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Tips for managing disputes in a joint venture relationship

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 business objective. Parties to a JV may seek to combine finances, research and development capabilities, market access, distribution channels, technology among others resources. JVs take two main forms namely:

1. Contractual JVs

Which are a type of strategic collaboration between distinct entities that is reduced into a JV contract and goes beyond customary supply and service agreements. These are ideal for one off projects of a duration that is not too long as is the case where parties come together to bid for a contract with a view to forming a more permanent JV should they succeed in their bid.

2. Entity JVs

Which are a type of collaboration where parties incorporate a jointly owned entity that may be specially formed for the JV.

Disputes are common particularly in entity JVs because of their inherent structure which many times provides for equal shareholding by parties and their unanimous approval of critical decisions making them susceptible to deadlocks should such unanimity not be reached. Even where the structure of a JV does not provide for equal or 50/50 shareholding by the parties, provision will usually be made for veto rights to critical decisions by the minority shareholder for its protection which again raises susceptibility to deadlock. Provision of a mechanisms for speedy resolution of deadlocks is therefore critical as failure to resolve them speedily could result in the collapse of the JV.

The following tips are useful in mitigating the possibility of disputes in a JV relationship:

I. At the onset of JV negotiations parties should carefully consider the structure to the JV with emphasis on ensuring adherence to generally accepted corporate governance principles.

II. At the onset of JV make clear provision on mode of distribution of board representation between the parties.

III. Utilize well thought out Shareholder agreements and JV agreements that clearly reflect the objectives of the parties so as to streamline their collaboration and minimize the risk of future misalignment.

IV. Identify critical matters in relation to which disagreement could lead to a deadlock. Provide for mutually agreed dispute resolution clauses to guide parties in instances of disagreements and frustrated expectations on such matters. The clause may provide for the use of senior management from the JV parties to resolve disagreements prior to the use of mediation and arbitration by a third party.

V. Deadlock provisions should make it possible for the exit of one of the parties to the JV by selling its ownership interest to the other party where the disagreement proves intractable.

VI. Provision should be made for an orderly sale of the JV Company and or its dissolution where all provided dispute resolution mechanisms fail.

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