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DRAG-ALONG, TAG-ALONG, ROFR, ROFO: DEMYSTIFYING KEY SHAREHOLDER RIGHTS

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ABSTRACT

In the evolving landscape of venture capital, private equity, and startup financing, shareholder rights have emerged as critical instruments for balancing control, liquidity, and economic protection among investors and founders. Among these, drag-along, tag-along, right of first refusal (ROFR), and right of first offer (ROFO) provisions constitute some of the most negotiated and frequently misunderstood elements of shareholders' agreements. This article provides a comprehensive doctrinal and transactional analysis of these rights within the Nigerian corporate framework, anchored primarily in the Companies and Allied Matters Act (CAMA) 2020. It situates Nigerian practice within a comparative framework involving the United Kingdom, Singapore, and South Africa, highlighting similarities, divergences, and lessons for Nigerian practitioners. Drawing from statutory interpretation, leading contractual jurisprudence, and emerging investment trends, the article argues that the enforceability and effectiveness of these shareholder rights in Nigeria ultimately depend on rigorous drafting, anti-circumvention design, clarity of obligations, and an appreciation of judicial attitudes toward contractual autonomy. Crucially, it demonstrates how to structure these rights to mitigate enforceability risks, particularly in relation to CAMA's minority protection provisions, and extends the analysis to sector-specific considerations relevant to energy and infrastructure joint ventures. It concludes with reform proposals and drafting guidance to strengthen minority protection, enhance investment certainty, and align Nigerian corporate governance with global best practices.

1. INTRODUCTION



Shareholder rights have become a cornerstone of modern corporate transactions, especially within the fast-growing Nigerian venture capital (VC) and private equity (PE) ecosystem. As investors inject capital into early and growth-stage enterprises, the relationship between majority and minority shareholders becomes increasingly complex, necessitating contractual mechanisms that allocate rights, obligations, and economic outcomes.

Between 2021 and 2024, Nigeria consistently ranked among the top three destinations for VC investment in Africa, capturing between 15%-20% of annually reported deal value. In 2024 alone, Nigeria regained its position as Africa's top VC destination, securing US$520 million in equity funding across 103 deals, representing an 11% year-on-year increase.[1] This rise in startup financing has led to increased use of shareholders' agreements to govern ownership, exits, and internal decision-making. However, many founders and even some investors sign these agreements without fully appreciating the implications of provisions such as drag-along, tag-along, ROFR, and ROFO. These clauses influence exit pathways, control over share transfers, minority protection, and liquidity events, issues that directly shape corporate destiny.

In Nigeria, the position is more nuanced than a purely contractual characterization would suggest. CAMA 2020 has introduced statutory recognition for these rights: Section 142(1) imposes a mandatory right of first offer on transfers of existing shares across all companies, and Section 22(2) expressly authorizes private companies to adopt tag-along protections and further transfer restrictions through their Articles.[2] Drag-along rights and ROFO, however, remain creatures of contract, arising solely from negotiation and drafting.

The terms are not unique to Nigeria. UK transactional practice treats them as essential tools in private company governance. Singapore and South Africa adopt similar structures, but with varying interpretations influenced by their corporate and judicial architecture. Nigerian practitioners drafting investment documents for cross-border investors must understand these comparative ecosystems to anticipate expectations and avoid enforceability issues.

This article dissects each right, illustrates its commercial logic, reviews Nigerian legal treatment, compares foreign practice, and provides drafting guidance, including the anti-circumvention mechanics, operational safeguards and sector overlays that distinguish a robust clause from one that merely appears complete on paper. It concludes with best-practice recommendations to strengthen investor confidence and minority protection in Nigeria's corporate space.

2. LEGAL FOUNDATION OF SHAREHOLDER RIGHTS IN NIGERIA



2.1. STATUTORY FRAMEWORK UNDER CAMA 2020

CAMA 2020 provides the structural foundation for share transfers, minority protection, and corporate autonomy. Key provisions include:

Section 22(2) — Expressly authorises private companies, subject to the provisions of their Articles, to restrict the transfer of shares and to provide for a right of first offer on transfers to non-members and tag-along protection where a controlling stake is sold. These rights are permissive, not mandatory, their adoption depends on the shareholders.[3]

Section 142 (1) — Imposes a mandatory right of first offer on transfers of existing shares, requiring that shares not be transferred to a non-member without first being offered to existing members. This provision applies to all companies and constitutes a statutory ROFR on share transfers, distinct from its separate function of governing pre-emption rights on new share issues.[4]

Sections 151–153 — Govern the transfer of shares, the entry of transfers in the register of members, and the company's right to refuse registration of a transfer.

