

A fair value of shares under the unfair prejudice remedy in UK company law

Izumi Kawashima

Section 994 (1) of the Companies Act 2006 in UK provides that a member of the company may apply to the court by petition for an order on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or some part of its members... This unfair prejudice remedy is the main mechanism of minority shareholders' protection in the UK company law. Section 994 gives the court a wide range of remedial discretion to make such order as it thinks fit for giving relief in respect of the matter complained. However, the most commonly used is an order that the petitioner's shares be purchased by the majority shareholder or the company. In most cases, the company concerned is a closely held private company, and there is no public market for the shares to be purchased.

The main purpose of this article is to understand how the value of shares is decided in the share purchase order of the unfair prejudice remedy. After surveying this remedy, the mechanism of the valuation is examined, including the basis of valuation, discount for minority shareholding in quasi-partnership company and non-quasi-partnership company, date of valuation (i.e., date of the petition, date prior to the petition or date of the order), and a special allowance to be made in the valuation for the unfairly prejudice conduct. Finally, the valuation of the restricted transferable shares under the Japanese company law is compared with the share valuation in the unfair prejudice remedy. This comparison seems to make clear the feature of the

minority shareholders' protection in UK company law and the problems of the protection in the Japanese company law.