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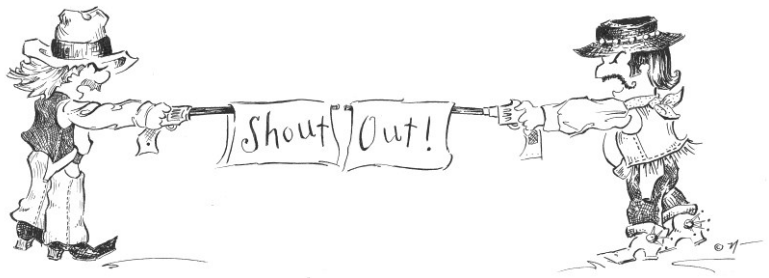
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BREAKING JOINT VENTURE AGREEMENT DEADLOCKS: BEFORE THE TEXAS SHOOT-OUT, TRY A TEXAS SHOUT-OUT

NORMAN NADORFF* & QUINNCY MCNEAL**



I. The Scene

"TEXAS SHOOT-OUT!" The very name evokes an image of two fidgety gunslingers faced off on a hot and dusty Laredo Wild West street. Each struggles with second thoughts about having accepted a fateful challenge they might not live to regret.

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The authors wish to acknowledge the valuable assistance of Holly Kingingham while a summer intern at Mayer Brown, in particular in compiling Annexes 2 and 3. We also wish to thank Norman´s sister, Nina Rose, for supplying the dueling cowboys sketch.

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Fast forward to the modern world of 50/50 joint ventures where the "Texas Shoot-out" clause ("TSO") is a popular, but often dreaded, voting deadlock-breaking method ("DBM"). We will describe below the TSO in its classic form and context and outline a few other options. More importantly, we will suggest how to make a draconian TSO both more palatable to wary clients and less prone to undesired and irreversible consequences. Indeed, we believe that placing a well-drafted Texas Shout-out within a well-considered joint venture agreement ("JVA") may well provide an ounce of prevention worth a pound of cure.

This article focuses upon the 50/50 business joint venture ("JV") where deadlocks are particularly challenging to break.

II. The Landscape

JVs resemble marriages in a number of ways:

- There are no guarantees of success;
- Their duration depends a lot on circumstances and parties´ attitudes going in;
- Frictions inevitably occur over time that hopefully can be resolved amicably;
- Money does not solve all problems – but it sure helps!
- "Shotguns" sometimes play a role; and
- Chances of success (or at least an equitable parting) can be enhanced through a well-considered pre-nuptial (i.e., JVA).

For present purposes, let us focus upon the last bullet—the JVA—and in particular, upon its DBM provisions. As with marriages, joint ventures may thrive for years, to each party's benefit, only to grind to a halt upon unforeseen circumstances, detrimental events, or simply, a change of heart. The result can be any combination of stagnation, decreased revenues, lost profits, credit woes, employee discontent and, ultimately, insolvency. The effective JVA drafter foresees such impasses and forges a fit-for-purpose DBM to avoid calamity and allow for a seamless transition to a new phase of the JV, hopefully to the benefit of both parties.

As always, there is more than one way to skin a cat. This article will describe the available alternatives but focus on the TSO for the reasons cited in Section IV.

III. Alternate Approaches[1]

Shoot-out provisions are like trips to the dentist. No one likes them, but they are a necessary evil if you are involved in, or advising, a 50/50 JV. Designed to end deadlocks, they reflect the reality that even the best intentioned and deftly structured JVs may eventually reach an intractable voting impasse on a fundamental issue. Like marriages that begin with toasts, speeches, and big smiles, experience shows that some marriages and most joint ventures will eventually run their course, often due to a crucial deadlock. A variety of deadlock provisions exists to address a variety of deadlock causes.

We describe below the most common types of such provisions. Typically, their application portends a radical transformation, if not the end of, the JV *per se*. Some of the provisions are less drastic than others, even permitting intervention by a neutral third party. Nevertheless, these provisions are often drastic when applied, as they do not allow adequate opportunity for dueling parties to defuse.