Sections 310–311 — Provide remedies for minority oppression and unfairly prejudicial conduct, empowering the court to grant wide-ranging relief where company affairs are conducted in a manner oppressive or unfairly prejudicial to a member.[5]

CAMA 2020 does not provide a statutory basis for drag-along rights or ROFO. These remain entirely contractual and must be embedded in either:

- the Articles of Association,
- a Shareholders' Agreement (SHA), or
- both – with dual embedding being best practice for enforceability against current and future shareholders.

Crucial Drafting Point: Supremacy of Documents

For maximum enforceability, especially against third-party transferees, share transfer restrictions must be included in the Articles of Association, which are public documents. The SHA should include a clear Supremacy Clause stating that the SHA provisions prevail inter partes between the signing shareholders, and that all shareholders undertake to ensure the Articles are promptly amended to reflect the SHA's restrictions.

Accession and Enforcement Mechanics

Embedding rights in the Articles and SHA is necessary but not sufficient on its own, enforceability in practice depends equally on accession discipline. Every new shareholder or transferee should execute a Deed of Adherence (or Accession Deed) agreeing to be bound by the SHA and the Articles as a condition precedent to registration of any transfer. The company should be expressly empowered, drawing on the authority conferred by Sections 151 - 153 of CAMA, to refuse to register any transfer and to decline to recognise any purported transferee unless and until these accession requirements are fully satisfied. It is also advisable to place a legend on share certificates and in the company's register noting that all transfers are subject to the Articles and the SHA. Without this layer of accession mechanics, a technically well-drafted clause can still be defeated by a transferee who simply never signs on to the governing documents.

2.2. CONTRACTUAL BASIS AND CASE LAW

Nigeria follows established common-law doctrine on enforceability of contracts. Two principles are particularly relevant: First, Courts uphold freely negotiated commercial agreements absent illegality or public policy concerns.[6] Second, where shareholders adopt contractual obligations, courts will enforce them if those obligations are clear, unambiguous, and consistent with company law.

While no Nigerian appellate decision has addressed drag-along or tag-along rights directly, courts have repeatedly enforced negotiated share transfer restrictions and pre-emption rights.

2.3. COMPARATIVE OVERVIEW

- **United Kingdom (Companies Act 2006):** Drag-along and tag-along rights are standard in UK shareholders' agreements and are common provisions in private equity, venture capital, and corporate joint venture transaction documentation.[7] Courts enforce them where properly drafted. They are not statutory rights.
- **Singapore (Companies Act 1967 as amended):** Singaporean practice mirrors the UK approach. Shareholder autonomy is strongly upheld, and courts routinely enforce negotiated share transfer restrictions.[8]
- **South Africa (Companies Act 71 of 2008):** South Africa uniquely allows certain shareholder rights, including pre-emption, to be entrenched in the Memorandum of Incorporation. Under section 15(6) of the Companies Act 71 of 2008, such provisions operate as a statutory contract between the company, its shareholders, and directors, giving them a durability beyond that of a purely contractual arrangement.[9] Drag-along and tag-along clauses are widely accepted and enforceable.

3. DRAG-ALONG RIGHTS



3.1. DEFINITION AND COMMERCIAL PURPOSE

A drag-along right allows majority shareholders to compel minority shareholders to sell their shares to a third-party buyer on equivalent terms when an exit transaction is approved.

Its Commercial purposes are threefold:

- To prevent minority shareholders from frustrating a lucrative acquisition.
- To enable the clean exits that venture capital and private equity acquirers typically require before committing to a transaction; and
- To enhance the overall saleability of the company by ensuring a buyer can acquire 100% of the equity without holdout risk.

