～ 国際研修 ～

ミャンマー法整備支援プロジェクト第４回本邦研修

国際協力部教官
野　瀬　憲　範

今次研修は，ミャンマーにおいて現在改正作業が進められている会社法をテーマとして行われた。そこで，本稿においては，本邦研修の内容等とともに，会社法改正に向けたこれまでの長期派遣専門家等の取組も含め，紹介することとしたい。

本稿中，意見にわたる部分は，もとより私見である。

１．ミャンマー会社法の状況等

⑴　ミャンマーに会社法[1]が制定されたのは，イギリス統治下の 1914 年である。当時，ミャンマーは，イギリス領インドの一州であったため，1908 年イギリス会社法を基礎とした 1913 年インド会社法を継受して，会社法が制定された。その後，会社法については，1929 年イギリス会社法の改正を受けた 1936 年のインド会社法の改正に倣った改正がされた以降，独自の限定的な一部改正が数回行われたにすぎない[2]。

⑵　2013 年以降，会社法を所管するミャンマー国家計画経済開発省（Ministry of National Planning and Economic Development）投資企業管理局（Directorate of Investment and Company Administration）（以下「DICA」という。）は，アジア開発銀行（Asian Development Bank）（以下「ADB」という。）の支援を受けて，会社法の改正案の起草を進めている[3]。

なお，ミャンマー政府での会社法の起草担当は，DICA であるものの，実際の改正案の作成は，ADB から委託を受けたコンサルタント（Baker & McKenzie 法律事務所）（以下「B&M」という。）が行っている。

⑶　ADB は，同支援について，日本貧困削減基金を用いているところ，資金拠出にあたって，JICA を含めた日本政府全体と協調していくこととされていること，

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[1] The Myanmar Companies Act (1914)

[2] 1914 年会社法制定後の改正経緯や現行会社法の内容については，当部が調査を委託した森濱田松本法律事務所報告書（http://www.moj.go.jp/housouken/housouken05_00056.html）に詳細が記載されている。

[3] ①会社法の現代化，②会社電子登録制度の樹立，③DICA 職員の能力開発の３点を内容とするプロジェクト。

実質的に見ても，長期派遣専門家が活動する連邦法務長官府（UAGO）は，法令の審査を担当するのであるから，前広に法令案を知り，その内容や方向性についてコメントをすることができれば，審査が効率的に行われること等を考慮して，長期派遣専門家が法案起草段階から関与することとなった。

２．法案作成段階での関与等

これまでに，会社法改正について，長期派遣専門家等を含めた関与状況等は，以下のとおりである。

① 2014 年８月 29 日

B&M との協議（8/19, 8/20 に B&M が行ったコンサルテーションの結果共有。今後のドラフトスケジュールの確認。）。

② 同年 10 月３日

会社法アドバイザリーグループ第１回会合。

③ 同年 10 月 10 日

森・濱田松本法律事務所作成の会社法改正ポイントを B&M に提出。

④ 同月 16 日

会社法第２章のドラフトを入手。

⑤ 同月 20 日～ 21 日

会社法ワークショップ（UAGO 及び DICA 職員向け）。

⑥ 同月 27 日

第２章についてのコメントを作成し，ADB にコメント送付。

⑦ 同月 31 日

UAGO WG3[4]（セミナー・ワークショップのフォローアップ）。

⑧ 同年 11 月 20 日～ 21 日

UAGO WG3（セミナー・ワークショップのフォローアップ）。

⑨ 同年 12 月 18 日

DICA のウェブサイトに第２章（10.16 版から若干修正あり）及び第８章のドラフトがアップロード。

⑩ 2015 年１月 16 日

第２章及び第８章についてのコメントを作成し，DICA に提出。

⑪ 同月 30 日

[4] 会社法ワーキンググループ

UAGO WG3（第２章，第８章について）。

⑫　同年２月４日

DICA のウェブサイトに第３章のドラフトがアップロード。

⑬　同月 16 日

第３章についてのコメントを作成し，DICA に提出。

⑭　同月 23 日

第４章（運営，管理及びガバナンス）及び第５章（解散）について，DICA のウェブサイトにアップロード。

⑮　同月末頃

会社法の残りの章についても DICA のウェブサイトにアップロード。

⑯　同年３月 10 日

第４章及び第６章についてのコメント提出。

⑰　同月 19 日

DICA，ADB，B&M，UAGO 及び長期派遣専門家との間で，法案の抱える問題点について協議。

⑱　同月 20 日

協議（UAGO 職員を対象として，法案の抱える問題点の振り返り）。

⑲　同月 29 日

第１章及び第７章についてのコメント提出。

⑳　同年６月第３週

コンサルテーション及びパブリックコメントの結果をもとに B&M がドラフトを修正。DICA において，ミャンマー語版を作成の上，DICA から，上級庁であるミャンマー国家計画経済開発省に案を送付。

㉑　同月 20 日～ 21 日

UAGO 主催：ドラフト検討会議（参加者：UAGO，DICA，UAGO が招待した実務家，ADB，B&M 及び JICA）。

㉒　同年７月８日ころ

会社法案が，UAGO に送付。

３．改正会社法案の主たる課題

⑴　B&M がドラフトした法案は，1914 年制定の現行法[5] を基礎にしているものの，

[5] 英国植民地時代に制定されているため，正文は英文である。

設立（第２章），株式（第３章），運営（第４章）を中心にオーストラリア，ニュージーランド等の英国系会社法の規定が大量に導入されている。

⑵　ミャンマーにおける会社法の実務，司法制度の状況，社会経済状況などに関するリサーチが不十分と思われる部分が存在する。

⑶　会社法案は，英国系会社法の影響を強く受けているため，会社，特に取締役会の裁量に委ねる範囲を広くする一方，株主の利益が侵害されるなど不都合が生じれば裁判所が解決するというアプローチが採用されているが，裁判所の商事事件に関する能力を考えるとそのようなアプローチがミャンマーで妥当するのかどうか疑わしい。

⑷　他の法律との整合性が配慮されていないと思われる箇所や条文の引用の間違いなども散見される。

４．研修の目的等

上記の改正会社法案の現状等に鑑み，改正会社法案が連邦議会に上程される前に，自国の実情に即して会社法を改正することの重要性や，改正会社法案は実情に照らして問題点を抱えていることについて認識してもらう必要があった。

そこで，まず，本邦研修の研修員としては，カウンターパート機関であるUAGO及び連邦最高裁判所（SC）のみならず，会社法所管官庁であるDICA関係者も研修員に加え，法案起草／審査及びその後の運用を担う機関相互の間で，問題点等の認識を共有してもらうこととした。

さらに，研修の方式についても，単に論点ごとにスクール形式で講義を行った場合，適切にインプットされないことも予想されたため，会社法の重要性や法令間の不整合によって起こりうる問題点などに関する総論的な講義と，裁判所訪問のほか，論点ごとに事例を設定した事例研究[6]とを組み合わせて研修を実施した。

５．研修の概要

⑴　「法律相互間の体系的整備の重要性」

慶應義塾大学法科大学院松尾弘教授から，「法律と法律の不整合」，「法律と命令の不整合」についてメコン諸国の具体例をもとに，御説明があった。さらに，松尾教授からは，法令の体系的整合性を高めるための方策や立法過程のルール化の必要性について御説明いただいた後，法体系全体を一本の木に例え，「新たに

[6] 研修員を班分けして班ごとに当該事例について検討し，講師陣と質疑応答を行うという方式を採用した。

法令を制定したり，既存の法令を改正するためには，当該法令が１本の木において，どの葉や枝に当たり，どの枝に通じ，他の枝葉とどのように関係しながら，幹や根に通じているかを確認しながら，細心の注意をもって，慎重に，木全体のバランス＝体系的整合性に留意しながら，作業を進める必要がある。」旨の御説明があった。

松尾教授（写真左）による講義

⑵ 「会社法の重要性について」

東京大学法学政治学研究科神作裕之教授から，日本会社法の特徴のみならず，社会経済に占める株式会社の重要性，株主有限責任の原則や株式会社の機関（コーポレート・ガバナンス関係）の趣旨・背景等について御説明があった。また，「企業の発展は，国民経済及びイノベーションの発展と密接に関連している。良い会社法は，企業の発展に貢献できると考えられる。会社法は，企業活動の健全性（ブレーキ）と効率性（アクセル）の質を上げるとともに，両者のバランスをうまくとることが非常に重要である。」旨の御説明があった。


神作先生による講義

⑶ 「ASEAN 諸国の会社法制及びその運用上の問題点について」

ASEAN 諸国の競争法の専門家である静岡大学グローバル企画推進室土生英里教授から，インドネシア，マレーシア，フィリピン，シンガポール，タイ及びベトナムを例にあげ，ミャンマーと同じような社会経済状態にある，あるいはミャンマーが目標とする状態にある ASEAN 諸国の会社法制やその運用上の問題点を紹介し，それぞれの国の問題点について，会社法の歴史を交えた御説明があった。

⑷ 「会社法の法案起草について」

法務省民事局の野澤大和局付（参事官室）から，我が国の会社法の内容・構成について説明があった後，会社法起草に当たっての考え方，法律改正に当たっての局内での検討の体制，法制審議会における議論，パブリックコメントを含めた法律改正（制定）の流れについて御説明いただいた。

⑸ 「商業登記について」

法務省民事局の辻雄介局付（商事課）から，上記テーマで御講義をいただいた。

現在，ミャンマーでは会社に関する情報を電子媒体で登録できるようシステムを構築しようとしているが，それらの電子情報及び紙媒体の情報も外部には公開されておらず，商業登記システムの改革も必要である。そこで，将来，商業登記システムを構築する際の参考になるよう，我が国の商業登記の基本的制度の概要，経済社会における役割，商業登記へのアクセスの方法について説明していただいた。

⑹　東京地方裁判所民事第８部（商事部）訪問

同部部総括裁判官やその他多数の裁判官から，商事事件を担当する裁判官に求められる資質や，商事事件の特色や留意点について御講義いただいた。また株式代表訴訟の第１回口頭弁論期日を傍聴させていただいた。

