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Golden Shares

a mechanism for privatizing companies with state involvement.

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Golden Shares.

The phenomenon of Golden Shares is a particularly important concept in commercial and public law, especially in the context of the privatization of state-owned companies.

Emerging primarily in Europe, particularly in the United Kingdom, during the neoliberal policies of the 1980s and 1990s, this legal tool was designed to allow the state to maintain limited but strategic influence over previously public companies transferred to the private sector.



Definition and Legal Nature

Legal doctrine defines the golden share as a privatization technique designed to reconcile the transfer of a public company to the private sphere with the protection of national interests. According to Cruz Ferrer (2003), it consists of the transformation, by statute or law/regulation, of an ordinary share into a special share (golden share) that remains in the hands of the government.

This share carries special rights or veto privileges that make the consent of its owner (the State) essential for the valid adoption of certain decisions considered relevant to the safeguarding of the public interest, national security, or the provision of essential services[1].

[1] Aparicio, 2011



These rights are exercised even when the State's shareholding is minority or non-existent, reserving the power of veto over strategic decisions, such as:

- The sale or encumbrance of key assets.
- The dissolution of the company.
- Fundamental amendments to the articles of association.

In terms of its implications for classical commercial law, the golden share creates obvious tension with the fundamental principles of traditional commercial law, which has led to constant doctrinal controversy:

- Principle of shareholder equality: This mechanism grants the state, as a shareholder, extraordinary rights without requiring a majority investment or shareholding [2].
- Free Transferability of Shares: By establishing disproportionate control or a veto right over corporate decisions, the free circulation and intrinsic value of the remaining shares may be compromised.

[2] Muci-Abraham, 2018



In the Venezuelan legal system, the concept of the Golden Share as a nominated figure is not part of positive commercial law, nor is it expressly regulated in the Commercial Code. However, there are similar mechanisms of state control that confer veto rights or disproportionate influence:

- Joint Ventures: State control over strategic sectors (such as hydrocarbons) is typically exercised through special legislation and the establishment of joint ventures, where the Venezuelan State constitutionally and legally reserves a majority shareholding [3].

- Shares with Special Rights: The Commercial Code allows for the creation of shares with special rights (Art. 292). However, common law requires that these rights be duly established and not detract from the essence of the company.

[3] A. Morales Hernandez , 2009

Emblematic Case: The Oil Opening

A clear example of the use of a mechanism analogous to the Golden Share was observed in the Oil Opening process and the establishment of PDVSA's joint ventures and its subsidiaries. In this context, an instrument conceptually similar to the golden share was designed to ensure the nation's control over the industry. Veto privileges were established for the state subsidiary, allowing it to reject proposals from the majority shareholder, with the final intervention of a Control Committee[4].

The controversy generated in the nullity trial focused on whether this control mechanism actually achieved the protection of the Nationalization Law and avoided the “weakness” in the integration of the oil economy, a function that the Golden Share is designed to guarantee.

[4] Brewer-Carias, 2001



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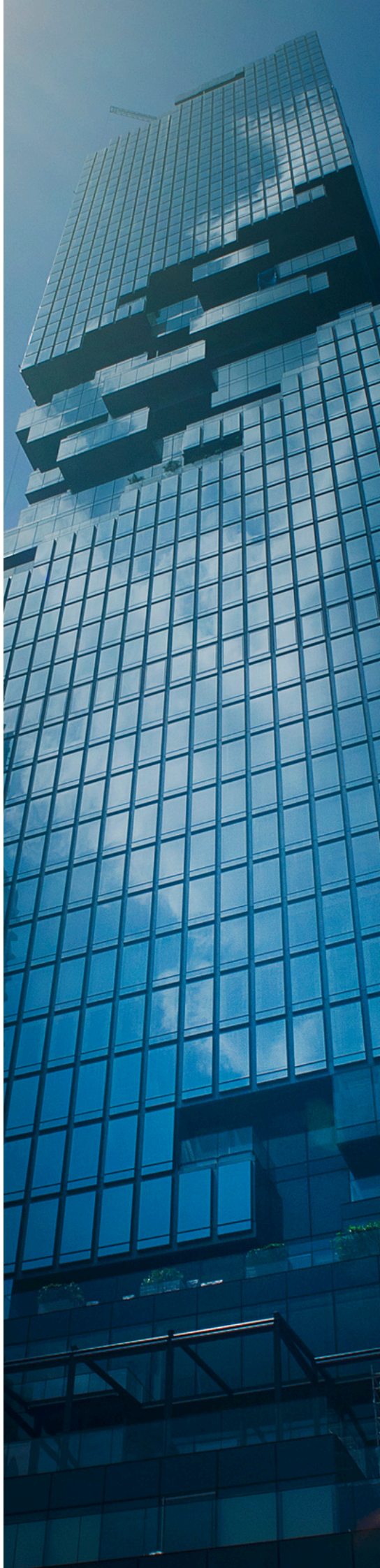
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