3.2. FOUNDATIONAL DEFINITIONS: TRANSFER, DEEMED TRANSFER, AND SALE OF COMPANY

A drag-along clause is only as strong as its definition of what constitutes a "Transfer." A narrow definition limited to a literal sale of shares creates a significant vulnerability: a controlling shareholder can sidestep the entire regime through a holding-company flip, a merger, or a scheme of arrangement that transfers economic and voting control without technically transferring a single share in the target company. This form of structuring arbitrage is not theoretical; it is a well-documented avenue for circumventing contractual transfer restrictions and any shareholders' agreement that fails to address it gives sophisticated counterparties a ready escape route from the very protections the agreement was designed to create.

The definition of "Transfer" should therefore extend beyond a literal share sale to encompass any sale, assignment, charge, pledge or other disposal of legal or beneficial ownership, and any arrangement having a similar economic effect. This breadth ensures that collateral arrangements such as a pledge of shares to a lender that effectively transfers economic exposure are brought within the regime rather than sitting outside it by reason of a technicality.

Building on this, "Deemed Transfer" should capture any change of control, whether direct or indirect, of a shareholder or its holding company, and any merger, scheme of arrangement, consolidation or reorganisation that results in a change in control or beneficial ownership. This is the definition that closes the holding-company flip loophole: by treating a change of control at the shareholder level as equivalent to a transfer of the underlying shares, it ensures that a buyer cannot acquire effective ownership of a company's equity simply by purchasing the holding company that sits above the relevant shareholder.

These two definitions together feed into a defined "Sale of the Company," which should encompass: (i) a sale of all or substantially all of the shares in the company; (ii) a merger, scheme of arrangement, consolidation or similar transaction resulting in a change of control; or (iii) a sale of all or substantially all of the company's assets (in each case including any Deemed Transfer). It is this composite definition that then operates as the trigger in the drag-along clause, ensuring that the right responds to the economic substance of a transaction rather than its legal form.

3.3. TYPICAL CLAUSE STRUCTURE

Sample Drag-Along Clause:

"If shareholders holding not less than 70% of the issued share capital ('Dragging Shareholders') approve a bona fide third-party Sale of the Company - meaning (i) a sale of all or substantially all shares, (ii) a merger, scheme of arrangement, consolidation or similar transaction resulting in a change of control, or (iii) a sale of all or substantially all assets of the company, (in each case including any Deemed Transfer,) the Dragging Shareholders may require all remaining shareholders ('Dragged Shareholders') to sell their shares to the buyer on the same terms and conditions, subject to the Dragging Shareholders providing at least 20 business days' written notice to each Dragged Shareholder and ensuring equal price and consideration for all shareholders of the same class, distributed in accordance with the agreed Capital Structure Waterfall. Any Dragged Shareholder who fails to execute the required transfer documents and ancillary instruments by the deadline specified in the notice shall be deemed to have irrevocably appointed the company secretary (or such director as the Dragging Shareholders shall nominate) as their attorney to execute such documents on their behalf, and the company shall be entitled to refuse to register any transfer unless all drag mechanics have been complied with"

The requirement that the sale be to a "bona fide third party" is a material protection for minority shareholders. In **United Company Rusal plc v Crispian Investments Ltd,** the English Commercial Court held that this phrase connotes an outside person unconnected with the transaction, and that the purchase must be without collusion and not part of a scheme to avoid the provisions of the agreement.[10]

Key Elements to Analyse: Trigger definition, drag threshold, same-terms requirement, notice period, obligation to cooperate, escrow and holdback language, Power of Attorney mechanics, and registration-refusal backstop.

Drag Threshold – Market Norms and Class Consent

A 70% drag threshold sits comfortably within market bounds. Internationally, thresholds of 66⅔% and 75% are also commonly used, with 75% more prevalent in private equity and infrastructure transactions. Where multiple share classes carry different economic entitlements,

deal parties often build in a class consent requirement or an approval mechanic specifically tied to the capital structure waterfall, so that the drag cannot be challenged as structurally unfair to a particular class whose economics may be materially different from the majority's.

Defining "Same Terms and Consideration"

In the context of VC and PE transactions, where different share classes such as Preferred and Common Stock exist, "same terms" must be explicitly defined. It does not mean the same price per share for all shareholders; it means that consideration is distributed according to the agreed Capital Structure Waterfall and Liquidation Preference set out in the Articles, ensuring equal treatment within each class.

