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SHAREHOLDER DISPUTES

SPEAKER

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PLACE

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SHAREHOLDER DISPUTES



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1. THE DISTINCT CHARACTERISTICS OF SHAREHOLDER DISPUTES



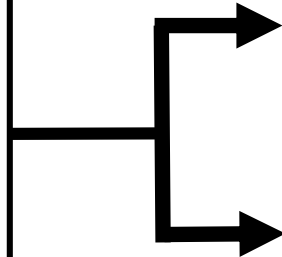
1.1. It will escalate very quickly and seriously affect the business

A simple disagreement over a business issue can eventually turn into personal hatred between shareholders and then, can lead to serious dispute



The company will be unable to carry out its normal business and may even face the risk of bankruptcy.

Should consult with the attorney when there is any sign of potential dispute



Settle the issue/disagreement quickly before it escalates into a serious dispute



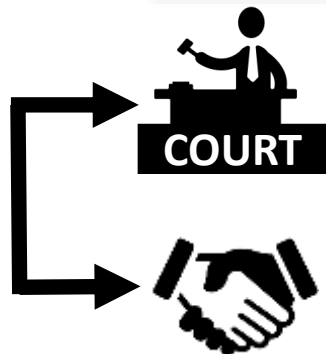
LEGAL ADVICE

The early advice of the attorney will help to timely prepare for the potential dispute and minimize damage caused to the business



1. THE DISTINCT CHARACTERISTICS OF SHAREHOLDER DISPUTES

1.2. The main target usually is winning the negotiation, not the court judgment



The court may not directly help you to achieve such purpose.

However, you can use the lawsuit to attack the opposing party and generate leverage for negotiation.

2. RESOLVING SHAREHOLDER DEADLOCK



Deadlock is the situation where the shareholders disagree with each other; and neither side has enough votes to pass the decision on their own; which results in a stalemate.



Sometimes, the deadlock can be solved by the discussion between shareholders or mediation. However, sometimes, deadlock can escalate into a war when each side attempts any possible way to attack the other side.

2. RESOLVING SHAREHOLDER DEADLOCK



HOW DOES THE ATTACK HAPPEN IN PRACTICE?

The shareholder will try to gain more advantage by:



Seizing the company seal

Working with the landlord to control the physical office of the company

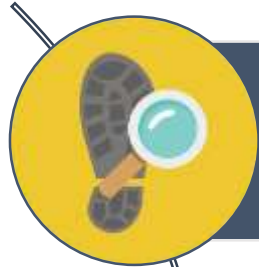
Seizing movable assets of the company

Taking advance of the position of legal representative

2. RESOLVING SHAREHOLDER DEADLOCK



WHAT CAN YOU DO TO COUNTER SUCH ACTIONS?



Collecting and recording as much evidence as possible regarding such actions.



Filing all possible lawsuits against the opposing party (e.g. breach of company charter, violation of enterprise law) or even criminal denunciation to apply pressure.