⑺　事例研究

名古屋大学松中学准教授，長島・大野・常松法律事務所の黒田裕弁護士，東京大学加藤貴仁准教授を講師としてお迎えし，①設立手続，②取締役の義務，③株主の利益保護のための救済措置について，事例研究を行った。事例研究の目的は，会社法の抱える問題点について，抽象的な講義形式によって伝えるのではなく，具体的な事例に対するあてはめを通じて問題点を把握してもらう点にあった。

具体的なプロセスとしては，研修員を３班に分け，先生方に作成していただいた事例について，研修員において，適切な条文選択，法律要件への事実のあてはめ，結論を検討するという作業を行い，先生方と議論をし，先生方から問題点について指摘していただくという形をとった。

こうした事例研究を通じ，改正会社法の条文が不明確であり適用が困難になる条文が存在することや，事例の設定を少し変えた場合に適用結果が異なるおそれがあるなど適用結果が妥当性を欠く場合があることなどについて研修員は認識できたのではないかと思われる。

事例研究（向かって左から黒田弁護士，松中准教授）

事例研究（真ん中が加藤准教授）

６．おわりに

１　会社法は，経済関係法令の基本をなすものである。基本となる法が，法として機能するためには，諸外国の法令を参考にしつつも，各国の実情に沿った形で導入される必要がある。我が国の会社法の歴史を見ても，ドイツ法系の会社法から出発し，戦後，アメリカ会社法の制度を導入し，日本独自のルールと合わせ発展させてきたのである。

２　現在検討されているミャンマー会社法改正案は，オーストラリアなどコモンローカントリーの法制度を引き写しただけのものであり，ミャンマーの社会経済情勢や，運用の担い手となる裁判所の実情等を考慮していないように思われる。そうした法が，ミャンマーという社会の中で運用され，うまく根付くのかについては懸念があるところである。

３　今次研修員が，自国の経済関係法令の基本となる重要な法案作成・審査等に関わっているという責任感を持ち，現行会社法の法技術的な問題点のみならず，会社法の機能や意義などについても積極的に吸収しようとして，講師の方々に質問し，それに対して講師から真摯な回答があるという姿は印象的であった。一例を挙げると，研修員から，講師に対して「会社法を改革するために新法を制定するのがよいのか。現行会社法を改正する方がよいのか。」などと質問をしたのに対し，講師から，現行の裁判制度との整合性を考えるべきで，英米法系の会社法は，経営の自由を広く認める反面（アクセルの側面），クラスアクションを含め裁判所に強い是正権限を与え（ブレーキの側面），バランスをとっているところ，ミャンマーの裁判所の権限や実務の運用に十分配慮した上で，決めるべき問題であるなどとの回答があり，研修員が深く感銘を受けた様子であったのが印象的であった。

４　ミャンマー会社法案は，2015 年７月８日頃に，所管官庁から，UAGO に法案が送付されたとのことである。なお，ミャンマーでは同年５月 11 日から議会が開会中であり，議会は，遅くとも同年８月末までには閉会すると言われている。

所管官庁は同議会での成立を目指していたようであるが，まだ審査が始まったばかりであることや，議会スケジュールを勘案すると，今次議会で法案が可決される見込みは少ないであろう。

同年 11 月８日に予定される総選挙の結果次第では，本法案の取扱いも少なからず影響を受ける中，本プロジェクトとしては，引き続き，改正会社法案の動向について注視し，下位法令を含め協力をしていくことが肝要であると考えるところである。

5　最後に，御多忙の中，本研修で講義や事例研究を引き受けていただいた講師の皆様，御訪問を引き受けていただいた裁判所の皆様，長期派遣専門家を含め関係者の皆様に心から御礼を申し上げたい。

特に，松中先生及び黒田先生におかれては，数日にわたり事例研究に参加していただき，特に感謝を申し上げたい。

Incorporation: cases

Manabu Matsunaka
Nagoya University

NAGOYA UNIVERSITY

1

Case1: limit of power of a company

- General facts
- Company A is a company limited by shares.
- Company A (A Co.) has following clauses in its constitution:
  - the object of A Co. is to run retail business of computers, computer parts and related devices.
  - A Co. has power to run any other related businesses and to take necessary actions.
- A Co. has only taken actions directly related to its business so far.
  - sell computers to its customers.
  - purchase computers in order to sell it.
  - hired employees to deal with its customers.
  - rent money from a bank to open a new shop.
  - and so on
- D1 and D2 are directors of A Co.
- Are the following actions by A Co. void or voidable?

2

Case1-1: Limit of power of a company1

- A Co. purchased refrigerators from B Co.
- The judgment to purchase was made by D1 and D2.
- They intend to start home electronics retail business.

3

Case1-2: Limit of power of a company2

- A Co. rend money to C.
  - C was a D1's friend.
  - D1 made the judgment of the loan.
  - D2 did not oppose.
- C is planning to start a hotel business.
  - The loan was a part of start up finance of the C's business.

4

Case1-3: Limit of power of a company3

- A Co. donated a half of its annual net income in 2015 to a charity association E.
  - E is based in the same city as A Co. does.
  - E helps poor children in the city to attend schools.

5

Case1-4: Limit of power of a company4

- Does the conclusion change if E's activity is following one?:
  - E is based in country F in Africa.
  - E helps children in F.
  - A Co. has no business ties to F or any other countries in Africa at all and has no plans to have any ties in a near future.

6

Guides for solving the problems

- Need to distinct between validity of an action by a company and responsibilities of directors.
- Need for an interpretation of clauses in a company's constitution.
- The attitude of new Myanmar Companies Act toward "*ultra vires*" doctrine.
- Consider interests of counter parties of each transaction.

7

Ultra vires doctrine

- Related sections: §§7(2) & 27(1)
- A company can restrict its power by a provision of its constitution (see §7(2)).
  - The object provision in Case1.
  - A company does not necessarily have to provide its objects in its constitution, but they can.
- What happens if directors act on behalf of the company that is beyond the provision?→Case1-1
  1. No power→no validity (void or voidable) or
  2. No influence to the validity of actions.
- § 27(1) expressly abolishes *ultra vires* doctrine.
  - power≠validity

8

Interpretation of constitution clauses

- Objective clauses should be interpreted flexibly.
- A Co.'s objective clause.
  - "A Co. has power to run *any other related businesses* and to take *necessary actions*."
  - Does not clearly provide about donations.
  - However, donations *may* help A Co.'s business.
    - A matter of business judgments.
- Even if a donation is not in the interest of A Co., the validity will not affected (§ 27(2)).
  - See also §§29 and 30 providing a counterpart of company's dealing with protection of assumption.

9

Case2: Pre-incorporation expenses and contracts

- 2017/6/1: X and Y decided to incorporate A Co.
- 2017/6/10: X hired B.
  - This was to help X prepare the documents necessary for the incorporation.
  - X paid salary to B.
- 2017/6/20: X and Y applied for the registration of A Co.
  - Y paid fees for the registration.
- 2017/7/10: X and Y received the certificate of incorporation of A Co.
  - The date of incorporation in the certificate is 2017/7/10.
- Can X and Y be reimbursed for their expenditures?

10

Case3: Pre-incorporation expenses and contracts

- 2017/6/1: X and Y decided to incorporate A Co.
- 2017/6/10: X rent an office for A Co. from B.
  - X paid the rent for the office to B.
- 2017/6/20: X and Y applied for the registration of A Co.
- 2017/7/10: X and Y received the certificate of incorporation of A Co.
  - The date of incorporation in the certificate is 2017/7/10.
- What is the requirement for X to be reimbursed for the rent?

11

Pre-incorporation expenses

- The draft explicitly provides for expenses for incorporation.
  - §31: "Subject to *the following provisions in this Division*, the expenses…in promoting and setting up a company may be paid out of the company's assets."
- §§32-35 in the Division 7 only provide for pre-incorporation *contracts*.
- Are these two concepts identical?
  - If so, pay out should follow the procedure set out in §32 (2)-(5).
  - If not, the procedure should be clarified through interpretation.
- "pre-incorporation contract" under §32(1).
  - "(a) a contract *purporting to be made by a company* before its incorporation" or
  - "(b) a contract *made by a person on behalf of a company* before and in contemplation of its incorporation."
  - if the incorporated company will be a party to the contract, a contract that brings about the incorporation expense falls under (a) or (b).

★ The procedure for a reimbursement should be clearly provided.

12

Case4: Pre-incorporation expenses and contracts

- 2017/6/1: X and Y decided to incorporate A Co.
- 2017/6/10: X purchased materials for future business of A Co. from C.
- 2017/6/20: X and Y applied for the registration of A Co.
- 2017/7/10: X and Y received the certificate of incorporation of A Co.
  - The date of incorporation in the certificate is 2017/7/10.
- 2017/7/30: A Co. has not yet ratified the contract between C.
- Can C demand X or A Co. to ratify the contract?

13

Case5: Pre-incorporation expenses and contracts

- 2017/6/1: X and Y decided to incorporate A Co.
- 2017/6/10: X purchased materials for future business of A Co. from C.
- 2017/6/20: X and Y applied for the registration of A Co.
- 2017/7/10: X and Y received the certificate of incorporation of A Co.
  - The date of incorporation in the certificate is 2017/7/10.
- 2017/7/30: A Co. refused to ratify the contract between C.
- Can C demand X to pay rents and/or damages?

14

Pre-incorporation contracts and expense

- Contracts by X in Cases 4 & 5 are "pre-incorporation contracts" under § 32(1).
- If ratified by the incorporated company, a pre-incorporation contract is valid (§32 (2) and (3)).
- Implied warranty in a pre-incorporation contract (§33)
  - Warranty that a company will ratify the contract (§33(1)(b))
  - If there are a breach of the warranty, a counter party can sue for damages (id. (2)).
  - In Case 4, C can demand X to pay damages, otherwise should be ratified by A Co.
- If an incorporated company dose not ratify it, a counter party may demand court several protections under §34 (1).

  (a)restorations

  (b)damages and other reliefs

  (c)validation

  →In Case 5, C can apply the court to validate the contract under this provision.