Beyond pricing economics, "same terms" should be drafted to cover all material transaction terms, including escrow and holdback percentages, earnout or contingent consideration mechanics, rollover equity elections, closing timelines, and the allocation of conditions precedent and regulatory risk. A drag clause that is silent on these non-price elements allows a buyer and the dragging majority to structure a deal that is nominally equal on headline price but materially unequal in risk allocation, with the economic disparity hidden in the deal's structural terms rather than its stated consideration.

3.4. NIGERIAN LEGAL CONTEXT AND MITIGATING THE SECTION 311 CAMA RISK

Because CAMA permits contractual regulation of share transfers, drag-along rights are generally enforceable provided they are clearly drafted and included in the Articles for enforceability against future shareholders.

The primary enforceability risk is a challenge under Sections 310–311 of CAMA on grounds of oppression or unfairly prejudicial conduct. A broad contractual waiver of a shareholder's right to bring a claim under those sections would itself risk challenge on public policy or ouster-of-jurisdiction grounds, a court is unlikely to enforce a blanket exclusion of a statutory minority remedy.

The better approach is to emphasise fairness safeguards and process compliance, paired with a carefully framed contractual acknowledgment rather than an outright waiver. The SHA should state that the exercise of the drag-along right, in strict accordance with the agreed threshold, process, and economic protections set out in the agreement, is a pre-agreed contractual exit mechanism and is intended by the parties not to constitute oppressive or unfairly prejudicial conduct. The clause should further make clear that nothing in the agreement limits any remedy to the extent that such a limitation is prohibited by applicable law, while the parties agree that disputes arising from a compliant exercise of the drag-along right shall be determined as a contractual matter in accordance with the agreement's dispute resolution clause. This formulation preserves the statutory remedy in principle while making it commercially very difficult to succeed on an oppression claim where the drag was exercised exactly as the parties had originally agreed.

3.5. DRAFTING RISKS AND TIPS

- Ensure fair valuation protections for minorities, for instance by requiring that the terms offered to Dragged Shareholders are no less favourable than those received by the Dragging Shareholders.

- Avoid overly low drag thresholds; anything below 60% creates a meaningful risk of an oppression challenge under Sections 310 – 311 of CAMA, and class consent mechanics should be considered where multiple share classes are in issue.

- Clarify the treatment of ESOP holders and preferred shareholders under the Capital Structure Waterfall before the drag is triggered.

PRO-RATA, CAPPED, AND LIMITED LIABILITY FOR DRAGGED SHAREHOLDERS

Any Dragged Shareholder's obligation to provide Warranties and Indemnities to the buyer, and their exposure to any escrow or holdback, must be strictly pro-rata to the net proceeds they receive from the sale. Their total liability must also be explicitly capped at those net proceeds, protecting minorities from bearing disproportionate risk relative to their economic participation.

Dragged Shareholders should generally be required to give only fundamental warranties, covering title to their shares, capacity, and authority to transfer, rather than business warranties, non-compete undertakings, or employment obligations. This position is consistent with the BVCA Model Shareholders' Agreement (updated February 2023), which confirms that dragged shareholders are not required to give business warranties or enter into non-compete or non-solicitation covenants unless previously agreed, and that their liability is capped at the purchase price received. Any obligation to assume broader warranties should require the express prior agreement of the relevant Dragged Shareholder and should not be imposed unilaterally through the drag mechanism. These liability protections should be several and not joint.

POWER OF ATTORNEY AND REGISTRATION-REFUSAL MECHANICS

A drag-along right that depends on every Dragged Shareholder voluntarily signing transfer documents is operationally fragile. The sample clause above embeds the necessary mechanics: an express deemed execution provision authorising a named attorney to sign transfer documents on behalf of any non-compliant Dragged Shareholder, and an express entitlement of the company to refuse registration unless all drag conditions have been satisfied. Without these mechanics, a single uncooperative shareholder can stall an otherwise fully approved and commercially agreed exit.



4. TAG-ALONG RIGHTS



4.1. DEFINITION AND RATIONALE

A tag-along right allows minority shareholders to participate in the sale of shares by a majority shareholder, ensuring they have an equal opportunity to sell their shares on the same terms rather than being left behind under potentially new and hostile control.[11]

For this protection to be effective, the trigger must be anchored to a change of Control, not merely to the selling shareholder transferring a numerical percentage of their own shareholding, since the more common real-world threat to minority shareholders is an indirect change of control achieved at the holding-company level. Similarly, where a buyer is unwilling to acquire all tagged shares, the clause must provide a clear scale-back mechanic; without one, allocation disputes among the tagging shareholders themselves routinely cause otherwise agreed transactions to stall.