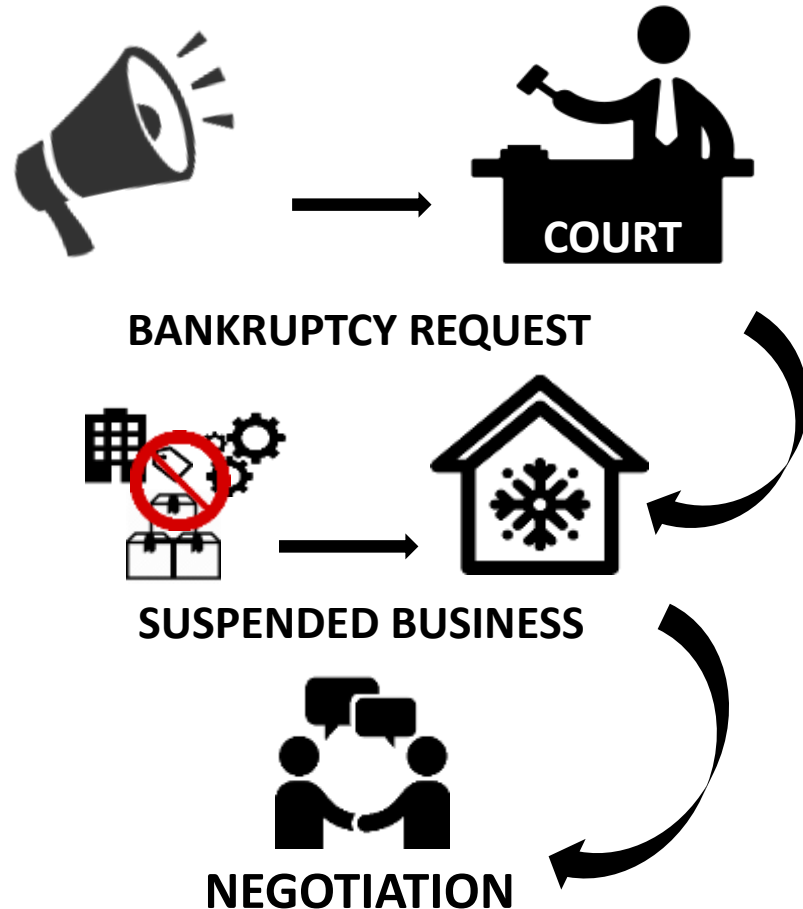


From such lawsuits, requesting the court to apply emergency measures against the opposing party.

2. RESOLVING SHAREHOLDER DEADLOCK



As a last resort, you can file a bankruptcy request against the company:



- During the deadlock, the business may be suspended and the company may not be able to pay its creditors on time; which may give you the ground for bankruptcy request.
- The bankruptcy procedure can put the company under supervision and thus, preventing the opposing party from carrying out any act that could reduce the assets of the company.
- This may pressure the opposing party and make them want to continue the negotiation with you.

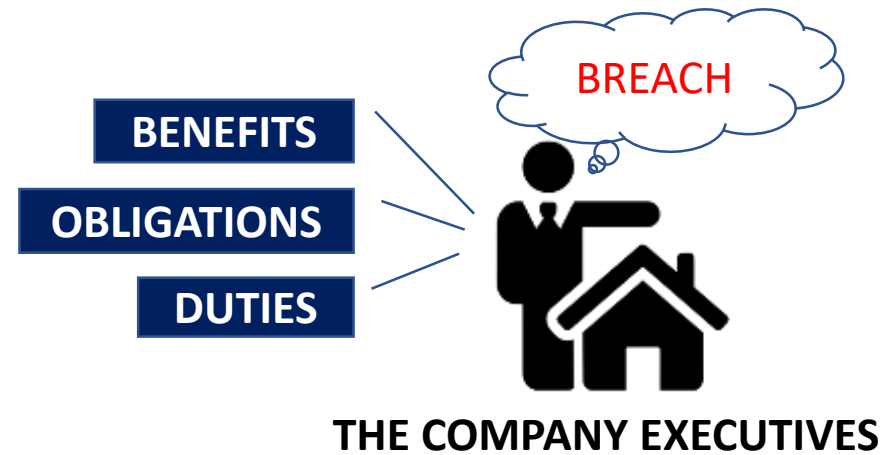
3. BREACH OF FIDUCIARY DUTY OF COMPANY EXECUTIVES



Shareholder disputes often involve lawsuits against the company executives because the executives will act for the benefits of the shareholder appointing them, which may conflict with the benefit of the company as a whole.