1. Russian Roulette. Under this option, Party A sets the terms and price of Party B's 50% participating interest ("PI"), whereupon Party B decides whether to sell or buy on those terms (essentially, "I cut, you choose"). For example, fed up with Larry, Rebecca notifies him that she is willing to either purchase his interest or sell her interest at an indicated price. Larry then has a defined period to decide and counterpropose. A JVA employing this DBM should provide ample time for Party B (Larry) to consider his options. In theory, this approach forces Party A (Rebecca) to propose a reasonable PI value, since she will be on the hook to sell or buy at the trigger price, depending on Larry's election.[2]

2. Mexican Shoot-out. In this case each Party submits to the other a sealed bid indicating the minimum price for which it would be prepared to sell its 50% share. Whichever sealed bid is higher "wins," and that bidder then buys the "loser's" share at the price indicated in the loser's sealed bid. This approach, also known as the "Dutch Auction," differs from the TSO in that the focus is on the selling price rather than the buying price.

3. Appraisal Method. Under this method, a qualified expert provides an independent appraisal of the value of the PI in question ("Appraised Value").

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1. See the checklist at Annex 2 for a handy side-by-side comparison of various contractual and non-contractual DBM approaches.

2. Carsten Beith et al., *Challenging Transactions: Confronting Difficult Regulatory, Tax, Antitrust, and Business Issues in Hospital to Hospital Transactions and Hospital-Physician Arrangements*, 20160627 AHLA SEMINAR PAPERS 31.

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Used in conjunction with a buy-out provision, the appraisal method determines valuation through the parties' choice of: (1) an agreed single appraiser, (2) an average of two appraisals (one appraiser chosen by each party), (3) an average of the two closest appraisals among a wider set of appraisals, (4) a premium on, or discount from, the Appraised Value, based on the reason for the dissolution (or some other factor, such as breach of the JVA), or (5) an appraiser's choice between each party's valuation of the PI.[3] Typically, the JVA will define the specific appraisal to be used in case of a qualifying voting deadlock.

Of course, hybrids are always a possibility. For example, Larry and Rebecca might agree upon the following variation: Upon deadlock, Rebecca and Larry each select an appraiser. If the resulting appraisals fall within a defined percentage or price threshold of each other and are comparable, the Appraised Value will be the average of the two. Failing which, the two party-selected appraisers choose a third appraiser to make the final appraisal (within the range of the first two).

The appraisal approach is less drastic than its "Russian" and "Mexican" counterparts, but it also requires more time and cost and deprives the combatants of their ability, in effect, to control their own fate.[4]

4. Outside Tiebreaker. The parties may also refer to a designated tiebreaker as a DBM. When this provision is invoked, the parties call upon a specified, pre-designated third party to break the deadlock. A variation of this method requires the tiebreaker to decide how the deadlock is resolved by making certain, specific determinations, which the parties decide beforehand will resolve the dispute. Tiebreakers benefit from being generally easy to draft and generally allow the JV to continue. Indeed, a well-drafted tiebreaker may remain available to resolve subsequent disputes. The JV partners may find it difficult to agree upon a third-party tiebreaker due to concerns about impartiality. Candidates unfamiliar with the day-to-day operations of the business may understandably be weary of being forced to make potentially uninformed decisions.

5. Inside Tiebreaker. To avoid the prospect of the partiality or unfamiliarity of the outside tiebreaker, an inside tie-breaking clause calls for the party-nominated director (or other designated representatives) to take turns casting the deciding vote in qualifying impasses. Some believe,

3. Similar to a baseball arbitration. See, Josh Chetwynd, *Play Ball? An Analysis of Final-Offer Arbitration, Its Use in Major League Baseball and Its Potential Applicability to European Football Wage and Transfer Disputes*, 20 MARQ. SPORTS L. REV. 109, 110-111 (2009).

4. *Id.*

however, that this type of provision unwisely leaves to chance an important decision in which owners expect to have equal say. Worse yet, some critics of this approach say it encourages gamesmanship where each party attempts to stall a crucial decision until it has the deciding rotational vote.[5]

6. Chance. Of course, there is always the *que será* approach, which unapologetically leaves the entire matter to chance by, say, a coin toss. Although this option may seem precipitous, some parties consider it the fairest of all. This bold mechanism can be incorporated into deadlock provisions in a variety of ways, but it ultimately resolves deadlock matters through luck (or lack thereof, as the case may be).[6]

7. Texas Shootout (see Section V below).

IV. Non-Contractual DBM Approaches

Other common deadlock alternatives exist—although none of them especially pleasant—in the absence of a DBM. Like intestate death, some of these alternatives result from failure to plan and force a strictly legal resolution.

