

## Deadlock and termination: country questions (Japan)

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Deadlock and termination of international joint ventures. Country Q&A (Japan).

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### **1. In the absence of specific provisions in a company's bye-laws or a shareholders' agreement, are any remedies available at law in the event of an unresolved dispute between shareholders resulting in deadlock?**

Although rarely used, under the procedures provided in the Companies Act, a shareholder may consider:

- ❑ **A transfer of shares.** Typically, a transfer of shares in a joint venture company is subject to approval by the board of directors (or, in some cases, the shareholders or other method as provided in the articles) of the company. If the company does not approve the proposed share transfer, the transferor can request that the company either purchase the shares or designate a third party to do so. If the parties to the share transfer fail to agree on the purchase price, they can petition the court to determine this.
  
- ❑ **Liquidation.** Generally, dissolution of the joint venture company must be approved by a special resolution of the shareholders. However, a shareholder holding 10% or more of either the voting rights of all shareholders or all shares issued by the company can file for a court order to dissolve the company, if there is a compelling reason based on one of the following circumstances:
  - ❑ it is extremely difficult for the company to execute business and the company suffers, or is likely to suffer, irreparable harm; or
  
  - ❑ the management or disposition of property of the company is extremely unreasonable and puts the existence of the company at risk.

### **2. Is it common practice expressly to provide for a dispute resolution process in a joint venture company for an unresolved dispute between shareholders resulting in deadlock? If so, are any procedures commonly adopted? In which document would the relevant provisions commonly be drafted?**

It is common for joint venture companies to provide some form of dispute resolution procedure to resolve a deadlock situation. Such procedures are typically set out in the shareholders' agreement. While the procedures vary, they usually include discussions between the senior management members of the shareholders. If the discussions are unsuccessful, the procedures may provide for a share transfer mechanism, although shareholders should carefully consider

whether a transfer of shares resulting in the unwinding of the joint venture is necessary or, depending on the nature of the deadlock, adequately resolves the dispute.

**3. Is it common to provide for the compulsory transfer of shares in a joint venture company in any of the following circumstances? In which document are the relevant provisions likely to be drafted and are they likely to be enforceable?**

**(a) Insolvency of shareholder.**

**(b) Change of control of shareholder.**

**(c) Material breach of the shareholders' agreement or bye-laws.**

(a) This is sometimes provided for in the shareholders' agreement. To be enforceable, the terms of the sale and purchase of the shares, such as the event triggering the share transfer and the transfer price, must be specifically set out in the shareholders' agreement. It is also advisable to arrange for the transfer to be done at a fair price to avoid accusations of fraudulent conveyance or avoidance.

(b) Yes, this is reasonably common. To be enforceable, terms of the sale and purchase of the shares, such as the event triggering the share transfer and the transfer price, must be provided in the shareholders' agreement.

(c) Yes, this is common in the case of a material breach of the shareholders' agreement (there are no bye-laws in Japan). The terms of the share transfer will be provided in the shareholders' agreement.

**4. Is it common in a joint venture company to impose restrictions on the transfer of shares? If so, what sort of restrictions are commonly imposed and in which document are they likely to be drafted?**

Yes, this is common. The articles of incorporation usually provide that share transfers are subject to approval by the board of directors (or, in some cases, the shareholders or other method as provided in the articles) of the company.

In addition, the shareholders' agreement commonly provides that the shares cannot be transferred without the prior written consent of the other shareholders. However, the shareholders' agreement frequently provides for a right of first refusal or right of first offer mechanism under which the shareholders wishing to sell their shares will be permitted to do so after the non-transferring shareholders are given a prior opportunity to acquire such shares.

**5. If shares are transferred to a third party in breach of restrictions on transfer (in a shareholders' agreement or bye-laws) what remedies are available to the remaining party?**

A share transfer in violation of the company's articles of incorporation is invalid as against the company.

However, if shares are transferred to a third party in breach of the share transfer restrictions in the shareholders' agreement, it will be difficult for the other shareholders to challenge the validity of the share transfer. In addition, while the other shareholders can claim monetary damages incurred as a result of the share transfer, it may not be easy to verify the amount of damages.

**6. Is it possible to provide that in the event of a joint venture company being**

**wound-up, certain assets (such as intellectual property rights) will be transferred to a specific shareholder? Will such a provision be enforceable in the winding-up?**

While this is possible, it must be carefully arranged to be legally enforceable against any liquidator of the company.

For instance, it would be advisable to make the company a party to such an agreement and also to provide in advance the terms of the sale and purchase of the transferring assets. In addition, to avoid potential conflicts of interest, the transfer of the assets should be arranged at a fair price.

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