15

Case6: Pre-incorporation expenses and contracts

- 2017/6/1: X and Y decided to incorporate A Co.
- 2017/6/20: X and Y applied for the registration of A Co.
- 2017/6/22: X rent an office for future A Co. from B.
- 2017/7/1: DICA rejected the application due to inadequacies in the documents.
- 2017/12/10: X and Y abandoned the incorporation of A Co.
- To whom can B demand the payment of the rent?

16

Pre-incorporation contracts and expense

- Implied warranty in a pre-incorporation contract (§33(1))
  - not only a warranty to ratify a pre-incorporation contract (id.(b)),
  - but also a warranty that the company will be incorporated within a reasonable period of time (id.(a)).
- In Case 6, X clearly owes the liability to pay damage.
  - X is "the person who purports to make a pre-incorporation contract"(§33 (1)), who gives the warranty.

★ It may be better to clarify the scope of person who owes the responsibility.

17

Duties of Directors: cases

Manabu Matsunaka
Nagoya University

NAGOYA UNIVERSITY

1

General

- Two distinct duties
  - Duty of care
  - Duty of loyalty
- Conflict of interest distinguishes the two duties:
  - no conflict of interest between a company and a director: duty of care
  - conflict of interest between them exists: duty of loyalty

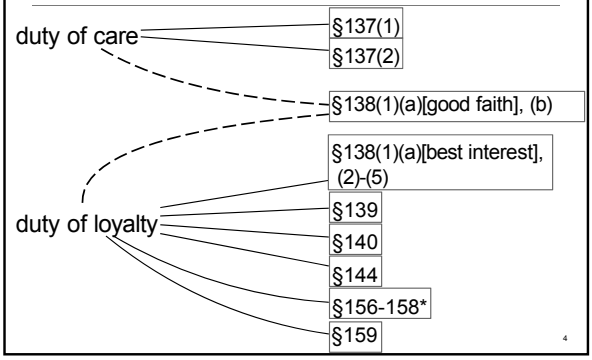
2

General

- Why we need the distinction?
- No conflict of interests:
  - director's judgments are reliable.
  - giving broad discretion to directors is basically consistent with shareholder's interests.
  - courts should not second guess their judgments.
- Conflict of interest exists
  - directors judgments become unreliable.
  - giving broad discretion to directors may harm shareholders.
  - court should review the conduct of directors more strictly.

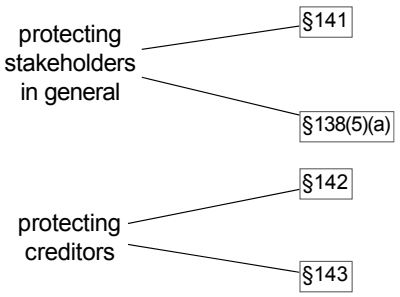
3

General: duties in the draft (Pt.4, Div.3)



4

General: duties in the draft (Pt.4, Div.3)



5

Case1: Failure in business

- About A Co.
  - Engaging in wholesale and retail business of tea.
  - Directors: D1(CEO), D2 and D3
  - A Co.'s business was doing well until 2015 (all amounts are in USD).
    - Annual sales: 10million, operating profit: 1.3million, net profit: 1million.
    - Total assets: 0.3billion, retained earnings: 50 million.
- In 2016, A Co. started handling coffee.
  - Invested 20 million for the new business.
  - Supported by all directors. D2 and D3 relied on the following report by D1.
    - D1 submitted a report to D2 and D3 based on a research by a market research firm.
    - Specialists of coffee market did the research suggesting a large chance in this business.
- The new business failed and caused loss of 30million.
  - The main reason: many new competitors entered into the market.
  - The number of new competitors was not predictable when A Co. made the decision.
- Did directors breached their duties?

6

Duty of care and business judgments

- Case1 concerns duty of care.
- §137(1) provides the general standard of duty of care:
  - "with the degree of care and diligence that *a reasonable person* would exercise as a director or an officer"
    - of *the* company
    - in *the company's circumstances*
- Practically, the standards of review set out in (2) is important.
  - (a) good faith for a proper purpose
  - (b) no material personal interest in the subject matter
  - (c) inform themselves…to the extent they reasonably believe to be appropriate
  - (d) rationally believe that the decision is in the best interests of the company

7

Case2: Failure in business2

- Does the conclusion in Case1 change if the facts are changed as following?
- About A Co.: same as in the case1
- In 2016, A Co. started handling coffee.
  - Invested 20 million USD for the new business.
  - At a board meeting on 2016/6/1, all directors supported D1's proposal to entering into the business. D2 and D3 simply relied on D1 who strongly insisted that the business is profitable.
  - D1 was simply inspired by several blog articles on coffee, which he read on the morning.
  - This was the only board meeting considering the new business.
- The new business failed and caused loss of 30million USD.
  - The main reason: many new competitors entered into the market.
  - It was easy for A Co. to predict this if A Co. had done market research.

8

Duty of care and business judgments

- §137(1) provides the general standard of duty of care:
  - "with the degree of care and diligence that *a reasonable person* would exercise as a director or an officer"
    - of *the* company
    - in *the company's circumstances*
- Practically, the standard of review set out in (2) is important.
  - (a) good faith for a proper purpose
  - (b) no material personal interest in the subject matter
  - (c) inform themselves…to the extent they reasonably believe to be appropriate
  - (d) rationally believe that the decision is in the best interests of the company
- Compare Case 1 with Case 2 regarding §137(2)(c).

9

Case3: self-dealing1

- About A Co.: same as in Case1
- In 2016, A Co. started handling coffee.
  - All directors supported the judgment.
  - A Co. purchased coffee beans only from B Co.
- About B Co.
  - One of companies importing coffee beans from African countries.
  - Wholly owned by D1 and the sole directors was D1.
- The transaction between A Co. and B Co.
  - The purchase price was 20% higher than the usual market price.
  - Same coffee beans were available from other importers.
  - The total price A Co. paid to B Co. was USD 12million in year 2016.
  - D1 started the transaction in order to improve B Co.'s profitability.
  - The transaction was not approved by the board or the shareholder meeting of A Co. and D1 made no disclosure to A Co. at all.
- Can A Co. demand D1 to pay the damage? If so, how much can A Co. get from D1?

10

Self dealing and director's duty.

- Duty to make a disclosure (§144(1))
  - When a director has *a material personal interest* in a matter that relates to the affairs of the company,
  - he must disclose his interests to other directors (at the board.§144(5)(b)).
  - D1 in Case 3 breached the duty to disclose his interests in B Co.
- What happens when a director breaches the duty to disclose?
  - No provisions other than §162(1)(2) providing fines (*compare* §159(5)(a)).
  - However, it is a precondition that a director owes liabilities to the company if he breaches his duties (see §§.162(3), 152-154).

11

Case4: self-dealing2

- Does the conclusion in Case3 change if the facts are changed as following?
- About A Co.: same as in the case1
- In 2016, A Co. started handling coffee (same as in the case3).
- About B Co.: same as in the case3
  - One of companies importing coffee beans from African countries.
  - Wholly owned by D1 and the sole directors was D1.
- The transaction between A Co. and B Co.
  - The purchase price was equivalent to the usual market price.
  - Same coffee beans were available from other importers.
  - One importer (C Co.) offered 1% discount from usual market price for the same beans.
  - The total price A Co. paid to B Co. was USD 12million in year 2016.
  - D1 chose B Co. because he can order B Co. to provide the coffee beans to A Co. stably.
  - The transaction was not approved by the board or the shareholder meeting of A Co. and D1 made no disclosure to A Co. at all.

12

Self dealing and director's duty.

- Duty to make a disclosure (§144(1))
  - When a director has *a material personal interest* in a matter that relates to the affairs of the company,
  - he must disclose his interests to other directors.
- D1 in both Cases 3 and 4 breached the duty to disclose his interests in B Co.
  - It *does not* matter whether the there is a reasonable ground for A Co. to enter into the contract such as in Case 4.
  - A Co. should be able to choose what to do after it finds out there are conflict of interests.

13

Case5: self-dealing3

- Does the conclusion in Case4 change if the facts are changed as following?
- About A Co.: same as in the Case1
- In 2016, A Co. started handling coffee (same as in Case3).
- About B Co.: same as in Case3
  - One of companies importing coffee beans from African countries.
  - Wholly owned by D1 and the sole directors was D1.
- The transaction between A Co. and B Co.
  - The purchase price was equivalent to the usual market price.
  - Same coffee beans were available from other importers.
  - One importer (C Co.) offered 1% discount from usual market price for the same beans.
  - The total price A Co. paid to B Co. was USD 12million in year 2016.
  - D1 chose B Co. because he can order B Co. to provide the coffee beans to A Co. steadily.
  - After D1 fully disclosed his relationship with B Co. and the price, the board of A Co. approved the transaction.

14

Self dealing and director's duty.

- If a director with a conflict of interest properly disclose the interest under §144, the director will not be liable because of breach of the duty under §144.
- However, qualifications for releasing directors from liabilities are not clear. Possible views are:
  1. Require nothing other than the disclosure under §144.
  2. Require approval by either:
     a) members under §§157 and 158.
     b) a board under §159.
  3. Require it to be substantially fair if not approved by the proper body.

  →Which interpretation should we adopt?

15

Self dealing and director's duty: view1

- Difficult to take view1.
  - There are §§157 and 159 which may contradict with view1.
  - In addition, common law principle is that a self dealing needs to be approved by a principal, otherwise it is void.
    - Usually, a clear statutory provision is provided in a statute if one intends to modify the principle (see, e.g., §144(6)).

16

Self dealing and director's duty: view2a

- §157 provides:
  - "A company must not give an officer…, a benefit in connection with the transfer of the whole or any part of…property of the company….unless there is member approval under section 158…"
  - "officer" may include a director (see §131(a)).
    - at least includes a director appointed as an officer at the same time.
- However, is always requiring a member approval for a self dealing beneficial to a company and its shareholders?
  - A company may need to transact with its directors or their associates.
  - It may take time to obtain an approval from company's members.