Voiding contracts for conflict of interest



Breach of company executive's obligations and duties

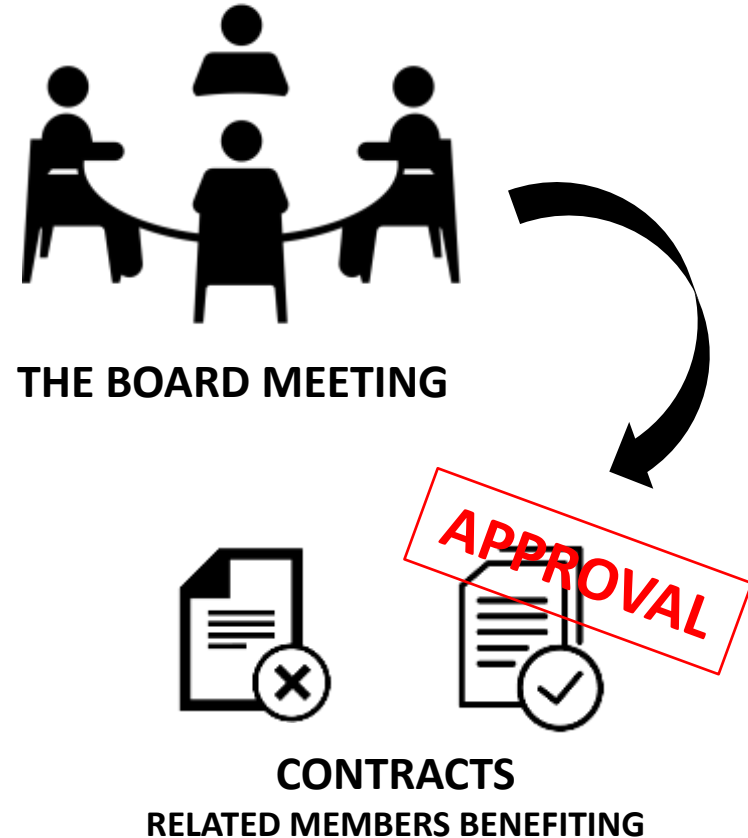
3. BREACH OF FIDUCIARY DUTY OF COMPANY EXECUTIVES



3.1. Voiding contracts for conflict of interest

Under the law, contracts between the company and its executives or their related persons/businesses will require the approval from the board or shareholder meeting. The board member or shareholder having interests in such contracts shall not be allowed to vote.

Without the approval, the executive signing the contract and the related parties benefiting from such contracts can be sued for damages and return of all benefits gained from such contracts to the company.



3. BREACH OF FIDUCIARY DUTY OF COMPANY EXECUTIVES



3.2. Breach of company executive's obligations and duties

The company executives are required to act for the best interest of the company and shall not abuse their position to benefit other individuals or organizations.



COMMON VIOLATIONS

- Using the related companies (which the executive has interests in) to be the middle men, which result in lower profits.
- Giving business opportunities of the company which the executive serves to other companies.
- Committing violations of the law during the business operation, which results in the administrative penalties and other legal remedies imposed on the company.

3. BREACH OF FIDUCIARY DUTY OF COMPANY EXECUTIVES



If the executive being sued is the only legal representative of the company, he/she will refuse to sign the statement of claim on behalf of the company. In that case, how to proceed with the lawsuit?

You can file the lawsuit as the shareholder and ask the court to force the executive to compensate the company.

What if the executive represents the company in that lawsuit and gives unfavorable statement on behalf of the company?

You can ask the court to remove his/her status as the legal representative of the company in that lawsuit due to conflict of interest.



4. DISAGREEMENT BETWEEN MAJORITY AND MINORITY SHAREHOLDERS



In practice, there are cases where there are some shareholders (the “majority shareholders”) that control enough votes to pass all desired resolutions without the other minority shareholders (the “minority shareholders”).



In this case what can the minority shareholders do to fight against the majority shareholders?

4. DISAGREEMENT BETWEEN MAJORITY AND MINORITY SHAREHOLDERS

4.1. Requesting the court to void the resolutions passed by the majority shareholders



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Requirements

at least 10% shares

filed within 90 days after the shareholder meeting

The common ground for voiding the resolution is the violation of procedural requirements under the law or company charter.

4. DISAGREEMENT BETWEEN MAJORITY AND MINORITY SHAREHOLDERS



The method of sending the invitation to the shareholders (email/courier?, address?)



Which documents and information must be provided to the shareholders before the meeting?



The minimum period of time between sending the invitation and the meeting?

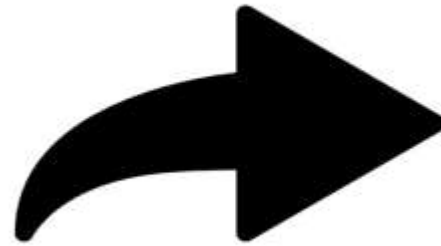
Since there are many procedural requirements, it is quite common to miss one or more of them if not being careful, this will make the resolution voided by the court as a result, affects the business operation.

4. DISAGREEMENT BETWEEN MAJORITY AND MINORITY SHAREHOLDERS



4.2. Requesting the company to buy back the shares

In case the minority shareholders disagree with the shareholder meeting resolution regarding important issues (such as the rights/obligations of shareholders; restructuring of the company):



The minority shareholders can request the company to buy back his/her shares

4. DISAGREEMENT BETWEEN MAJORITY AND MINORITY SHAREHOLDERS



In case of **disagreement on the price**, under the law:

