

## Varying a Shareholder's Participation in Management by the Use of Non-Statutory Devices: Is It Possible Under Our Corporation Statute?

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*SUBJECT(S): CORPORATION*

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The Article provides a discussion of the other devices and transactions, non-statutory in nature, which may be so designated as to vary the individual shareholder's normal statutory participation in a management. Its scope is limited to the situation of shareholders in a close corporation, the type of corporation, which predominated in those times. With the salient features of a close corporation – ownership of its shares is limited to the members of a family or to a group of friends or business associates, and the identity between ownership and management – the Author notes its similarity with a partnership, particularly the latter's element of "delectus personae" and representation. The challenge therefore consists in allowing the associates in a close corporation to operate as partners despite their choice of corporate form of organization, which admittedly insulates them against unlimited liability and affords them some calculated tax advantage. Certain provisions of the corporation statute are analyzed in the light of close corporations, and in the process, workable scenarios are proffered to effectively allocate participation in management through the use of agreements, charter and by-law provisions fixing quorum and voting arrangements. As a final word, Ferrer emphasizes the importance of a realistic approach to the perceived problem since the corporate economy then relied heavily on close corporations.