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Minority party protection in a joint venture to transaction

By Geoffrey E. Odongo

A joint venture (JV) is a business transaction entered into by two or more independent parties with a view to combining their resources to achieve a specific business objective.

The JV may be structured in many ways depending on the objectives of the parties to the JV. A commonly used structure being the incorporation of a limited liability company that the parties jointly own. The board of directors in a JV ideally owe a fiduciary duty to the JV which prohibits them from acting solely in the interest of just the party nominating them to the board.

In addition, a limited liability company has the advantage of according the shareholding parties avenues by which the rights of a party with a minority stake in the JV can be supplemented. One such avenue is the use of a shareholders agreement whose provisions supplement the statutory protections granted to minority shareholders when the following provisions are included:

I. Veto rights granted to the minority shareholder over specified critical decisions on the running of the JV.
II. A requirement of a super majority vote that includes the minority shareholder's vote for specified critical decisions on the running of the JV
III. A right accorded to the minority shareholder to designate an observer in the board of directors of the company so as to stay appraised on the JVs actions where the minority shareholding stake does not qualify for a board seat board meetings.
IV. Ensuring rights that allow the minority JV party to sell its interests on a pro-rata basis should the majority JV party seek to sell its interests to a third party (referred to as tag along right)
V. A provision requiring the majority shareholding party to the JV to purchase the interest of the minority in specified situations such as where there is change of control of the majority party entity (referred to as put option)
VI. A well thought out dispute resolution clause to guide parties in instances of disagreements arising from frustrated expectations.

In a JV it is also imperative to have a well thought out JV agreement which properly reflects the objectives of parties to the JV so as to streamline collaboration between the parties and minimize the risk of misalignment. In addition the directors in the governing body to the JV ideally owe a fiduciary duty to the JV which prohibits them from acting solely in the interest of just one of the parties to the JV.

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