instead included solely in an investment agreement concluded between the shareholder and the investor. It is uncommon for the company to be a party to such an agreement as well; however, this does not alter the legal assessment of the clause's effectiveness. A lock-up clause contained in an investment agreement does not bind third parties. In such cases, Article 57 § 2 CC does not apply, since the investment agreement creates obligations only *inter partes* – that is, only among the contracting parties. Accordingly, a breach of the lock-up clause in this context may give rise to a claim for damages but does not affect the validity or effectiveness of the share transfer itself.

It is also important to emphasize that the company's articles of association, as a constitutive and organizational agreement, are subject to a specific formal regime. Under Article 255 § 1 CCC, any amendment to the articles of association requires not only resolution of the general meeting but also registration with the National Court Register (KRS), which constitutes a condition of legal effectiveness. A change to the articles of association becomes legally binding only upon registration. The registration has a constitutive legal effect (Stawecki, 2005). Moreover, pursuant to Article 8 section 1–3 of the Act on the National Court Register (*Ustawa o Krajowym Rejestrze Sądowym*, consolidated text: Journal of Laws of 2025, item 869), the register is public, and any person has the right to access its contents, including corporate documents such as the articles of association.

Since 2021, access to the register has been provided electronically via the Central Information platform (*Centralna Informacja*). The public nature of the articles of association reinforces the rationale for applying the concept of obligations with extended effectiveness. It enables all parties – shareholders, counterparties and potential buyers – to become aware of restrictions imposed by the company's articles of association.

From an investment perspective, the binding effect of the articles on third parties protects the interests of investors and fellow shareholders. It allows them to effectively resist attempts to circumvent contractual restrictions on share transfers. In this way, the breach of a lock-up clause is not reduced to a mere claim for contractual damages; it can also preclude the legal effectiveness of the transfer of legal title itself.

CONCLUSION

The lock-up clause is a widely used contractual mechanism serving to temporarily restrict the transferability of shares in a Polish limited liability company. Its main role is to protect the interests of the company and its investors by temporarily stabilizing the ownership structure – thereby fostering continuity and facilitating development. Lock-up provisions are very common in private equity and venture capital transactions, where they serve both protective and incentive-based purposes.

From the investor's perspective, the use of a lock-up clause is fully justified both economically and organizationally. Investors who commit substantial financial resources expect not only to acquire shares, but also to rely on personal stability among existing shareholders, typically the company's founders, whose knowledge, experience, and networks are often central to the company's value. The lock-up clause is intended to ensure that such key individuals remain actively involved in the company's operations for a defined period, thereby enhancing the security and growth potential of the investment.

In practice, the clause results in a temporary suspension of the shareholder's ability to transfer shares, usually for a period of three to five years. This restriction should be qualified as a limitation on share transferability, not an outright prohibition. In light of Article 182 § 1 CCC, a lock-up clause should be deemed legally valid, especially when it is time-bound, proportionate, and pursues legitimate business objectives. Such a clause aligns with the nature of the Polish limited liability company and should not be equated with the permanent deprivation of a shareholder's right to transfer their interest. It does not "trap" the shareholder in the company but rather constitutes a rational and temporary limitation, one that is voluntarily accepted by the shareholders themselves.

The lock-up clause functions as a contractual safeguard, not only for investors but also for other shareholders, ensuring that no party unilaterally exits the ownership structure during a critical period. Although additional legal instruments may also be used to secure shareholder commitment (e.g., management agreements or non-compete agreements), only a lock-up clause embedded directly in the company's articles of association produces strong legal consequences. Its breach leads not merely to contractual liability, but to ineffectiveness of the share transfer itself.

As long as the lock-up clause remains in force, the legal title to shares cannot be effectively transferred, whether through sale, donation or any other disposition. A violation of the clause results in the ineffectiveness of the transactions vis-a-vis the company, meaning that although a contract may be executed, it does not produce in rem effects. The legal title remains with the original shareholder, and the acquirer does not attain shareholder status.

In conclusion, when properly drafted and limited in duration, the lock-up clause is fully compatible with the Polish law.

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