17

Self dealing and director's duty: view2b

- §159(1)(e) provides that a board *may* authorize
  - "the entering into of a contract to do any of the things set out in paragraphs (a), (b), (c), and (d) or *to the provision of any other kind of financial benefit* to a director or a related party *not otherwise regulated under this Law*…"
- Do contracts between a company and its directors in general fall into §159(1)(e)?
  - Are the transactions regulated under §159(1)(e) limited to those provided in (a) to (d) and similar ones to them?
    - (a)remuneration, (b)compensation for loss of office, (c)loans and (d)guarantees by a company.
    - §159(1)(e) can be interpreted as including only transactions similar to remuneration, provision of credits.
    - However, "*any other kind of financial benefit"* can be read broader.
  - Are these contracts regulated under §157?
    - If so, these are excluded from §159(1)(e) because of the clause "*not otherwise regulated under this Law"* in it.

18

Self dealing and director's duty: view3

- Requires fairness in a conflicting transaction.
  - procedural fairness
  - substantial fairness
    - contents of the transaction needs to be fair:the price, the quantity or quality of the objects…
    - requires the transaction to be in the best interests of the company.
- View 3 can be used with view 2a or b.
  - Either acquire an approval for the transaction *or* the transaction should be substantially fair.
  - Require a board approval and substantial fairness at least to some extent (see, e.g., §159(5)).

★ Whichever opinion you adopt, it may well be better to clarify what the rule is in the draft.

19

Self dealing and director's duty: Case5

- View1: no breach of duty.
- View2
  - a): breach of duty under §157
  - b): no breach of duty.
- View2a+view3
  - no member approval: the transaction is can not be justified under §157.
  - However, it can be evaluated as being substantially fair to A Co.

20

Case6: self-dealing4

- Does the conclusion in *case3* change if the facts are changed as following?
- About A Co.: same as in Case1
- In 2016, A Co. started handling coffee (same as in the case3).
- About B Co.: same as in Case3
- The transaction between A Co. and B Co.
  - The purchase price was 20% higher than the usual market price.
  - Same coffee beans were available from other importers.
  - The total price A Co. paid to B Co. was USD 12 million in year 2016.
  - D1 started the transaction in order to improve B Co.'s profitability.
  - After D1 fully disclosed his relationship with B Co. and the price, the board of A Co. approved the transaction.

21

Case 7: remuneration of directors1

- A Co.: same as in the Case 1.
- In 2016, A Co. decided to start handling coffee.
- In doing so, A Co. decided to appoint a new director.
  - The new director N was appointed at the shareholder meeting of A Co.
  - N is a non-executive director and is not appointed as an officer of A Co.
  - N is expected to give advices on the A Co.'s new business as an expert on coffee market.
- N's remuneration:
  - USD 0.3million/year
  - In the course of negotiation, N told the amount to D1 and D1 accepted it immediately.
  - D1 and other directors did not made any research on the remuneration of non-executive directors in competitors or any other companies.
  - Directors of A Co. thought that although USD 0.3million is rather expensive, it does worth for the knowledge and specialties N had.
  - The remuneration was approved at A Co.'s shareholder meeting appointing N.
- X, a shareholder of A Co. thinks the remuneration is excessive. Can X challenge it?

22

Remuneration of directors

- Rules on remuneration of directors.
  - A board can authorize a remuneration if it is in an arm's length terms.
    - Directors' remuneration can be authorize by a board (§159(1)(a)).
    - Three conditions for the authorization (id. (f))

      (i)to authorize "is in the best interest of the company" (ii)to authorize "is reasonable in the circumstances"

      (iii)"the payment…is on made on terms that are no worse than arm's length from the perspective of the company."
  - Even if a remuneration does not satisfies the three conditions above, a company can pay the remuneration if it is approved by its members (§160(1)).
- The remuneration in Case 7 is approved by A Co.'s members.

23

Case 8: remuneration of directors2

- Does the conclusion in Case 7 change if the facts are changed as following?
- A Co.: same as in Case 1.
- In 2016, A Co. decided to start handling coffee.
- In doing so, A Co. decided to appoint a new director (same as in Case 7).
  - The new director N was appointed at the shareholder meeting of A Co.
  - N is a non-executive director and is not appointed as an officer of A Co.
  - N is expected to give advices on the A Co.'s new business as an expert on coffee market.
- N's remuneration:
  - USD 0.3million/year
  - In the course of negotiation, N told the amount to D1 and D1 accepted it immediately.
  - D1 and other directors did not made any research on the remuneration of non-executive directors in competitors or any other companies.
  - Directors of A Co. thought that although USD 0.3million is rather expensive, it does worth for the knowledge and specialties N had.
  - The remuneration was approved by the board but not by A Co.'s shareholder meeting.
- X, a shareholder of A Co. thinks the remuneration is excessive. Can X challenge it?

24

Case 9: remuneration of directors3

- Does the conclusion in Case 8 change if the facts are changed as following?
- A Co.: same as in the Case 1.
- In 2016, A Co. decided to start handling coffee.
- In doing so, A Co. decided to appoint a new director (same as in Case 7).
- N's remuneration:
  - USD 0.2million/year
  - In the course of negotiation between D1 and N, N told D1 that he want 0.3million/year. Based on the information gathered by D2, D1 insisted 0.15million/year is appropriate.
  - D1 and N negotiated for several times and both sides conceded to each other's demand. Finally, they agreed on 0.2 million/year.
  - Directors of A Co. approved the remuneration on the reason that even though it is higher than they expected knowledge and specialties N had are indispensable for A Co..
  - The remuneration was not approved by A Co.'s shareholder meeting.
- X, a shareholder of A Co. thinks the remuneration is excessive. Can X challenge it?

25

Remuneration of directors

- Rules on remuneration of directors.
  - A board can decide if it is in an arm's length terms.
    - Directors' remuneration can be authorize by a board (§159(1)(a)).
    - Three conditions for the authorization (id. (f))
      (i)to authorize "is in the best interest of the company" (ii)to authorize "is reasonable in the circumstances"
      (iii)"the payment…is on made on terms that are no worse than arm's length from the perspective of the company."
  - Alternatively, a company can pay the remuneration if approved by its members (§160(1)).
- Remunerations in both Cases 8 and 9 are not approved by A Co.'s members.
- Whether the remunerations in each case satisfies §159(1)(f) must be considered, especially (iii).

26

Remuneration of directors

- Arm's length terms
  1)Negotiated and agreed between independent and equal parties
  2)the terms that can be evaluated as substantially same as those between independent parties.
  - Cf. "fairness" in self-dealings.
- Independent parties
  - Parties of usual business contracts.
  - Fiduciary and its principal are not independent and equal parties.
- Better to consider procedural aspects first, then substantial ones.
  - In Case8, it is not arm's length in both aspects.
  - In Case9, it can be evaluated as independently negotiated, i.e., arm's length in procedural sense.

27

Case 10: remuneration of officers

- Suppose N was appointed as an officer of A Co. but not as a director.
- Does the procedure for setting the remuneration of N differ from that of directors?
  - Specifically, does the remuneration, always or under specific circumstances, have to be approved by the shareholder meeting of A Co.?

28

Remuneration of officers

- Possible views on remuneration of officers.
  - View1: It can be paid under a contract without a member approval.
    - §156(1) requires a member approval on a severance payment.
    - §156(2): "(1) *does not restrict* the payment of any benefits required to be…paid in good faith under or in connection *with the officer's contract of employment*"
  - View2: a member approval is required for paying remuneration to an officer.
    - §157 prohibits provisions of company's property to its officers without a member approval
      - "a benefit in connection with the transfer of the whole or any part of…property of the company".
- Which is the rule?
  - Taken together with §156, §157 can be interpreted as excluding remunerations.
    - If so, there are no procedural failures in Case 10.
  - However, the provisions of the draft are unclear.

29

Case 11: remuneration of officers2

- Suppose N is appointed as an executive director and officer at the same time.
- Does the procedure needed for setting the remuneration of N for his capacity as an officer differ from that of Case 10?

30

Remuneration of officers/directors

- The unclarity in rules on remuneration of officers creates further difficulties.
  - If a director is also appointed as an officer, procedures for setting remuneration as an officer and as a director *may* differ.
- View1(no member approval is required for officer's remunerations)
  - No equivalent of §159 (1)(f) for officers.
  - Excessive remunerations can be legal if it is payed as remuneration for an officer.
- View2 (a member approval is required for officer's remuneration): the overall remuneration regulation will be totally perverse.
  - Officer: always need a member approval.
  - Director: can be paid remuneration without member approval.
  - Officers are (can be) monitored by directors, but not vice versa.
- Note that even if a director is not specifically appointed as an officer he can still be an officer under §131(a).

31

Remuneration of officers/directors

- Rules on remunerations of officers should be clarified.
  - The main reason for this inconsistency is unclarity in rules on officer's remuneration.
  - Results from incomplete copy and paste of Australian law.
- ★ A proposal for modification1.
  - Director: §159
  - Officer: specifically provides that a board can authorize remuneration (probably by adding specific provisions in or after §156).
  - Director and officer: specifically provides that both remunerations as a director and as an officer are regulated under §159.
- ★ A proposal for modification2.
  - In addition to proposal1, revise §159 to always require a member approval.
    - Also removes ambiguity concerning "arm's length" rule under current §159(1)(f).
  - However, whether to adopt this idea is totally a policy matter.

32

Case12: Competing with the company1

- About A Co.: same as in Case1
- 2016/6/1, A Co. started to consider entering into coffee business.
  - Based on the decision at the board meeting on the day, D2 started to prepare a report on coffee market for the next board meeting.
  - On 2016/7/1, D2 submitted the report to the board and made a presentation based on it at the board meeting.
- 2016/7/14, D1 started coffee business at his wholly owned company (E Co.).
  - The sole director of E Co. was D1.
  - D1 kept these facts secret to D2, D3 and employees of A Co.
- Did D1 breach his duties to A Co.?

33

Competing with the company

- The draft does not contain regulations specifically tailored for situations where directors compete with the company.
- However, there are related provisions.
  - The director must make disclosures under §144(1).
    - When he has "a material personal interest in a matter that relates to the affairs of the company".
  - §140(a): using information obtained as a director to benefit himself in the course of competition consists a breach of duty.
  - §139: using his position as a director for his personal business consists a breach of his duty.
- Case 12 involves breaches of (at least) two duties.
  - D1 made no disclosure (§144(1)).
  - D1 used information obtained as a director at A Co.'s board meeting on 2016/7/1.
- Some cases can also be handled under §164.