Limited Liability Company

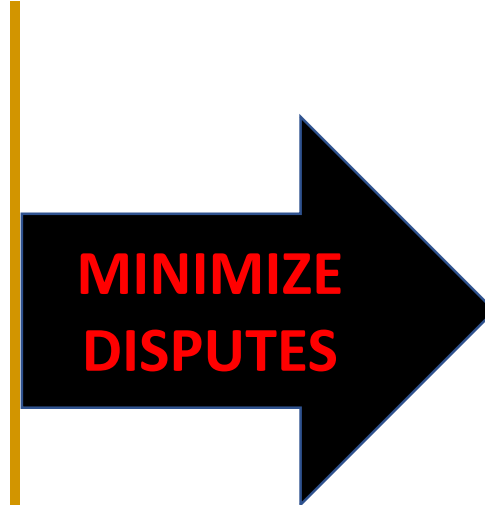
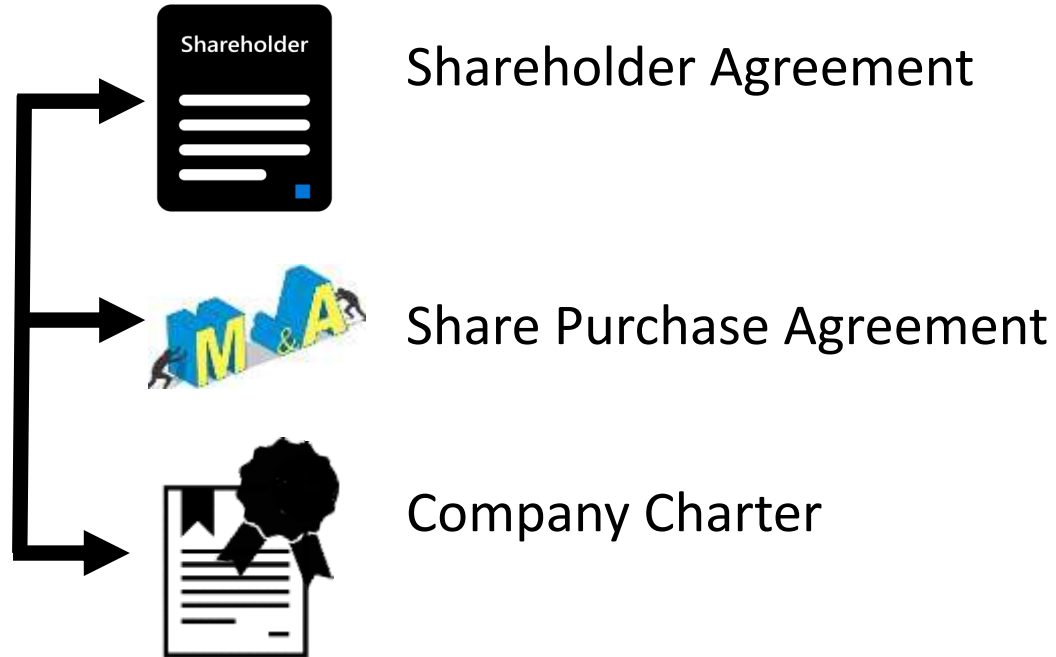
- Sell his/her shares to other shareholders; or
- Sell to the third parties.

Joint Stock Company

- The price will be decided by an independent price appraisal agency;
- The company will recommend 03 agencies => the shareholder will choose one of them.

This option, by default, is only practical for shareholders of the joint stock company. To practically apply to limited liability company, there should be other provisions in the Charter that force the company to buy back the shares under reasonable price.