4.2. STANDARD CLAUSE EXAMPLE

Sample Tag-Along Clause:

"If any shareholder proposes a Transfer (including any Deemed Transfer) which would result in a change of Control of the company, the other shareholders shall have the right, but not the obligation, to participate in such sale by selling a pro-rata portion of their shares to the same buyer on the same terms, as determined by the agreed Capital Structure Waterfall for each class of shares. The selling shareholder shall give not less than 15 business days' written notice of the proposed Transfer to all other shareholders, specifying the identity of the buyer, the proposed consideration, and all material terms. If the buyer is unwilling to acquire all shares offered under the tag-along, the number of shares to be purchased from each participating shareholder shall be reduced pro-rata, or in such other proportion as the participating shareholders may agree in writing, so that the buyer acquires the maximum number it is willing to purchase."

4.3. NIGERIAN POSITION

Tag-along rights are enforceable as contractual rights under Nigerian law, and where adopted in the Articles, benefit from the statutory footing provided by Section 22(2) of CAMA 2020. In either case, enforceability requires that pricing and mechanics are clear, exercise procedures including notice periods and delivery of share certificates are unambiguous, and the definition of "identical terms" is properly aligned with the company's agreed Capital Structure Waterfall.

"Identical terms" should not be limited to headline price and waterfall distribution. It should also capture all material non-price terms; escrow or holdback arrangements, earnout structures, rollover equity elections, and closing conditions, to ensure that the effective economic package received by minority shareholders is genuinely equivalent to that received by the majority.

Any side arrangements between the buyer and the selling shareholder or management, including retention bonuses, consultancy arrangements, non-compete payments, and similar sweeteners, must be disclosed to all other shareholders. Such arrangements should either be offered on economically equivalent terms to all participating shareholders, or expressly carved out with the benefit of appropriate shareholder approvals.

Undisclosed side deals are among the most common sources of post-completion litigation in tag-along transactions, because they create a real disparity between what different shareholders actually receive from the same transaction, even where the headline terms appear equal on paper.

4.4. COMMON DRAFTING PITFALLS

- Triggering the tag-along on a numerical shareholding threshold rather than on a change of Control, which leaves indirect transfers (including Deemed Transfers) unprotected.
- Failing to define "identical terms" to cover non-price terms and side arrangements.
- Absence of a scale-back mechanic where the buyer is unwilling to acquire all tagged shares.
- Ambiguous notice timelines and exercise procedures.
- Misalignment with ROFR and ROFO provisions, creating procedural conflicts when multiple rights are triggered by the same transaction.
- Failure to limit Tagged Shareholders' liability for warranties and indemnities to fundamental warranties on a several, pro-rata, and capped basis, consistent with the protections applicable to Dragged Shareholders described in Section 3.5.



5. RIGHT OF FIRST REFUSAL (ROFR)



5.1. OVERVIEW

A ROFR gives existing shareholders the right to match a third-party offer before the selling shareholder completes the proposed sale to that third party. It operates after a bona fide external offer has been received, distinguishing it from the ROFO which is triggered before any third-party approach is made.

5.2. PRACTICAL OPERATION

The ROFR operates through a structured sequence of steps that must be precisely drafted to avoid dispute.

1. The selling shareholder receives a bona fide written third-party offer setting out the proposed price and all material terms, including the type of consideration offered and any escrow, earnout, deferred payment, or conditions attached to the offer.

2. The selling shareholder issues a ROFR Notice to all existing shareholders summarising the price and all material terms of the third-party offer in sufficient detail for an informed matching decision to be made.

3. ROFR holders may elect to purchase the shares on those terms within a defined period, typically 15 to 30 days from receipt of the ROFR Notice.

4. Where the offer includes non-cash consideration, the matching election must encompass an equivalent value or structure, determined by reference to a valuation mechanism agreed in the SHA, so that the right remains exercisable even where the consideration involves shares, deferred payments, or earnout structures.

5. If existing shareholders decline to exercise the ROFR or allow the notice period to expire without response, the Transfer may proceed to the third party on the notified terms.