34

Case13: Competing with the company2

- Does the conclusion in Case12 change if the facts are changed as following?
- About A Co.: same as in the case1
- As of 2016/7/14, A Co. never considered entering into coffee business.
  - Until now, A Co. never entered or considered entering into the business.
- 2016/7/14, D1 started coffee business at his wholly owned company (E Co.).
  - The sole director of E Co. was D1.
  - D1 kept these facts secret to D2, D3 and employees of A Co.
  - The business went so well.

35

Competing with the company

- The draft does not contain regulations specifically tailored for situations where directors compete with the company.
- However, there are related provisions.
  - The director must make disclosures under §144(1).
    - When he has "a material personal interest in a matter that relates to the affairs of the company".
  - §140(a): using information obtained as a director to benefit himself in the course of competition consists a breach of duty.
  - §139: using his position as a director for his personal business consists a breach of his duty.
- Case 13 involves no conflict of interests.

36

Case14:Corporate opportunity1

- About A Co.: same as in Case1
- 2016/6/1, A Co. started to consider entering into coffee business (same as in Case12).
- 2016/7/14, F Co.'s CEO P told D1 the following:
  - F Co. is considering selling its wholly owned subsidiary (F2 Co.).
  - F2 Co. is engaging in wholesale business of coffee beans.
  - P was looking for someone who is interested in purchasing F2 Co.
- 2016/9/1, E Co. purchased F2 Co. from F Co.
  - E Co.'s sole shareholder and sole director was D1.
  - D1 did not tell D2 or D3 about the offer from P.
  - Instead, he started considering the purchase of F2 Co. by E Co. just after the offer by P.
- Did D1 breach his duties to A Co.?

37

Usurping corporate opportunity

- The relevant provisions in the drafts are similar to those on a competition with the company.
  - Disclosure (§144(1)).
  - No improper usage of company's information (§140).
  - No improper usage of his position as a director (§139).
- A business opportunity offered to a company consists "information" obtained as its director.
  - In Case14, D1 improperly used the information obtained as a A Co.'s director.
- According to cases in Commonwealth countries, this type of conflicts can be handled under the unfair oppression clause.

38

Case15:Corporate opportunity2

- Does the conclusion in case14 change if the facts are changed as following?
- About A Co.: same as in Case1
- 2016/6/1, A Co. started to consider entering into coffee business.
  - 2016/7/1, D2 reported at the board meeting that it would cost too much to enter the business now.
  - D2 also reported that if A Co. make investment for the new business, it will be difficult for A Co. to make necessary investment for the existing tea business.
- 2016/7/14, F Co.'s CEO P told D1 the following (same as in the case14):
  - F Co. is considering selling its wholly owned subsidiary (F2 Co.).
  - F2 Co. is engaging in wholesale business of coffee beans.
  - P was looking for someone who is interested in F2 Co.
- 2016/9/1, E Co. purchased F2 Co. from F Co.
  - E Co.'s sole shareholder and director was D1.
  - D1 told D2 about the P's offer.
  - D2 replied D1 that A Co. did not have enough money for purchasing F2 Co. based on his 7/1 report.

39

Usurping corporate opportunity

- The rules are similar to those on a competition with the company.
  - Disclosure (§144(1)).
  - No improper usage of company's information (§140).
  - No improper usage of his position as a director (§139).
- A business opportunity offered to a company consists "information" obtained as its director.
- In Case14, there is no improper usage of information by D1.
- Case15
  - D1 properly offered the opportunity to A Co. first.
  - A Co. was not willing to take advantage of the opportunity.
  - It can be understood that there is no conflict of interest between D1 and A Co.
  - In practice, it is better for D1 to make disclosure about the purchase nonetheless.

40

Case16: Illegal actions by the company1

- About A Co.: same as in Case1.
- In 2016, A Co. started handling coffee (same as in Case1).
- The new business went well in 2016. However, in June 2017 a newspaper revealed the following:
  - Some of coffee beans sold by A Co. contained a specific harmful agricultural chemical, which was prohibited by a food safety regulation.
  - D1 recognized the problem by the end of 2016.
  - However, D1 kept on buying and selling the bean since it was cheaper and better in quality compared to the competitive products. The bean was popular among consumers.
  - These press reports turned out to be true.
- By the end of 2017, A Co. suffered loss of USD 100 million by this scandal.
- Can A Co. demand D1 to pay damage?

41

Duty to obey law

- Directors and officers have a duty to obey law (§141)
  - i.e. duty to prevent herself from engaging in illegal actions.
  - In Case16, D1 intentionally engaged in the illegal action.
- Current §141 limits the scope of laws to be obeyed only to Companies Act.
  - "A director or officer must not act…in a manner that contravenes *this* Law or…"
  - However, there is few rationale for this limitation.

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Case17: Illegal actions by the company2

- About A Co.: same as in Case1.
- In 2016, A Co. started handling coffee (same as in Case1).
- In June 2017, a newspaper revealed that A Co.'s coffee beans contained a harmful agricultural chemical which was prohibited (same as in Case16).
- D2 and D3 did not know the problem until the press uncover.
  - D1 was in charge of the quality management of the coffee beans.
  - D2 was CFO and D3 was not an officer or managing director of A Co.
  - D1 never told D2 or D3 about the problem.
  - D2 and D3 never asked D1 or investigated about the safety of the beans A Co. sold.
  - If they checked the report by specialists examining the bean and/or examined the farm producing the bean, they could easily find out that the prohibited chemical was used.
- Did D2 and/or D3 breached their duties to A Co.?

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Duty to obey law and monitoring

- Directors also have a duty to monitor their colleague directors, officers and employees.
  - No specific provision, but a part of the duty of care (§137(1)).
  - Directors other than who committed an illegal action may (but not always) be held as breaching his duty.
  - Case17 is this type of problem.
- If D2 or D3 did hear or recognize about D1's action
  - §137(2)(a)
  - §137(2)(d)

  are not satisfied.
- If D2 or D3 did not inform themselves about serious risks of A Co.'s business, §137(2)(c) is not satisfied.
  - They do not have to gather information daily by themselves.
  - Instead, they can structure an internal control system.

44

Duty to obey law and monitoring

- §163 provides that if a reliance on information by a director satisfies following conditions, it will be presumed as reasonable.
- (1)(a) information supplied by
  - (i)"an employee of the company whom the director believes on reasonable grounds to be reliable and competent…";
  - (ii)a professional adviser or expert;
  - (iii)"another director or officer in relation to matters within the director's or officer's authority"; or
  - (iv)"a committee of directors on which the director did not serve…"
- and (1)(b) where
  - the reliance was made in good faith and
  - after making an independent assessment by the director
- the presumption is rebuttable (§163(2)).

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Case Study of Corporate Law #3

Dispute Resolution between Majority Shareholders and Minority Shareholders

July 3, 2015

Case 1:

Company P, a company limited by shares, had three shareholders. Individual A held 100 shares, Individual B and Individual C held 50 shares each, all of the shareholders were natural persons. All of the outstanding shares were common stock, which had one voting right for each share. Company P had a board of directors where each shareholder, i.e. Individuals A, B and C, was a member of the board. Individual A was the chairman of the board of directors of Company P. After several years, Individual A, without sending out a convocation notice to each shareholder, held a general shareholders meeting. While Individual B who heard of the shareholders meeting could attend the meeting, C could not as he did not have any chance to hear about the meeting. At the shareholders meeting, Company P passed (a) removal of Individuals B and C from directors of Company P and (b) appointment of Individuals D and E as new directors of Company P. Further, after completion of the registration of removal of previous directors (Individuals B and C), and appointment of new directors to the registry office, the new board of Company P approved the purchase of land from Company Q at the higher price than the fair market value of the land. Company Q was a wholly owned by Individual A.

Questions:

1. What can Individuals B and C assert against Company P?
2. What can Individual B and C assert against Individual A?

Case 2:

Individuals A, B and C were the shareholders of Company R, a company limited by shares, where Individual A held 600 shares, Individual B held 350 shares and Individual C held 50 shares in Company R. All of the outstanding shares were common shares. Under the constitutional document of Company R, the special resolution at the general shareholders meeting with a majority vote was required to sell and transfer the shares in Company R.

After several years, the relationship between Individual C and the remaining shareholders became bad, and Individual C started to seek disposal of the shares in Company R. One day, Individual C found a potential purchaser of the shares, Company S. After negotiation taken place, Company S agreed to purchase the shares that Individual C holds at US$ 5 million.

Individual C asked for the approval of share transfer to Company S at the general shareholders meeting of Company R, but the general shareholders meeting rejected the share transfer, since Individuals A and B voted against the share transfer. Note that Company S was a business competitor to Company R.

Accordingly, Individual C could not sell the shares in Company R to Company S.

The value per share was;

(a) US$ 10,000@share, if evaluated by dividend discounted method;
(b) US$ 35,000@shares, if evaluated by method by referring to similar industry;
(c) US$ 50,000@share, if evaluated by net asset value method; and
(d) US$100,000@share, if evaluated by income approach.

Questions:

1. How should be the interest of Individual C protected?
2. Does your analysis change if the number of shares held by each shareholder were as follows?

Individual A – 450 shares
Individual B – 150 shares
Individual C – 400 shares

* Supplemental Explanation:

“Dividend discounted method” means the evaluation method of shares where the shares are evaluated based on the amount of dividend.

“Method by comparing similar industry” means the evaluation method of shares where the shares are evaluated by referring to average share price, average of the amount of dividend, profits and net asset amount, of the similar industry.

“Net asset value method” means the evaluation method of shares where the shares are evaluated based on the net asset amount of the company.

“Income approach” means the evaluation method of shares where the shares are evaluated

based on the income of the company generated.

Case 3:

Company T was founded by Mr. X, owned 100% by him, and grew to a big company under his management. After many years when Mr. X passed away, three sons of Mr. X, Individuals A, B and C inherited the shares in Company T. Respective number of shares of each son was, 400 shares for Individual A, 300 shares for Individual B and 300 shares for Individual C. Company T had the board of directors which consisted of the three sons.