1. Custodian or Receivership. A custodian or receiver may be appointed when the "members' division is so severe that it prevents the orderly operation of the business and threatens the entity with irreparable injury."[7] In such case, an appointed custodian or receiver runs the enterprise. The disadvantages here are obvious. "[C]ustomers, creditors and suppliers still may be put off. They may refuse to deal with the corporation on the same terms as before and may insist on protecting themselves to a greater degree."[8]

2. Involuntary or Judicial Dissolution. A court might mandate a private auction for the business in which each party provides the other a sealed bid; the high bidder becomes the buyer while the low bidder becomes the seller (at the higher price).[9]

3. Injunction. One of the parties to a JV impasse might seek injunctive relief from a court. If granted, the court might compel or prohibit certain

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5. Kenneth J. Vanko, *Dissolution and Rational Choice: The Unique Remedial Framework for Director Deadlock Under the Illinois Business Corporation Act*, 38 N. ILL. U. L. REV. 348, 376 (2018).

6. *Id.*

7. Louis T. M. Conti et al., *Deadlock-Breaking Mechanisms in LLCs—Flipping a Coin is Not Good Enough, but Is Better Than Dissolution,* BUS. L. TODAY, Mar. 2017.

8. Eileen A. Lindsay, *What Can I Do for You? Remedies for Oppressed Shareholders in New Jersey*, 204-AUG. N.J. LAW. 37, at 37, 39.

9. Claudia M. Landeo & Kathryn E. Spier, *Irreconcilable Differences: Judicial Resolution of Business Deadlock*, 81 U. CHI. L. REV. 203, 213 (2014).

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conduct in order to overcome the impasse. While potentially beneficial, injunctive resolutions present inherent downsides. "Although an injunction theoretically allows for the continuance of the company's business, it does not resolve deadlock, it holds a bad relationship together, and it is difficult to obtain due to a high standard of proof."[10]

V. The Texas Shootout

We have chosen to focus upon the Texas Shoot-out because we (i) practice law in its namesake State and (ii) believe this DBM may often be the lesser of necessary evils when implemented judiciously and in appropriate circumstances.

In its classic form, the TSO, when triggered by either JV party, requires each JV party to offer to buy the other's entire interest in the JV at the price indicated in a sealed bid. Typically, JV parties submit their bids to a third party designated for such purpose in the JVA ("Referee") who opens and communicates the bids to the JV parties as provided in the JVA. The higher bidder is then obligated to purchase the lower bidder's JV interest at the strike price.[11]

The TSO is a fairly popular DBM for a variety of reasons. First, the TSO is simple in concept and implementation. Second, it allows for a rapid resolution of the deadlock, thus allowing the JV to continue operating normally once triggered and executed. Finally, it allows each JV party to determine, through earnest soul searching, the intrinsic value of its JV interest in light of all relevant circumstances.

The TSO, like all "shotgun" scenarios (including weddings), has its drawbacks. First, it may lead to a precipitous divorce to the exclusion of a negotiated resolution that might allow the JV to survive. Second, under some circumstances, the TSO may favor the financially stronger or more informed party to the detriment of the other. Finally, if not properly drafted, the TSO may lead to acrimonious procedural spats and ultimately litigation, to the detriment of both parties and the JV itself.

Upfront JVA negotiations, complemented by meticulous and balanced drafting, can maximize advantages and curtail drawbacks of the TSO. Key elements of this effort include: (i) identifying a qualifying voting impasse, (ii) clear and realistic notification periods, (iii) sufficient time and appropriate conditions to overcome the impasse, (iv) identification of a viable Referee, and (v) unequivocal TSO procedures.

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10. Conti et al., *Deadlock-Breaking Mechanisms in LLCs* at 1, 5.
11. See the footnote 7 in Annex 1 for another possible variant.

