

Joint Venture and Shareholder Dispute Advisory Services

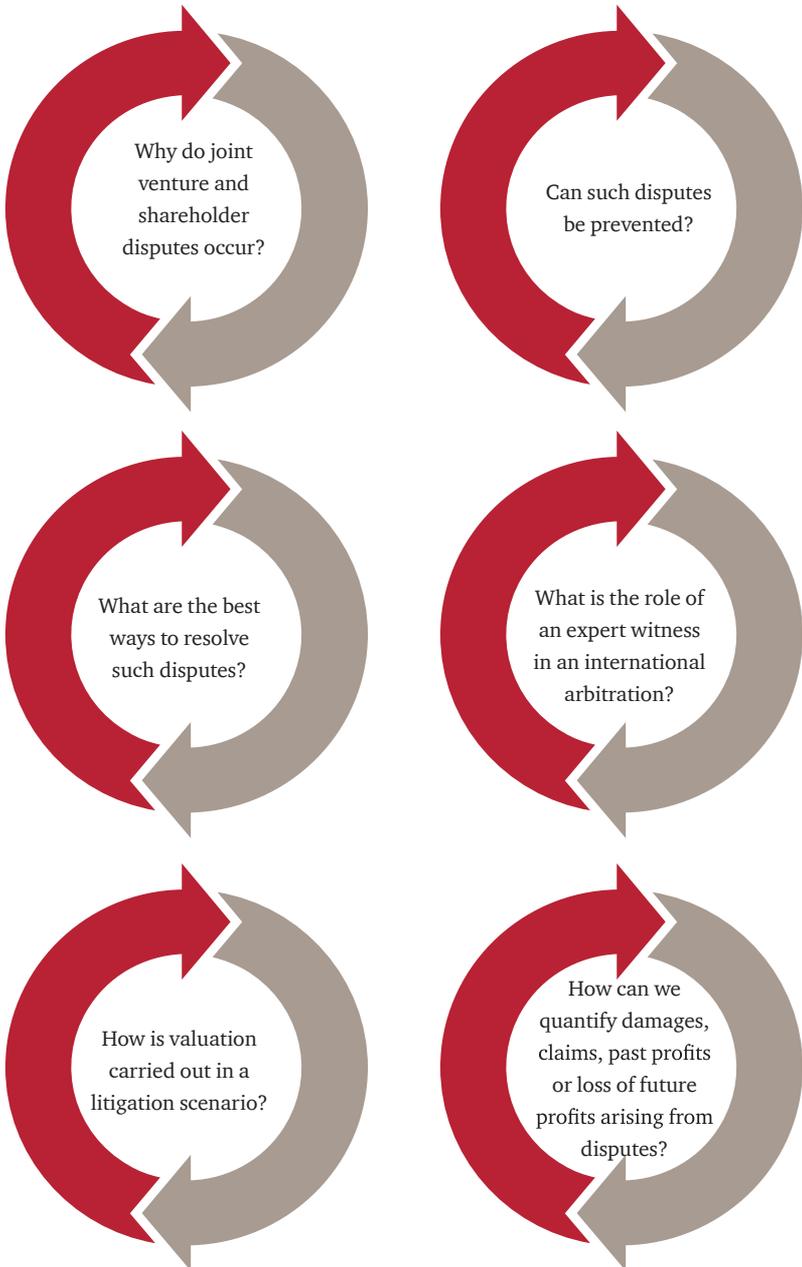
*Helping you
handle conflict
situations*



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An overview

In an environment replete with economic uncertainty, volatile industry dynamics and sluggish equity markets, joint venture, financial investor and shareholder disputes are increasing not only in number but also in terms of complexity. With many recent announcements made by large financial investors alleging the investee company of fudging accounts, mismanagement, siphoning of funds, fraudulent behaviour or oppression, several questions baffle the industry:



Top 10 disputes among joint venture partners and shareholders

- * Joint venture disputes
- * Shareholder disputes
- * Questionable related-party transactions
- * Disagreement on business plans
- * Intellectual property disputes
- * Cost overruns in capital projects
- * Purchase price disputes
- * Off-court settlements
- * Questionable fund utilisation
- * Exit disputes



Sources of conflict

Lapse in corporate governance is one of the primary sources of conflict between shareholders, thereby resulting in stress, disagreement and eventually, legal disputes.

When a dispute arises, it is in the best interest of the company to resolve it effectively, expeditiously and efficiently. Incorporating appropriate dispute management clauses as well as mediation provisions within contracts puts the dispute resolution framework in place at the beginning and not when a conflict arises.

Any prudent shareholder makes an investment with an expectation of long-term growth as well as financial success. However, this association also brings with it a new set of challenges and risks.



- * Long-term expectations of shareholders to manifest themselves through a possibly aggressive business plan scenario and unrealistic revenue targets
- * Business, financial and commercial risks in appropriately addressed in shareholder agreements
- * Failure to critically evaluate exit clauses and pricing analysis under different possible exit scenarios
- * Lack of view on integrity due diligence on the shareholders
- * Dilution in equity stake of existing shareholders
- * Loss of management control



- * Boardroom conflict over nomination and appointment of a board member, discharge and remuneration
- * Conflict over enforcement of stricter corporate governance codes and disclosure requirements
- * Disagreement, either strategic or operational in nature
- * Lack of parity in size, ownership, management control, contribution
- * Predominance of promoters in business decision-making
- * Questionability of appropriateness of utilisation of funds
- * Revenue leakage, cash generation and non-compliance to anti-bribery and corruption laws



- * Failure to achieve the business plan and revenue targets as stipulated at the investment stage
- * Failure on promoters' part to deliver on exit promises to financial investors
- * Exercise of put options challenged
- * Disagreement over valuations at the time of exit especially in case of put options
- * Technology and IP-related issues
- * Breach of terms of the JV or shareholder agreement
- * Lack of transparency in use of funds
- * Resulting litigations or arbitrations between shareholders

How we can help you

Investment stage
'proactive mechanism'

Pre-formal dispute
situations and litigations

Dispute, litigation and
arbitration support



- Conduct integrity due diligence or background checks on potential investee company or joint venture partner (pre-investment)
- Seek disclosures on related parties of the local partner or management
- Seek mutual agreement and clarity on business plan and forecasts
- Include adequate dispute resolution mechanism and clauses
- Address business, financial and commercial risks in the JV or shareholder agreements
- Include clauses for right of inspection of books of the entity in specific situations
- Develop robust MIS reporting mechanism for JV partners or strategic shareholders
- Review company operations for establishing appropriate use of funds
- Detect early signs or red flag



- Critically examine factors for failure of association between JV partners or shareholders
- Assist in firming up position on an exit strategy
- Assist in exercising the right of inspection of books
- Evaluate the underperformance of the business plan
- Investigate into the appropriateness of utilisation of funds
- Provide valuation and negotiation support in the following avenues:
 - Carry out pricing analysis in order to determine the fair value of the business or the stake held
 - Carry out valuation as per the shareholder agreement or the local laws, as applicable
- Assess the business, financial and commercial impact of the clauses mentioned in the JV or shareholder agreements
- Assist in retaining critical written correspondence and other form of information in the electronic format
- Assist in protecting a company's brand, technology and other IP given without ownership transfer



- Expert witness testimony
- Litigation valuations
- International arbitrations and mediations
- Quantification of damages or claims
- Quantification, which includes wasted expenditure or past profits
- Quantification which includes loss of future profits

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