5. HOW TO PREPARE FOR THE FUTURE SHAREHOLDER DISPUTES

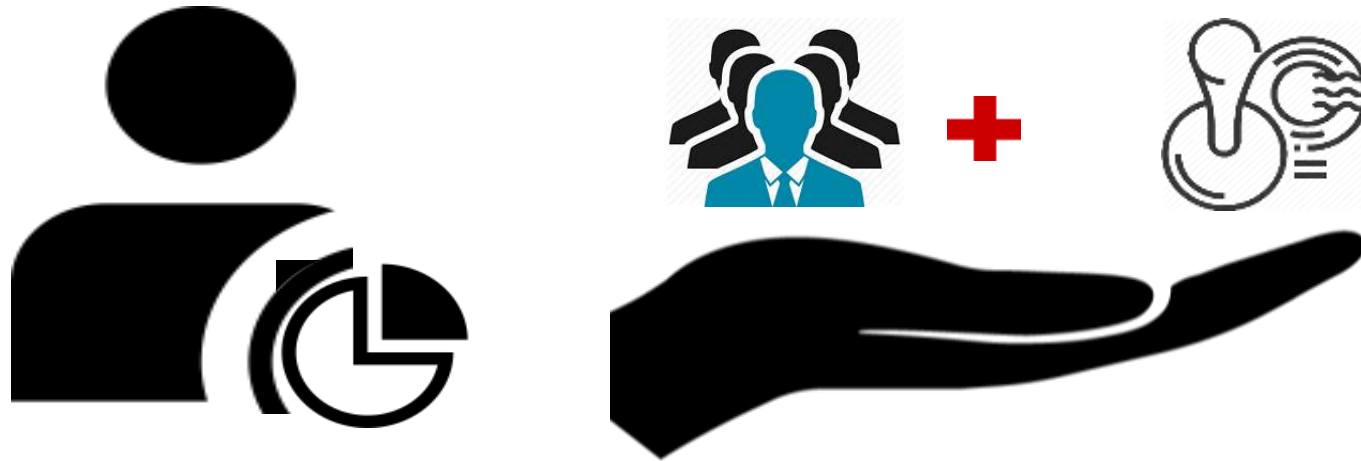


5. HOW TO PREPARE FOR THE FUTURE SHAREHOLDER DISPUTES



Important issues need to be addressed

5.1. Number of legal representatives and number of company seals:

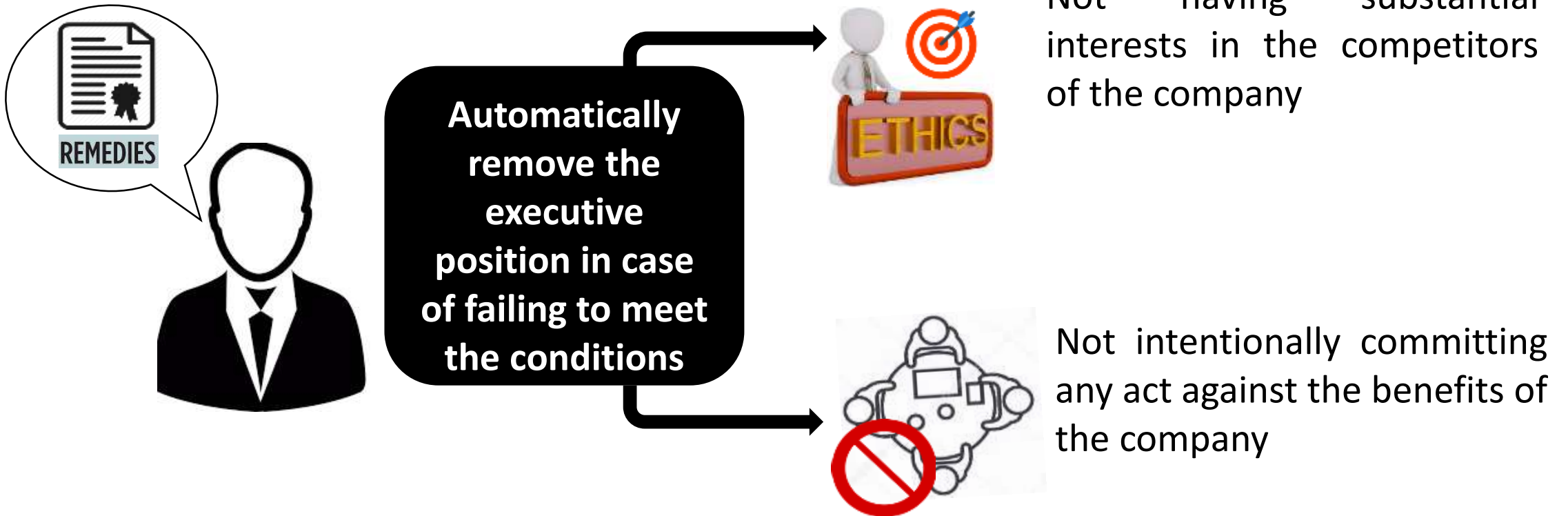


Note: Having too many may lead to difficultly control but having only one may lead to the situation where the shareholder controlling the legal representative/seal **can abuse his/her position.**

5. HOW TO PREPARE FOR THE FUTURE SHAREHOLDER DISPUTES

Important issues need to be addressed

5.2. Conditions for being a company executive (especially the legal representative) and the remedies applied in case of failing to meet such conditions



5. HOW TO PREPARE FOR THE FUTURE SHAREHOLDER DISPUTES

Important issues need to be addressed

5.3. Sale and purchase of shares in case of dispute



PROVISIONS

There should be provisions which allow the shareholders to sell their shares to the company/other shareholders in case of serious dispute regarding the management of the company.