VI. Our Texas "Shout-Out"

As indicated, the TSO suffers from the very characteristics that its name implies—a precipitous rush to a precarious showdown fraught with potentially needless dangers to the duelers and by-standers (creditors, customers, employees) alike. As DBM drafters, we prefer a Texas Shout-out to a Texas Shoot-out, in appropriate circumstances.

A well-drafted Texas Shout-out clause allows the potential combatants adequate time and suitable procedures to amicably overcome an impasse prior to a potentially deadly showdown. And ideally, it requires a further final cooling-off period before either may shoot. In the end, however, the clause must allow either party to call the other's bluff, letting the chips fall where they may, so that the JV may get on with business.

Our suggested Texas Shout-out clause appears in Annex 1. It is intended as a model only and must be carefully modified to fit each set of circumstances.

VII. Conclusion

As with any commercial contract, the effective JVA drafter will consider both fairytale and nightmare decision-making scenarios. In particular, she must contemplate, and expertly provide for, an eventual partner stand-off threatening the very viability and continued existence of the venture. Section III outlined a variety of available contractual DBMs to consider. For the reasons stated, we believe that in many instances a properly drafted Texas Shout-out clause provides the best option, absent a crystal ball. Hopefully the above analysis, together with the suggested model clause and checklist, will facilitate that task.

In any event, a wise JV dueler may do well to heed the admonition popularized by Kenny Rogers:

> *You've got to know when to hold 'em*
> *Know when to fold 'em*
> *Know when to walk away*
> *And know when to run.*[12]

and thus, avoid a shootout not worth fighting.

12. KENNY ROGERS, *The Gambler*, *on* THE GAMBLER (United Artists Group 1978).

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ANNEX 1
MODEL TEXAS SHOUTOUT CLAUSE[13]

Deadlock

(a) If a vote of the General Assembly[14] fails to agree on a Resolution proposed pursuant to Article [ ] whose adoption one Shareholder ("Proponent") feels is essential for the proper administration or substantial achievement of the Company's purposes as stated in the By-Laws[15] ("Assertion"), the Proponent may initiate the following procedure to resolve the impasse ("Impasse").

(b) The Proponent may Notify the other Party of the Assertion within 15 days of such vote, failing which the Proponent's right to raise the Assertion under this Article expires.

(c) The Shareholders have 15 days from the date of Notification under (b) to resolve the Impasse, failing which the Proponent may request that the Expert[16] provide, within 30 days, a written opinion confirming or denying the Assertion.[17]

(d) If the Expert confirms the Assertion, the Company bears the Expert´s related costs. If the Expert denies the Assertion, the Proponent bears the Expert´s costs.

(e) If the Expert confirms the Assertion, each Shareholder must use reasonable best efforts during the next 60 days[18] to resolve the Impasse.

(f) Failing (e), either Shareholder may refer the Impasse to a Mediator[19] with target completion of 60 days.[20]

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13. The capitalized terms would be defined in the JVA.
14. The JVA could provide a different triggering event.
15. Reference to By-Laws here is optional.
16. The JVA would indicate the Expert, who could possibly be the Company´s auditor.
17. This presumes that an Expert has been lined up ahead of time for JVA consultations and that the rules of such engagement have been agreed.
18. This model calls for relatively long periods in hopes of allowing an amicable solution. The drafter might consider shorter periods, depending on the client's preference.
19. This presumes that the JVA dispute resolution clause contains non-binding mediation provisions.
20. Some clients may not wish to provide for mediation.

(g) Following (f) each Shareholder must use reasonable best efforts during the next 30 days to resolve the Impasse.

(h) Should (g) fail, each Shareholder must appoint a representative fully authorized to resolve the Impasse ("Representative"). At the request of either Shareholder, the Representatives must meet at the Expert's office (or other agreed location) at 9:00 a.m. on a day, within 15 days of such request, agreed by the Shareholders or failing which, chosen by the Expert ("Meeting").

(i) Should the Meeting fail to resolve the Impasse by 5:00 p.m., each Representative must, by 5:00 p.m. the following Business Day,[21] submit a sealed envelope to the Expert containing a firm offer, stated in US Dollars cash, to purchase the other Shareholder's Shareholding.