After starting the new operation by the new management, there were several occasions that the opinions of Individuals A and B oppose each other, and Individual C always supported Individual B.

One day, at the board meeting, Individuals B and C proposed the agenda of issuing 2,000 new shares in Company T and allot 1,000 shares to each of Individuals B and C, but none to Individual A. Accordingly, if the shares were issued and allotted as planned, the number of shares held by each son would be 400 shares for Individual A, 1,300 shares for Individual B, and 1,300 shares for Individual C after the share issuance and allotment. The actual value of each share in Company T was US$10,000.

Questions:

1. Assume that Company T issued the new shares at US$1,000 per share.
   (1) What is the economic consequence of such issuance of shares among the shareholders?
   (2) What Individual A can do or assert in such situation?
2. Assume that Company T issued the new shares at US$10,000 per share.
   (1) What is the consequence of such issuance of shares among the shareholders?
   (2) What Individual A can do or assert in such situation?
3. What if there was a bona fide business reason to issue the shares and raise the funds? Assume that Company T needed to raise substantial amount in order to build a new plant, and the shares were issued for the purpose of raising the necessary fund.

Case 4:[1]

Company U engaged in the business of leasing aircrafts. Companies A, B, and C, who together hold 60% of the outstanding shares of Company U, adopt a policy of withholding payment of dividends on Company U's shares and obtaining the benefits of their control of Company U solely through the leasing of aircrafts at a bargain price for air carrier business that they operate. Company D, a minority shareholder of Company U holding 40% of the outstanding shares who did not approve the policy, is unable to take advantage of the policy because it does not operate air carrier business.

Question:

What are the measures that can be taken by Company D to protect its own interests?

[1] The case is based on the illustration on d.(1)(b) of ALI, *Principles of Corporate Governance § 5.11: Analysis and Recommendations Part V. Duty of Fair Dealing Chapter 3. Duty of Fair Dealing of Controlling Shareholders* (ALI-CORPGOV § 5.11) (1994).

Case 5:[2]

Company A, a company limited by shares, has a controlling shareholding in another company limited by shares (Company B), holding 80% of the shares. Company A was controlled by the family member of the founder of the business.

For a period of 10 years, and despite the steady build up of profits over that time which have led to an increase in the fair value of the shares of Company B, the controlling shareholder Company A has refused to vote in favour of any dividend in the hope of buying back the 20% of the shares of Company B held by the minority shareholders. Each time the matter has come before the general shareholders meeting, the board of directors has recommended that the shareholders do not vote in favour of any dividend but instead retain the profits in Company B. Some family members held senior positions in Company A and Company B and so received a satisfactory level of remuneration. Therefore, they do not feel they have any need to receive dividends. A minority shareholder of Company B has decided to sue the majority Company A for damages in respect of the failure to vote in favour of the payment of dividend for such a long period.

Meanwhile, for valid business reasons, the management of Company B decides to sell one of its businesses to Company A, together with the assets and liabilities pertaining to such business at fair price. Under the constitution of the Company B, it was required to obtain the special resolution at the general shareholders meeting in order for the Company B to sell important assets. Thus, Company B held duly held the shareholders meeting, where the said assets sale was approved with the affirmative voting by Company A.

Later, the plan of Initial Public Offering (IPO) of Company B came up. In order for Company B to conduct IPO, the Company B needed to do reverse share split, whereby make per value of shares more appropriate for the listed shares. The ratio of reverse share split was for 20 shares to 1 share.

Some minority shareholders of Company B have several complaints.

Questions:

1. One minority shareholder of Company B has decided to sue to obtain a court order annulling the sale of the business as well as its asset on the ground that Company A, although authorized by law to vote on the sale, had a conflict of interest and should have refrained from voting. What would be the consequence?
2. In the course of the reverse share split, three minority shareholders of Company B, who held only 18 shares each, were unable to obtain the new share after the reverse share split, receiving cash instead. Is there anything that these three minority shareholders can assert?

[2] This case is inspired by the case shown in page 227 of Pierre-Henri Conac, *Shareholders and Shareholder Law* in Mathias Siems and David Cabrell, *Comparative Company Law – A Case-Based Approach* (2013).

Case 6:

V Company, a producer of oil and gas, owns 60% of the common stock of W Company, a refiner of oil and gas, which has been purchasing its raw material from third parties. W Company developed a great business opportunity to invest in the other oil and gas business operator, X Company. Since the management of W Company was convinced that the investment in X Company would be extremely profitable, the managements of W Company reported to V Company, as its parent company, about the investment opportunity in X Company. However, the management of V Company strongly opposed to W Company's investment in X Company, and even ordered the management of W Company that they should not invest in X Company. Accordingly, W Company gave up its plan to invest in X Company. However, 3 months later, V Company acquired all equity interest in X Company, and made its own 100% subsidiary. Minority shareholders of W Company complained about such acquisition by V Company.

Questions:

1. What made the minority shareholders of W Company so unhappy?
2. What are the remedies available for such minority shareholders of W Company?
3. What if Company V held 95% of the outstanding shares in Company W?

Case 7:[3]

Assume that a 60% majority shareholder and two 20% minority shareholders form a company engaged in the sale of a particular product. Under the constitutional document of the said company, the approval at the general shareholders meeting with a majority vote was required to sell and transfer the shares in such company. At the time the shareholders commit their capital to the business, they all agree that the company needs only two active managers. As a result, the majority and one of the minority shareholders assume active management roles in the business, while the other minority shareholders assume active management roles in the business, while the other minority shareholder chooses to remain as the passive investor. 6 months later, the three individuals realize for the first time that the growing business will require a third manager. With the support of the other two shareholders, formerly passive minority assumes the third management position. For the next twenty years, all three shareholders participate actively in the management of the business. However, at the end of that time period, the majority unjustifiably removes both minority shareholders from their positions.

Question:

Is there any remedy available to the two minority shareholders?

[3] This case is based on the example shown in Page 719 of Douglas K. Moll, *Shareholder Oppression & Reasonable Expectations: Of Change, Gifts, and Inheritances in Close Corporation Disputes*, 86 Minn. L. Rev. 717 (2001-2002).

事例研究（取締役の違法行為に対する救済措置（株主代表訴訟））レジュメ

Derivative actions and remedies for oppressive or unfair conducts: cases

Manabu Matsunaka
Nagoya University

NAGOYA UNIVERSITY

1

Case1: breach of duties and derivative action

- X is a shareholder of A Co.
  - A Co. issues 1000 shares.
  - X holds 10 of them since the incorporation.
- D1, a director of A Co., involved in a self-dealing.
  - Suppose that details are the same as in the Case 3 in “directors’ duties” section.
- X thinks D1 should compensate A Co. for the damage he caused.
  - However, D2 and D3 are hesitating to make action on behalf of A Co.
  - Can X take an action to make D1 compensate A Co.?
  - If he can, what is the required procedure for X?

2

Case1: Case3 of duties of directors

- About A Co.
  - Engaging in wholesale and retail business of tea.
  - Directors: D1(CEO), D2 and D3
- In 2016, A Co. started handling coffee.
  - All directors supported the judgment.
  - A Co. purchased coffee beans only from B Co.
- About B Co.
  - One of companies importing coffee beans from African countries.
  - Wholly owned by D1 and the sole directors was D1.
- The transaction between A Co. and B Co.
  - The purchase price was 20% higher than the usual market price.
  - Same coffee beans were available from other importers.
  - The total price A Co. paid to B Co. was USD 12million in year 2016.
  - D1 started the transaction in order to improve B Co.’s profitability.
  - The transaction was not approved by the board of A Co. and D1 made no disclosure to A Co. at all.
- Can A Co. demand D1 to pay the damage? If so, how much can A Co. get from D1?

3

Derivative actions

- Shareholders can make actions on behalf of the company.
  - Anyone can sue for herself.
  - Here, X wants to sue on behalf of A Co.
    - If X (A Co.) wins, A Co. will recover damage from D1, not X.
    - Usually, directors (or officers) act on behalf of the company.
- Which section in the draft provides for the rules on derivative actions?

4

Derivative actions

- A shareholder and other person in §168(1)(a) may make a derivative action if the court grant a leave (§169(1)).
- The conditions and procedure for the court to grant a leave (§169(2)).
  - (a) to (d) must be satisfied
    - (a): non action by the company itself
    - (b): the applicant acting in good faith
    - (c): being in the best interests of the company
      - (c) is presumed *not* to be satisfied if conditions in (3) are satisfied.
      - (3) essentially lets a board to reject a derivative action as long as they make independent and reasonable decisions.
    - (d): existence of a serious question to be tried
  - Also the applicant basically have to make a notice under (e).

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Case2: breach of duties and derivative action2

- Suppose X successfully made the derivative action in Case 2 and the court judged that D1 should compensate A Co.
  - The court ordered D1 to pay A Co. USD 2 million.
- X hired a lawyer and paid him USD 10,000.
- X also paid fee to the court.
- Can X get reimbursed for these expenses?

6

Oppression remedies

- Oppressive conducts (§164)
  - If (a), (b) or (c) is
  - either (d) or (e),
    → Members (and other persons in §166) can apply court for following reliefs.
- Reliefs (§165): especially following ones are important.
  - (a): winding up
  - (d)(e): purchase of (plaintiff's) shares by other member(s) and/or the company.
  - (c)(i)(j): regulating, restraining or requiring current or future conducts of a person (a member and or a director) or the company.
  - (k): damages
  - These reliefs are illustrative, not comprehensive.
- Reliefs must correspond with the oppressive conducts in question.

7

Case3: oppression of minority shareholders

- In 2010, X, Y and Z incorporated A Co.
  - All three hold 1/3 of A Co.'s shares (300 shares in total, 100 each).
  - All three were managing directors.
- In 2013, a conflict arose among X, Y and Z.
  - Y and Z tried to drive out X.
  - In June 2013, the board of A Co. decided to deprive managing authority of X.
  - In the same month, general shareholder meeting of A Co. decided to pay no dividends this year.
    - A Co. had sufficient profits to make dividends then.
    - A Co. had been making dividend of USD 500 per share since 2011.
    - This is continuing as of 2017.
  - At the same time, the board of A Co. made following decisions.
    - Raise the remuneration of each managing director to USD 150,000 per year from USD 100,000.
    - Set the remuneration of non-managing directors at USD 1000 per year.
- X wants to exit from A Co. What can he demand and to whom?