Where the ROFR is not exercised, the selling shareholder must complete the Transfer on terms no more favourable to the buyer than those set out in the ROFR Notice, and within a defined completion window, commonly 60 to 120 days from expiry of the ROFR period. Failure to complete within that window requires the entire ROFR process to be repeated. This discipline prevents the seller from using a once-rejected notice as cover for renegotiating improved terms with the buyer outside the scrutiny of the ROFR regime.

5.3. RELATIONSHIP WITH STATUTORY PRE-EMPTION (SECTION 142 CAMA)

Section 142(1) of CAMA imposes a mandatory right of first offer on transfers of existing shares, requiring that no shares be transferred to a non-member without first being offered to existing members. This statutory ROFR operates independently of, and in addition to, any contractual ROFR in the SHA. Both regimes must therefore be drafted to operate harmoniously, the SHA's ROFR mechanics should be consistent with the Section 142(1) offer requirement, and the SHA should specify the procedure by which compliance with Section 142(1) is treated as satisfying the contractual ROFR process, or vice versa, to avoid shareholders facing two parallel but inconsistent pre-emption obligations on the same transfer.[12]

5.4. BALANCING FLEXIBILITY AND CONTROL IN DRAFTING

- Avoid excessive ROFR windows that chill third-party offers.
- Define valuation mechanisms clearly.

Exemptions: ROFR provisions must include clearly defined exemptions for transfers where no genuine change of economic ownership or control is intended. Standard exemptions include Transfers to Affiliates, transfers for estate planning purposes, and Transfers by VC or PE shareholders after an agreed lock-up period. These should be extended to cover Transfers by way of security to reputable lenders and enforcement thereof; intra-group reorganisations that do not change ultimate control; and intra-fund Transfers by regulated VC or PE entities in the ordinary course of fund management. The definition of "Affiliate" should be drawn tightly and conditioned on no change of ultimate control, to prevent the exemption sheltering what is, in substance, an arm's-length disposal.



6. RIGHT OF FIRST OFFER (ROFO)



6.1. DEFINITION AND DISTINCTION FROM ROFR

A ROFO requires a selling shareholder to offer shares to existing shareholders before approaching any third party. Unlike the ROFR, which activates after a third-party offer has been received, the ROFO is triggered before any external approach, the selling shareholder must first present their own proposed price and terms to existing shareholders.

6.2. TYPICAL MECHANICS

The selling shareholder notifies existing shareholders of intent to sell. Parties negotiate exclusively for a fixed period. If negotiations fail, the seller may approach third parties, but not on materially better terms.

The initial ROFO notice must specify the number and class of shares, price or valuation basis, payment mechanics, timing, and key conditions. "Materially better terms" must cover not only headline price but also materially more favourable risk or structure terms, including escrow and holdback percentages, earnout structure, conditions precedent, and closing timeline.

6.3. PRACTICAL GUIDANCE ON INTEGRATING ROFO WITH ROFR PROVISIONS

Either ROFO or ROFR, properly drafted, is capable of delivering the desired protection in most transactions. Stacking both without clear commercial justification adds procedural complexity and risks conflicting notice periods. Where both are retained, their timelines and triggering conditions must be carefully sequenced to avoid placing the seller in technical breach of one right while complying with the other.

6.4. QUANTIFYING THE "MATERIALLY BETTER TERMS"

"Materially better terms" means a third-party offer that either (i) exceeds the last internal offer by more than 10% to 15% on an aggregate value basis, or (ii) is otherwise materially more favourable in structure or risk allocation, including escrow and holdback percentages, earnout mechanics, conditions precedent, or closing timeline.

If either limb is satisfied, the ROFO process must be repeated before the seller may proceed.

7. INTERACTION OF RIGHTS IN PRACTICE



In VC and PE transactions, all four rights frequently operate within the same agreement. A typical sequential hierarchy runs ROFO → ROFR → Tag-Along → Drag-Along, with each mechanism activating at a different stage of the exit or Transfer process.

The SHA must harmonise the timing and procedural requirements of each right and include a Precedence Clause governing any conflict between SHA provisions and the Articles.

The agreement must expressly state when the Drag-Along overrides the other rights. Where a qualifying Sale of the Company has cleared the agreed drag threshold and satisfied all prescribed minority protections, the SHA should provide that the ROFO, ROFR, and Tag-Along procedures are either disapplied or deemed satisfied, a right intended to give existing shareholders first-mover priority should not operate as an inadvertent veto over a transformative exit.