(j) The Expert must immediately show the offers to the Representatives and provide them authenticated copies.

(k) The Shareholder who makes the higher offer must purchase the offered Shareholding at the price it offered.[22]

(l) Each Shareholder must use reasonable best efforts to promptly close such purchase.

21. The JVA parties may wish to allow a longer period here.

22. Alternatively, the lower bidder may be given the choice to (i) purchase the high bidder's interest at the higher price or (ii) sell its interest to the higher bidder at the higher offered price.

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ANNEX 2
DESCRIPTION OF DEADLOCK BREAKING MECHANISMS

TYPE	OVERVIEW	MECHANICS, EXAMPLES, & NOTES	SOURCES
Appraisal	A qualified expert provides an independent appraisal of the value of the interest to be purchased or sold	Used in conjunction with a buy-out provision, an appraisal mechanism determines valuation through: • An agreed single appraiser • An average of two appraisals (one appraiser chosen by each party) • An average of the two closest appraisals out of a set number • A premium on or discount from the appraised value, based on the reason for the dissolution (or some other factor) • An appraiser's choice between each party's valuation Example: Upon deadlock, each party selects an appraiser. If the resulting appraisals are comparable, then an average of the two appraisals will be the valuation. If not, the two selected appraisers choose an additional appraiser to make the ultimate appraisal.	Carsten Beith et al., *Challenging Transactions: Confronting Difficult Regulatory, Tax, Antitrust, and Business Issues in Hospital to Hospital Transactions and Hospital-Physician Arrangements*, 20160627 AHLA SEMINAR PAPERS 31 (2016). John W. Welch, *Practical Guide to Forming A Partnership in Utah*, 12 BYU J. PUB. L. 111, 135 (1997).
Russian Roulette	One party sets the terms and price of a 50% interest, and the other party decides whether they want to sell or buy on those terms (essentially, "I cut, you choose")	One party determines the buy-out terms and the other party decides if they want to buy or sell on those terms. Example: Party A notifies Party B, that she is willing to either purchase B's interest at a specified price or sell her own interest at the same price. Upon notification, B then has a set period of time to elect either to purchase A's interest at the set price or sell his interest to A at the set price. Note: These clauses are rarely invoked because they involve guaranteed dissolution of the joint venture but can be useful in situations where the members (or at least the triggering member) no longer wishes to remain in a business relationship with the other party.	Business Transactions Solutions § 65:62 Carsten Beith et al., *Challenging Transactions*.
Texas Shootout	Each party to a joint venture	Both parties submit sealed bids to a third party. The party with the highest bid must buy out the other party at that price.	Carsten Beith et al., *Challenging Transactions.*

	makes an offer through sealed bidding to buy out the other party	Example: If Party A submits a bid of $100 and Party B submits a bid of $125, then B must purchase A's interest for $125. Note: Information asymmetries can be mitigated but only if the parties "anticipate at the time of drafting their business agreement which of the two owners will have better information."	Claudia M. Landeo & Kathryn E. Spier, *Shotguns and Deadlocks*, 31 YALE J. ON REG. 143, 163 (2014). Peter B. Ladig, *Death by Auction: Can We Do Better?*, 73 BUS. LAW. 53, 80 (2018).
Dutch Auction	This is a variation of the Texas Shootout	Both parties submit sealed bids stating their minimum price to a third party. The highest bidder must purchase the other party's interest at the lower price. Example: If Party A submits her (minimum) bid of $100 and Party B submits his (minimum) bid of $125, then B must purchase A's interest for $100.	Carsten Beith et al., *Challenging Transactions*.

Tie Breaker	The parties refer the issue to a designated tie breaker	When invoked, this kind of provision calls upon a specified third party to break the deadlock.
		