5. HOW TO PREPARE FOR THE FUTURE SHAREHOLDER DISPUTES



Important issues need to be addressed

Note: This sale and purchase of shares should not completely rely on agreement of the parties. Instead, should have some methods to solve the disagreement



Having an independent price appraisal agency to determine the price



Applying a bidding process where the shareholder who willing to pay the highest price can buy out the other shareholder

5. HOW TO PREPARE FOR THE FUTURE SHAREHOLDER DISPUTES



Important issues need to be addressed

5.3. Mediation and arbitration clause

Mediation can help to solve the dispute before it escalates into a war.



SOLVE THE DISPUTE

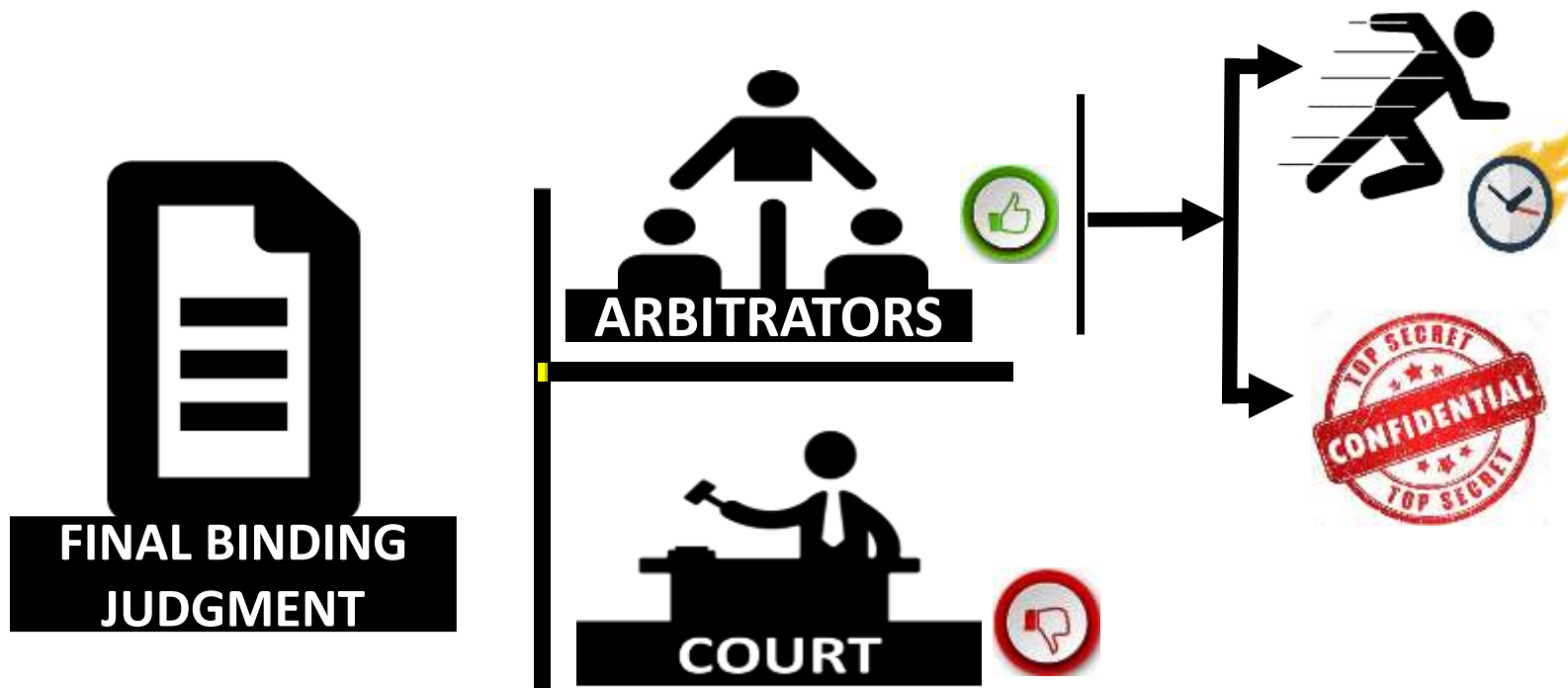


5. HOW TO PREPARE FOR THE FUTURE SHAREHOLDER DISPUTES

Important issues need to be addressed

5.3. Mediation and arbitration clause

In case of needing a final binding judgment, arbitration is often preferred than the court in this case because:



Less time consuming: the more time it takes, the more damage it can cause to the company.

Confidentiality: any publicity of the dispute can harm the company's reputation and business.

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