ILLUSTRATION: NIGERIAN TECH STARTUP EXIT SCENARIO

A majority investor receives a transformative acquisition offer. The ROFO gives early-stage investors an exclusive first window to negotiate. If they decline, the ROFR gives them the opportunity to match the third-party offer. If the ROFR is not exercised, the Tag-Along allows minority founders to participate on the same economic terms. Where the deal satisfies the drag threshold and all prescribed conditions, the Drag-Along enables the majority to deliver 100% of the equity to the buyer, with the Precedence Clause confirming that the Drag-Along supersedes any residual ROFO or ROFR mechanics.

8. ENERGY AND INFRASTRUCTURE OVERLAY



Drag-along, tag-along, ROFR, and ROFO provisions are equally prevalent in Nigerian energy and infrastructure joint ventures, but their implementation requires integration with regulatory and asset-level frameworks that do not arise in a typical VC or PE context.

REGULATORY AND MINISTERIAL CONSENTS

Transfers of interests in regulated assets require prior approval from the relevant sector regulator or minister, in the upstream oil and gas sector, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). All four mechanisms must operate subject to these consent requirements, with appropriate long-stop dates to accommodate regulatory timelines that may extend well beyond standard SHA notice periods.

LOCAL CONTENT COMPLIANCE

Under the Nigerian Oil and Gas Industry Content Development Act 2010, proposed transferees may be required to demonstrate local content compliance as a condition of registration. The SHA should anticipate this and allocate responsibility for obtaining the necessary confirmations before any Transfer is completed.

QUALIFIED TRANSFEREE AND OPERATOR STANDARDS

Joint venture and concession agreements typically require an incoming party to satisfy technical, financial, and operational qualification standards. The SHA's Transfer mechanics must align with these asset-level requirements so that a Transfer passing the SHA's procedural conditions does not simultaneously fail the qualification standard in the underlying joint venture agreement.

SANCTIONS, ANTI-BRIBERY, AND ANTI-MONEY LAUNDERING GATING

All Transfers should be conditioned on the proposed transferee passing applicable sanctions screening and anti-bribery, anti-corruption, and anti-money laundering checks. The company and existing shareholders should be expressly entitled to refuse to recognise or register any Transfer where these requirements are not satisfied.

ALIGNMENT WITH ASSET-LEVEL PRE-EMPTION UNDER JOAS AND PSCS

Where the underlying asset is held through a Joint Operating Agreement (JOA) or Production Sharing Contract (PSC), those instruments contain their own pre-emption rights and consent regimes operating independently of the shareholder-level provisions in the corporate SHA. Practitioners must map both regimes at the outset and sequence the SHA and asset-level documents consistently, ensuring, for example, that the SHA's ROFR notice period does not expire before the JOA's pre-emption period has run.

9. ENFORCEMENT CHALLENGES AND REMEDIES



9.1. ENFORCEMENT UNDER NIGERIAN LAW

For breach of any of these rights, the principal remedies available are specific performance, injunctive relief, and damages. Specific performance and injunctions are preferred where reversal of the Transfer remains practicable; damages become primary where the Transfer cannot practically be unwound.

9.2. JUDICIAL ATTITUDE

Nigerian courts are increasingly willing to uphold detailed corporate agreements, especially where parties negotiated freely and at arm's length. The Supreme Court in **Yalaju-Amaye v Associated Registered Engineering Contractors Ltd & Ors**[13] recognised that corporate power often rests with the majority, making minority shareholders vulnerable where safeguards are weak, a consideration that underscores the importance of well-drafted exit mechanisms that can withstand scrutiny under Sections 310–311 of CAMA.

The enforceability of any forced sale mechanism depends on the drafting demonstrating fairness, commercial necessity, and genuine pre-agreement by all affected shareholders. In exercising drag-along and related exit rights, parties are expected to act in good faith, that is, honestly and not in a manner calculated to frustrate the purpose of the agreement or that could be regarded as commercially unacceptable by reasonable and honest people, as confirmed in persuasive English authority.[14] A drag-along exercised in strict compliance with its agreed terms, framed as a pre-agreed contractual exit mechanism, presents the strongest basis for enforcement and the most credible rebuttal of any oppression challenge under Sections 310–311 of CAMA.