		Note:
		• Advantages:
		  ○ Tie-breaker clauses are easy to draft.
		  ○ The appointment of a designated tie breaker "does not carry the stigma that a receiver or custodian does; therefore, such an appointment does not have the impact on creditor and customer relations that other kinds of appointments do."
		  ○ A tie breaker can potentially remain available to help resolve future disputes.
		• Disadvantages:
		  ○ "[F]ew likely are willing to undertake this endeavor."
		  ○ "[A]n outsider who is not familiar with the day-to-day business of the corporation may fear liability from making a key business judgment or may not understand enough to make that judgment in the first place."
			Kenneth J. Vanko, *Dissolution and Rational Choice: The Unique Remedial Framework for Director Deadlock Under the Illinois Business Corporation Act*, 38 N. ILL. U. L. REV. 348, 376 (2018).
			
			Eileen A. Lindsay, *What Can I Do for You? Remedies for Oppressed Shareholders in New Jersey*, 204-AUG N.J. LAW. 37, 39 (2000).

Flip a Coin	Decisions are determined by a coin flip	This kind of mechanism can be incorporated into deadlock provisions in a variety of ways.	Stevens A. Carey, *Real Estate Venture Exit Strategy Provisions*, 33 PRAC. REAL EST. LAW. 41, 49 (2017).

		Example (buy-out context): If the selling member of the buy-out is "concerned that a bulk transaction could result in a discount because, among other matters, the venture's properties may be at different stages of development and the properties may be ready for sale (or may experience a peak or depression in value) at different times," the parties can alleviate this concern through a process whereby the parties "value each of the properties, then flip a coin and take turns selecting properties until one member gets within a certain range of its share of the values (and a final adjustment is then made in cash)." Example (arbitration context): An agreement that provides for arbitration may require the selected arbitrator to come from a pool provided by the American Arbitration Association (AAA). If the parties cannot agree on an arbitrator, then the AAA "will provide a list of three available retired judges, and each [party] may strike one of the available retired judges. The remaining retired judge shall resolve the issue." However, if the parties both strike the same potential arbitrator, then they "shall flip a coin to determine which of the retired judges shall make the determination."	Drafting Partnership Agreements and Operating Agreements: Selected Issues, SK011 ALI-ABA 179 , 290
Rotating Vote	The parties alternate the role of tie-breaking vote whenever there is a deadlock on a decision	The parties take alternating turns casting the decisive vote. Note: • This kind of mechanism, however, is "inconsistent with the purpose of an equally-divided firm. Owners expect to have an equal say in management, which corresponds to an unfettered veto right, regardless of whether that right ultimately proves to be judicious." • This kind of provision encourages parties to "game the system and feign deadlock over secondary issues in the hopes of gaining a deciding vote on more critical ones."	Kenneth J. Vanko, *Dissolution and Rational Choice*.
Partition or Sale of Company or Assets	This alternative works only in limited circumstances, such as where the assets or activities are easily	• "Where the assets of a corporation consist primarily of separate parcels of land or buildings, partition may afford more effective relief than a buy-out. Each shareholder can then have his or her expectations of real estate ownership — albeit on a smaller scale — met." • "Partition might also be preferable in cases where customer lists (perhaps in different geographic areas) could be split, or in a case where one business could be readily divided in half. In many cases, where the second or third	Eileen A. Lindsay, *What Can I Do for You?*