8

Case3: point of view

- Do the conducts of A Co. amount to oppressive conducts under §164?
  - Consider total effects of the conducts.
    - Deprive X of the managing authority
    - Set dividends to zero *and* raising the remuneration of managing directors since 2013.
  - Are these oppressive to, unfairlyprejudicial to, or unfairly discriminational against X?
- If so, can the court order A Co. or Y/Z to purchase the share of X under §165?

9

Case3: explanations

- Do no dividends with higher director's remunerations amount to oppression?
- If all of the shareholders are directors: higher remunerations substantially compensate for lost dividends.
- When only a part of shareholders are (managing) directors:
  - Y and Z: dividends+remunerations
    - until May 2013: USD 500*100shares+USD 100,000=USD 150,000
    - from June 2013: 0+USD 150,000=USD 150,000
  - X : dividends+remunerations
    - until May 2013: USD 500*100shares+USD 100,000=USD 150,000
    - from June 2013: 0+USD 1,000=USD 1,000

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Case3: explanations

- Purchases of oppressed party's shares as an appropriate remedy.
  - Provides an oppressed shareholder with exits from the company.
  - A purchase by *oppressing* shareholders is the most common relief (§165(1)(d)).
  - In addition, the court can order the company to purchase (Id. (e)).
    ✳If company, instead of other shareholders buy oppressed shareholder's share, there can be an (bad) effect to its business and creditors.
- Is these an appropriate remedy for Case 3?
  - Can the purchase by Y, Z or A Co. put an end to the oppression to X?
  - Is X relived from and/or compensated for the oppression?

11

Case4: a dispute on dividend policy1

- A Co.
  - B Co. is a majority shareholder of A Co.
  - C and others are minority shareholders of A Co.
- A Co. has distributed 90% of its net profit every year since its incorporation in 2000.
  - This was because B Co. needed cash to make investment for its own business.
  - Since A Co. has not retained most of its earnings, it lacked a fund to make investment in a new profitable business brought to A Co. in 2014.
  - D bank told directors of A Co. that D would not lend money for the investment as long as A Co. does not change its dividend policy.
  - B Co. opposed to change the dividend policy and A Co. has been keep on distributing 90% of its net profit in years 2014 and 2015.
- In 2016, all minority shareholders including C sued for relief.
- Can C and other minority shareholders get any relief? If so, what is an appropriate relief?

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Case4: point of view

- What is effects of the A Co.'s dividend policy on its shareholders?
  - Effects on B Co.
  - Effects on C and other minority shareholders of A Co.
- How should the attitude of C and other minority shareholders affect the judgment on oppression?
- What are appropriate remedies?
  - Does not have to be limited to one remedy.

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Case4: explanations

- Effects of the A Co.'s dividend policy on its shareholders.
  - Effects on B Co.: obtained money needed.
  - Effects on C and other minority shareholders of A Co.: A Co. lost the profitable investment opportunity.

  →favorable for B Co., but unfavorable for A Co.'s shareholder in general.
    - Although B Co., a shareholder of A Co., suffer from A Co. losing the new business, profits from investing dividends from A Co. can compensate the damage.
- The attitude minority shareholders
  - Unanimously opposing the existing policy.
  - This will be an additional factor toward affirming oppression.

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Case4: explanations

- What are appropriate remedies?
- Winding-up A Co.(§165(1)(a))
  - might be able to solve some (but not all) of the problem caused by oppression.
  - but it is too excessive.
- Damage: B Co. pays to C and other minority shareholders
  - is difficult solve the problem: the dividend itself will continue in the future, which cause the same problem afterwards.
- Purchase of minority share (including C's share)
  - Purchase by B Co. and/or A Co.
  - C and other minority shareholders obtain exit: freed from future oppression.
  - C and other minority shareholders can be compensated for the damage caused to A Co. by losing the new investment opportunity, if the price of purchase is fair.
- Another remedy might be to regulate future dividends of A Co., but this cannot compensate for the past damage caused to A Co.

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Case5: a dispute on dividend policy2

- A Co.
  - B Co. is a majority shareholder of A Co (60%).
  - C, D and others were minority shareholders of A Co.
- A Co. has made no dividend since its incorporation in 2000.
  - This was initially based on the intent of the entire shareholder to prioritize investment in new fields rather than distribution.
  - Until present, A Co. has successfully found investment opportunities.
  - Since 2014, some of the minority shareholders including C insisted to make modest (about 30% of annual net profits) dividend to shareholders.
- In 2016, a part of minority shareholders including C sued for relief.
  - Altogether, C and other dissenting minority shareholders hold 20% of A Co.'s shares.
  - The remainders of minority shareholders, who altogether hold 20% of A Co.'s shares, supported the existing dividend policy.
- Can C and other dissenting minority shareholders get any relief? If so, what is an appropriate relief?

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Case5: point of view

- Is continuing the dividend policy amounts to oppressive, unfair or prejudicial to some members?
- What factors are different from Cases 3?
  - The reason why A Co. adopted the dividend policy.
  - Effects of the dividend policy to shareholders.
    - esp. (in)difference between majority and minority shareholders.
  - Must also look to attitudes of minority shareholders.

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Case5: explanations

- What factors are different from Cases 3 and 4?
  - The reason and effects of the dividend policy:
    - The "no dividend" policy was not for benefiting a majority shareholder or other particular parties.
    - The profits were invested in new businesses: the value of A Co.'s share raised by the investment.
      - E.g., 100 (original share value) + 20 (dividends) or 120 or more (capital gain) + 0 (dividends)
    - Total values for each shareholder is not decreasing. This is also the case for both majority and minority shareholders.
  - Also some of minority shareholders themselves are supporting the dividend policy.
- Cases in Commonwealth countries have denied relief for no or low dividends where:
  - it led to increase in funds/reserves for shareholders
  - there are sound business reasons for the policy.

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Case6: share issues1

- In 2010, X, Y and Z incorporated A Co.: same as in case1
  - All three hold 1/3 of A Co.'s shares (300 shares in total, 100 each).
  - All three were managing directors.
- In 2015, a conflict arose among X, Y and Z.
  - Y and Z tried to drive out X.
  - In June 2015, the board of A Co. decided to issue 300 shares.
  - Y, who proposed the issuance, explained that A Co. needed working capital.
  - X opposed, but Y and Z voted for the issuance.
  - In the resolution, terms of the issuance was set as following:
    - issue price: 1000USD/share. This was based on an accountant B's appraisal.
    - Y and Z have to pay USD 500/share by the time of issuance. The remainder can be paid within a year.
    - A Co. issues to Y and Z (150 shares each).
- In November 2015, Y and Z proposed X to sell all of its shares to them.
  - The price they offered was USD 800.
  - Y and Z insisted that this was a "fair price" reflecting minority discount.
- X rejected the offer and sued for a relief. Can X get any relief? If so, what is an appropriate relief?

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Case7: share issues2

- In 2010, X, Y and Z incorporated A Co.
  - X and Y hold 100 shares each, and Z hold 300 shares.
  - All three were managing directors since A Co.'s incorporation.
- In 2015, a conflict arose among X, Y and Z.
  - X and Y tried to drive out Z.
  - In June 2015, the board of A Co. decided to issue 300 shares.
  - Y, who proposed the issuance, explained that A Co. needed working capital.
  - Z opposed, but X and Y voted for the issuance.
  - In the resolution, terms of the issuance was set as following:
    - issue price: USD 500/share. An accountant B's appraisal was USD 1000/share.
    - A Co. issues to X and Y (150shares each).
- In November 2015, the general shareholder meeting of A Co. appointed W instead of Z as a director.
- Can Z get any relief? If so, what is an appropriate relief?

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Case8: clause of constitutions

- A Co. is a listed public company
- A Co. issued 1million shares.
  - 400,000 shares are held by a founding family.
  - 150,000 shares are held by shareholders friendly to the management and founding family.
  - The rest of the shares are held by various shareholders including individuals and institutional investors.
- In 2015, A Co. passed the following resolution at its shareholder meeting:
  - Shareholders holding shares for 2 years or more are entitled to have two voting rights per share.
  - Other shareholders have one voting rights per share.
  - The founding family, friendly shareholders and a part of individual shareholders who are attached to the A Co.'s products and are or willing to be long term shareholders voted for the resolution (800,000/1,000,000>75%).
  - In contrast, institutional investors and other shareholders voted against it (200,000/1,000,000).
- Dissenting shareholders sued for a repeal of this "long term shareholder" clause.

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Case8: point of view

- Does §164 apply to listed companies?
  - §164 mainly focuses on closed companies.
  - How about the words themselves in §164?
- Consider the effects of "long term shareholder" clause in Case 8 to following groups of shareholders.
  - The founding family
  - Other shareholders supporting the clause
  - Institutional shareholders and other dissented shareholders
- Can the court order a repeal of a constitution clause as a remedy?

22

Case8: explanations

- Does §164 apply to listed companies?
  - §164 does not explicitly exclude listed companies.
  - However, the court should usually be restrictive: shareholders of listed companies can simply sell their shares at the market, which means there are little needs for providing exits to them.
- The effects of "long term shareholder" clause in Case 8.
  - The founding family (400,000shares): the percentage of voting rights rises (e.g. from 40% to 50%).
  - Other shareholders supporting the clause: may have to sell their shares in cheaper price, but give consent anyway.
  - Institutional shareholders and other dissented shareholders
    - may lose voting rights.
    - Esp. serious for institutional investors that buy or sell shares frequently.
- Can the court order a repeal of a constitution clause as a remedy?
  - See §165(1)(b).
  - The remedies listed in §165(1) are not comprehensive but illustrative.

