

in which case the purpose of shareholders incorporating the company is frustrated, thus the law should allow the shareholders to dissolve the company.

The goal or rationale behind this provision is to protect the suffering shareholder (often the minority shareholder) in a company that is stuck in stalemate situation and finally break the deadlock.

III. Application in Judicial Practice

Facts triggering the application of this clause seem not hard to determine except the proving of the fact that the company is in serious difficulties in corporate operation and management.

Confusion arises in particular when the company in question is being managed in good condition and is actually making good profits (often due to the reason that the controlling shareholder or management is taking care of the company competently) at the time of being sued for dissolution.

Over time, the confusion is no longer existing after China Supreme Court made it clear in one of the published guiding precedent cases in which the Supreme Court stated that courts should look into the functioning of the corporate organs in determining whether there is a deadlock, and a deadlock shall be found if the share-holders meeting or board of directors cannot operate despite that the company is making money.

So investors in foreign invested companies esp Sino-foreign joint ventures in China shall take advantage of this clause in China Company Law to end the impasse in the dead valley.

Lastly, it shall be noted that the China Company Law requires that other remedies shall be exhausted before the court can order the dissolution of a deadlocked company. Because of this, in practice, Chinese courts are not that ready to easily dissolve a company. Instead, the courts will organize the parties to the dispute to reach a settlement and this mediation efforts by courts may happen repeatedly in a lawsuit, which will generally drag the legal proceeding over a very long period, say one or two years. So parties embarking on this road to end their misery in a deadlocked company shall be prepared for a long battle.

Date Created

September 2015

Author

admin