	separated without destroying the business itself or where the value of the assets is easily identified or agreed upon	generations in family-owned businesses cannot get along — but both sides want to continue with some part of the family enterprise — partition may be more appropriate than a buy-out. The parties' expectations of continuing in management — and in the family business — are then met." • "[S]ome adjustment must be made to accommodate for the fact that one party will retain the name of the business and the goodwill associated with it."	
Involuntary or Judicial Dissolution	Court intervention	Example: A court might mandate a private auction in which the parties participate in a sealed-bid auction and the party with the highest bid becomes the buyer and the other party becomes the seller (at the higher price).	Landeo & KaSpier, *Irreconcilable Differences*.
Custodianship or Receivership	A custodian may be appointed when the "members' division is so severe that it prevents the orderly operation of the business and threatens the entity with irreparable injury"	An appointed custodian runs the venture. Note: • Although the term *custodian* is less onerous than *receiver*, "customers, creditors and suppliers still may be put off. They may refuse to deal with the corporation on the same terms as before, and may insist on protecting themselves to a greater degree." These issues can be minimized if the custodian works through the parties rather than supplants them entirely. • "A custodian who is not a 'fast study' may actually exacerbate the situation if he or she is not able to steer the corporate ship — which may already be foundering — effectively. The [parties] may find [themselves] rearranging deck chairs on a ship that is still going down — only under the stewardship of a different captain."	Eileen A. Lindsay, *What Can I Do for You?* Louis T. M. Conti et al., *Deadlock-Breaking Mechanisms in LLCs—Flipping a Coin is Not Good Enough, but Is Better Than Dissolution,* BUS. L. TODAY, Mar. 2017.
Injunction	A court requires or prohibits the performance of certain conduct	"Although an injunction theoretically allows for the continuance of the company's business, it does not resolve deadlock, it holds a bad relationship together, and it is difficult to obtain due to a high standard of proof."	Conti et. al*., Deadlock-Breaking Mechanisms in LLCs*, at 1, 5.
Specific Performance	Equitable remedy requiring a party to perform a specific act	This alternative "features the unfortunate characteristic of forcibly keeping a contentious relationship together without providing a method to resolve future deadlock."	Conti et. al., *Deadlock-Breaking Mechanisms in LLCs*, at 1, 5
Judicial Expulsion	Removal of a member from the enterprise	Expulsion can be effectuated "by judicial order in a case in which a member's wrongful conduct adversely and materially affects the company's activities and affairs, constitutes a willful or persistent and material breach of the operating	Louis T. M. Conti & Gregory M. Marks, *Florida's New Revised LLC Act, Part III*, 88 FLA. B.J. 34 (2014).

		agreement, violates fiduciary duties or other statutory standards of conduct … or makes it not reasonably practicable to carry on the company's activities and affairs with that person as a member."	
Mediation	A neutral party presides over voluntary negotiations	"Mediation is useful in situations where the parties are motivated to compromise, but it may be fruitless when the parties are so hostile and entrenched that compromise is impossible."	Louis T. M. Conti et al., *Deadlock-Breaking Mechanisms in LLCs*.
Arbitration	A process "to obtain a resolution in an adversary manner more quickly than might occur in state or federal court"	Example: "Any controversy or dispute arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration. Such arbitration shall be effected by arbitrators selected as hereinafter provided. The dispute shall be submitted to three arbitrators each of whom shall have had at least ten (10) years' experience in the restaurant business, one arbitrator being selected by each Manager … the two designated arbitrators shall pick the third. The decision of a majority of the arbitrators shall be binding on all parties."	*Operating agreement for two manager, four member Limited Liability Company LLC with voting and nonvoting members and anti-deadlock provisions as to managers' actions*, 15 MASS. PRAC., LEGAL FORMS § 13:8 (5th ed. 2019) Conti et. al., *Deadlock-Breaking Mechanisms in LLCs*, at 5.

ANNEX 3
COMPARISON OF DEADLOCK BREAKING MECHANISMS

	GENERAL LIKELY RESULTS				
PROVISIONS	**Leaves dysfunctional relationship intact**	**Leads to ultimate dissolution of venture**	**Outside force determines value or outcome**	**Information asymmetry leads to inefficient outcomes**	**Requires specific, limited circumstances to be efficient**
Slice-of-the-pie Provisions					
Appraisal	☐	☑	☑	☐	☐
Russian Roulette	☐	☑	☐	☑	☑
Texas Shootout	☐	☑	☐	☑	☑
Dutch Auction	☐	☑	☐	☑	☑
Other Provisions					
Tie Breaker	☑	☐	☑	☐	☑
Flip a Coin	[*Varies by use*]	[*Varies by use*]	☑	☐	☐
Rotating Vote	☑	☐	☐	☑	☑
Partition/Sale of Company/Assets	☐	☑	[*Varies by use*]	[*Varies by use*]	☑
Common Alternatives When Deadlock Mechanisms Fail or Are Absent					
Involuntary or Judicial Dissolution	☐	☑	☑	☐	☑
Custodianship or Receivership	☑	☐	☑	☐	☑
Injunction	☑	☐	☑	☐	☐
Specific Performance	☑	☐	☑	☐	☐
Judicial Expulsion	☐	☑	☑	☐	☑
Mediation	☑	☐	☐	☑	☑
Arbitration	☑	☐	☑	☐	☑