9.3. ARBITRATION AND CROSS-BORDER ENFORCEMENT

Most VC and PE agreements involving Nigerian entities provide for arbitration, with the Lagos Court of Arbitration, LCIA, and ICC being the most commonly selected forums. Nigerian courts generally enforce properly drafted arbitration clauses, and international awards are enforceable in Nigeria under the Arbitration and Mediation Act 2023.

The arbitration clause should preserve access to court for urgent injunctive relief, enabling any party to restrain a threatened Transfer pending constitution of a tribunal. It should also provide for expedited procedures specifically for disputes concerning share Transfers and exit mechanics, given the time-sensitive nature of such disputes.

10. COMPARATIVE LESSONS AND POLICY CONSIDERATION



UK practice demonstrates the value of embedding these rights in both the Articles and the SHA, supported by accession mechanics that bind incoming shareholders to the existing regime. Singapore's approach shows how consistent judicial deference to freely negotiated contracts strengthens investor confidence. South Africa's framework illustrates the additional durability that comes from entrenching certain rights at the constitutional document level under section 15(6) of the Companies Act 71 of 2008, giving them statutory force as between all shareholders.

Nigeria may draw productively from each model through:

- Statutory clarification on contractual shareholder rights.
- CAC guidance on enforceability of drag-along transactions.
- Mechanisms to protect minorities during forced sale events.
- SEC and CAC issuance of specific guidance confirming that pre-agreed exit mechanisms, exercised in strict compliance with agreed fairness metrics, are presumptively not oppressive within the meaning of Sections 310–311 of CAMA.

11. CONCLUSION AND RECOMMENDATIONS

Drag-along, tag-along, ROFR, and ROFO rights are foundational instruments of corporate governance and investment structuring. Under Nigerian law, their enforceability depends on drafting clarity, anti-circumvention design, alignment with CAMA, and procedural precision across all four mechanisms.

KEY RECOMMENDATIONS:

1. **Dual Enshrining, Supremacy and Accession:** Embed all four rights in both the Articles and the SHA, include a Supremacy Clause obligating prompt amendment of the Articles to reflect the SHA, and require every transferee to execute a Deed of Adherence as a condition precedent to registration.

2. **Anti-Circumvention Drafting:** Define "Transfer," "Deemed Transfer," and "Sale of the Company" broadly to capture indirect transfers, holding-company changes of control, mergers, schemes of arrangement, and asset sales, applied consistently across all four rights.

3. **Financial Clarity:** Define "same terms" and "identical terms" to cover both the Liquidation Preference Waterfall and all material non-price terms including escrow, earnout, and rollover equity elections, with disclosure obligations for any side arrangements.

4. **Operational Execution:** Include Power of Attorney or deemed execution mechanics and a registration-refusal backstop in drag-along clauses, and a pro-rata scale-back mechanic in tag-along clauses where a buyer will not acquire all tagged shares.

5. **Risk Mitigation:** Frame the SHA's treatment of CAMA Sections 310–311 as a fairness-based contractual acknowledgment rather than a blanket statutory waiver.

6. **Minority Protection:** Limit Dragged and Tagged Shareholders' warranty exposure to fundamental warranties only, on a several and pro-rata basis, capped at net proceeds received, without compulsion to provide business warranties or non-compete undertakings unless expressly agreed.

7. **Procedural Certainty:** Avoid unnecessary layering of ROFO and ROFR; include an express precedence rule confirming when a compliant drag-along overrides the other rights; and define "materially better terms" using a two-limb test covering both headline price and structural or risk-allocation terms.

8. **Sector Overlays:** For energy and infrastructure transactions, treat regulatory consents, local content compliance, qualified transferee standards, sanctions and ABAC gating, and alignment with JOA and PSC pre-emption regimes as integral drafting considerations from the outset.

9. **Dispute Resolution:** Provide for arbitration as the primary dispute resolution mechanism, supplemented by a court-access carve-out for urgent injunctive relief and an expedited procedure for Transfer-related disputes.

Nigeria's investment climate will benefit materially from greater clarity and sophistication in the treatment of these rights, both at the level of individual transaction drafting and through statutory and regulatory guidance that gives all market participants confidence in the enforceability of the frameworks they negotiate.

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