



Dissolving a Delaware-Registered Joint Venture: A Key Pressure Tactic in Joint Venture Disputes

In contentious joint-venture disputes, every point of leverage could add up to more negotiating power. If a counterparty is registered in Delaware, pursuing a dissolution proceeding there offers a fast way to ratchet up the pressure. Our Claim Monetization & Dilution team explains why and shows how it saved time and money for a client in a recent case.

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Coming up with a novel approach to exert pressure on the opposing side is always a challenge for non-U.S. parties embroiled in a contentious joint-venture dispute. If the joint venture in question is a Delaware-registered entity, one option is to seek dissolution of the joint venture itself. A dissolution proceeding in the Delaware Court of Chancery can be a launching-off point for an aggressive and effective litigation strategy that can save a party millions of dollars and years of opportunity costs.

What's So Special About the Delaware Court of Chancery?

When compared to other jurisdictions, the Delaware Court of Chancery ("DCC") presents a few strategic leverage points:

It's Exclusive. The DCC is the exclusive jurisdiction for dissolution of any entity (i.e., limited liability companies, partnerships, or corporations) organized under Delaware law, notwithstanding any exclusive forum selection clause in the operating agreement.

It's Fast. The DCC provides an automatic expedited schedule and reduced discovery, with no jury trial, limiting the client's exposure to litigation that could drag on for much longer than typical litigation in other jurisdictions.

It's Fact-Specific. For a dissolution petition, the DCC requires a showing that it is not reasonably practicable to carry on the business in conformity with a company's operating agreement. Under this standard, the Court views the facts of the case through various legal elements, but has the freedom to apply its discretion to the matter, rather than being limited to ridged precedent, allowing the petitioner to leverage its best facts to seek and obtain a successful dissolution petition.

It can Maintain the "Status Quo." Oftentimes contentious joint-venture disputes are accompanied by ongoing disruptions in the company over the management, composition of the board, or control of operations. While a petition for judicial dissolution is pending, the petitioner can obtain a status quo order, which sets out how the operations, management, and control of the company are to be administered throughout the pendency of the litigation. This maintains the value of the joint-venture assets and prevents the opposition from taking actions that could harm or devalue the joint-venture during the litigation.

The uniqueness of Delaware's Court of Chancery – as evidenced by its approach to dissolution proceedings, as one example – can open the door to new, value-driving strategies for parties in contentious disputes over Delaware-registered entities, even if the present litigation is not taking place within Delaware. Non-U.S. parties in particular simply need to marry an on-the-ground approach in Delaware with an integrated, global litigation strategy.

Cross-Border Case: Dissolving a Korean-U.S. Joint Venture Amidst a Contentious Dispute

In a recent case, Kobre & Kim represented a Korean corporate client that found itself in a contentious joint venture dispute with its U.S. counterparty, with ongoing litigation in the New York State Supreme Court's Commercial Division. In addition to the pending New York litigation, Kobre & Kim filed a dissolution petition for the joint venture limited liability company in the DCC, creating an enormous amount of pressure on the opposing party and essentially forcing them to choose between two options: either forfeit all chances of recovery from the joint venture outside of an asset liquidation, or agree to a settlement deal on terms favorable to the Korean partner.

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An integrated team of Kobre & Kim lawyers in the firm's Seoul, New York, and Delaware offices worked together to win a series of key motions leading up to a mediation, setting a very favorable environment for the negotiation. In the procedural rulings, the New York State Court Justice and the Delaware Vice Chancellor referenced extensively the well-pled dissolution petition. Ultimately, the client was able to reach a favorable settlement, saving them time, money and disruption from ongoing litigation.

About Kobre & Kim's Claim Monetization and Dilution Offering

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct. Because our firm avoids ongoing client relationships with common industry participants and instead focuses on special-situation engagements, our Claim Monetization and Dilution team can offer the most aggressive, creative and independent advocacy even in cases involving numerous, overlapping institutional stakeholders' interests.

We also have significant experience in corporate governance matters, having led and defended initiatives on the formation and conduct of special investigative committees; organization of steering committees of equity holders to remove incumbent directors outside a regularly formulated election; the serving of statutory notices and pursuit of emergency actions relating to books and records access and related asset-freeze applications; applications for involuntary receiverships and liquidations; and other special strategies to place our clients in a position of strength to negotiate a satisfactory resolution.

Our Delaware team consists of experienced trial litigators in the Delaware Court of Chancery and U.S. Bankruptcy Court for the District of Delaware that focus on complex commercial disputes and often work closely with lawyers in key non-U.S. markets around the world, such as Korea, Brazil, the United Arab Emirates and the People's Republic of China.