23

Case 9:conflict over business policy

- About A Co.
  - Engaging in wholesale business of tea.
  - Shareholders: X, Y and Z (1/3 of all shares each).
  - Directors: X (CEO), Y and Z
- Shareholders/directors are divided over A Co.'s business policy.
  - In June 2014, X and Y insisted that A Co. should go into retail business as well as wholesale business.
  - Z opposed their idea because 1) the retail business requires knowledge different from wholesale business 2) their idea harms relationship with existing customers (retail store).
  - In August, each side prepared the report based on specialists opinions and debated on the policy again for three hours, but did not reach any agreements.
  - Two weeks later, they gathered again and had discussion for three hours.
    - Again, they did not reach any agreements.
    - After the discussion, they voted on whether to go into the new business. The board passed a resolution to go forward by two (X and Y) to one (Z).
- Z sued for a relief asserting that the new policy is against the interest of members as a whole.

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Case9: point of view

- Policy consideration
  - Should the courts intervene in this type of conflicts?
  - Consider the question above as a policy matter, not as a matter of interpretation of statues or legal doctrine.
  - When answering the question above, take effects of letting the court to intervene in to consideration, especially on directors and interests of shareholders.
- Then, consider the words in §164.

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Case9: explanations

- General principle
  - The courts should avoid substituting their judgments for business judgments by directors.
  - Directors can and have incentives to make better judgments on business matters than judges (as we saw at the "business judgment"part).
  - If the courts intervenes in this type of conflicts, directors owe the risk of being overturned, which in turn harms shareholder's interests because of reduced risk taking.
- §164(d) and (e)
  - (d)"contrary to the interests of *the members as a whole*; *or*"
  - (e)"oppressive to…a member or members"
  - In Australia, the equivalence of (d) is considered as a separate and independent ground for the relief (E.g., Turnbull v NRMA Ltd. [2004] 50 ACSR 44. See generally Ford [10.450.3]).
    - MCL §164 is consistent with this interpretation.
  - This opens the door to an intervention by the court into business judgments.

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Case9: explanations and recommendations

- Differences between §164(d) and (e):
  - (d): causing damages to the shareholders as a whole, i.e., to the company.
    - E.g., appropriating assets of the company to himself.
  - (e): causing damages to a part of the shareholders. I.e., a shareholder damaging other shareholders.
    - E.g., conflicts over dividend policies in the previous cases.

★ It is recommended to delete (d) in §164.

- Delete §164(d) to limit the scope of §164 to conflicts among shareholders.
  - Damages caused to the company are handled by duties of directors and derivative actions.
- The equivalent in UK also contains similar words but in more nuanced fashion: "the interests of members generally or of some part of its members" (§994(1)(a)).
- However, UK courts seem to draw a distinction between oppressive remedies and derivative claims (see Palmer §8.3811.1).
- If the draft is not going to modified, we must limit the scope of §164(d) to where directors causes damages to *both the company and particular shareholders directly*.

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Case10: voluntary exit

- About A Co.: same as in case 9.
  - Shareholders: X, Y and Z (1/3 of all shares each).
  - Directors: X (CEO), Y and Z.
- Shareholders/directors are divided over A Co.'s business policy (same as in case 9).
  - In June 2014, X and Y insisted that A Co. should go into retail business but Z opposed.
  - In August, they discussed intensely based on their reports but failed to agree.
  - Two weeks later, after having another discussion, the board passed a resolution to go forward.
- In October, Z told X and Y that he will leave A Co. both in terms of directorship and shareholding.
  - They negotiated on the purchase of Z's share but failed to agree on the price.
  - Z wanted to sell his shares in 10% higher price than an offer by X and Y.
  - Z told X and Y that unless they accept the price Z insisted, he will not resign from director and keep on receiving the remuneration as a director.
  - In April 2015, W was appointed as a new director replacing Z at general shareholder meeting of A Co.
- Z sued for a relief. Can Z get any relief? If so, what is an appropriate relief?

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Case10: point of view

- Is Z forced to leave?
- What is the effect of giving Z any remedies?

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Case10: explanations

- Effects of giving minorities who already decided to exit the company remedies.
  - Strengthen Z's bargaining power.
  - Even where remaining shareholders are negotiating fairly with the minority shareholder.
- Objects of §164
  - §164 does not give shareholder a right for voluntarily exiting the company at the price he wants.
  - Nor intends to empower one side of the parties in negotiations for purchases of shares.

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ミャンマー法整備支援プロジェクト第4回本邦研修　研修員

1	テイ ミィン エー **Ms. Htay Myint Aye** Additional District Judge, Western Yangon District Court, Supreme Court of the Union 連邦最高裁判所　ヤンゴン西部地方裁判所　県裁判所補充判事
2	キン ティッ スウェ **Ms. Khin Thit Swe** Deputy Director, Law and Procedure Department, Supreme Court of the Union 連邦最高裁判所　法案起草部　副部長
3	チュー チュー アウン **Ms. Kyu Kyu Aung** Staff Officer, Office of the Union Judiciary Supervision, Supreme Court of the Union 連邦最高裁判所　連邦司法監督事務局　所付
4	チィ チィ タン アゥン **Ms. Kyi Kyi Than Aung** Deputy Director, Commercial Contract Division, Union Attorney General's Office 法務長官府　商業契約部　副部長
5	ティッ ティッ ウィン **Ms. Thit Thit Win** Deputy Director, Constitution Division, Union Attorney General's Office 法務長官府　憲法部　副部長
6	ウィン メイ **Ms. Win May** Deputy Director, Legislative Vetting and Advising Division, Union Attorney General's Office 法務長官府　法案審査助言部　副部長
7	チョー トゥー ヘイン **Mr. Kyaw Thu Hein** Assistant Director, Commercial Contract Division, Union Attorney General's Office 法務長官府　商業契約部　部長補佐
8	サン トゥッ **Mr. Hsan Htut** Assistant Director, Legislative Vetting and Advising Division, Union Attorney General's Office 法務長官府　法案審査助言部　部長補佐
9	ニーラー ム **Ms. Nilar Mu** Director, Directorate of Investment and Company Administration, Ministry of National Planning and Economic Development ミャンマー国家計画経済開発省　投資企業管理局　部長
10	タンダー ソー **Ms. Thandar Soe** Deputy Director, Directorate of Investment and Company Administration, Ministry of National Planning and Economic Development ミャンマー国家計画経済開発省　投資企業管理局　副部長
11	ラ ラ ウィン **Ms. Hla Hla Win** Staff Officer, Directorate of Investment and Company Administration, Ministry of National Planning and Economic Development ミャンマー国家計画経済開発省　投資企業管理局　部付

【研修担当/Officials in charge】

教官 / Professor 野瀬 憲範（NOSE　Kazunori）

国際協力専門官 / Staff Officer 井倉 美那子(INOKURA Minako)

ミャンマー第4回本邦研修日程表

日	曜	10:00 12:30	14:00 17:00	
6／28	日	移動日		
6／29	月	10:00 11：00 【ＪＩＣＡブリーフィング】 ＴＩＣ	13：00 【ＩＣＤオリエンテーション】 赤れんが　共用会議室	14：00 17:00 【講義】 「法律相互間の体系的整備の重要性」 慶應義塾大学 教授　松尾　弘　赤れんが　共用会議室
6／30	火	10:00 12:30 【講義等】 事例研究（設立） 名古屋大学准教授　松中　学 弁護士　黒田　裕　赤れんが　共用会議室	14:00 17:00 【講義等】 事例研究（設立） 名古屋大学准教授　松中　学 弁護士　黒田　裕　赤れんが　共用会議室	
7／1	水	10:00 12:30 【講義等】 事例研究（会社機関の役割と取締役の義務） 名古屋大学准教授　松中　学 弁護士　黒田　裕　赤れんが　共用会議室	14:00 17:00 【講義等】 事例研究（会社機関の役割と取締役の義務） 名古屋大学准教授　松中　学 弁護士　黒田　裕　赤れんが　共用会議室	
7／2	木	10:00 12:30 【講義】 「会社法の重要性について」 東京大学 教授　神作　裕之　赤れんが　共用会議室	13:30 17:00 【訪問】 東京地方裁判所商事部	
7／3	金	10:00 【講義等】 事例研究（多数派株主と少数派株主との紛争解決） 弁護士　黒田　裕 名古屋大学准教授　松中　学　赤れんが　共用会議室	12：15 13：15 所長主催意見交換会 日比谷パレス	14:00 17:00 【講義等】 事例研究（多数派株主と少数株主間との紛争解決） 弁護士　黒田　裕 / 名古屋大学准教授　松中　学 東京大学准教授　加藤　貴仁　赤れんが　共用会議室
7／4	土			
7／5	日			
7／6	月	10:00 12:30 【講義】「ＡＳＥＡＮ諸国の会社法制及びその運用上の問題点について」 静岡大学 教授　土生　英里　赤れんが　共用会議室	14:00 17:00 【講義】 「会社法の法案起草について」 法務省民事局参事官室 局付　野澤　大和　赤れんが　共用会議室	
7／7	火	10:00 12:30 【講義等】 事例研究（取締役の違法行為に対する救済措置（株主代表訴訟）） 名古屋大学准教授　松中　学 弁護士　黒田　裕　赤れんが　共用会議室	14:00 17:00 【講義等】 事例研究（取締役の違法行為に対する救済措置（株主代表訴訟）） 名古屋大学准教授　松中　学 弁護士　黒田　裕　赤れんが　共用会議室	
7／8	水	10:00 12:30 【講義等】 事例研究（会社法と他の法律との間の整合性の確保） 弁護士　黒田　裕 名古屋大学准教授　松中　学　赤れんが　共用会議室	14:00 17:00 【講義等】 事例研究（会社法と他の法律との間の整合性の確保） 弁護士　黒田　裕 名古屋大学准教授　松中　学　赤れんが　共用会議室	
7／9	木	10:00 12:30 【講義】 「商業登記について」 法務省民事局商事課 局付　辻　雄介　赤れんが　共用会議室	14:00 17:00 【演習】 総合発表準備 赤れんが　共用会議室	
7／10	金	10:00 12:30 【発表・総括質疑応答】 ミャンマー側からの総合発表/総括質疑応答 赤れんが　第５教室	14:00 【評価会・修了式】 赤れんが　第５教室	
7／11	土	移動日		