A corporate director generally cannot obtain privileged corporate documents when that director has an improper purpose for obtaining the documents or is acting adversely to the company's interests.

In some jurisdictions, a company may be able to shield its privileged communications from a director by appointing a special committee to handle a dispute involving the director or with a prior agreement.
Two threshold issues may ultimately determine the outcome of an ownership dispute lawsuit involving a limited liability company (LLC): what law governs the dispute, and what court has jurisdiction to resolve the dispute?

Under the internal affairs doctrine, the law of the jurisdiction where the company is organized governs the relationships among a company, its members, and its managers.

Courts generally have broad subject matter jurisdiction to resolve issues involving domestic LLCs, but a court may not dissolve a foreign LLC.

Ownership disputes often arise from a common scenario: a few friends start an LLC together. The friends each take an ownership interest in the LLC and decide to organize their LLC under Delaware law. Over time, the business grows, but the friendship crumbles. The friends disagree about the direction of the business, resulting in a dispute over control of the company. Despite the friends’ best efforts to resolve the dispute amicably, litigation seems likely.

This post analyzes two potential determining factors that emerge for the friends and their LLC: what jurisdiction’s law will apply to their ownership dispute, and which court has subject matter jurisdiction to resolve the dispute? Because these issues may impact all stages of the dispute and determine its outcome, business owners should anticipate and plan for these issues before a dispute arises. (See our Solving Disputes series to learn more about attorney-client privileged communications and other common disputes among business owners and partners.)

**Choice of Law**

LLC owners should know which state’s law governs their relationship. As a general rule, the internal affairs doctrine dictates that the law of the jurisdiction where the business is organized governs the relationship among a business, its owners, and its officers. In our example, Delaware law will generally govern the dispute regardless of where the business is headquartered, because the LLC is organized under Delaware law.

The time at which the dispute arose is also relevant in determining what law governs the dispute. Under the internal affairs doctrine, the law of the jurisdiction where the business is organized at the time a dispute arises governs the dispute even if the business later reorganizes in another jurisdiction. For example, if the Delaware LLC reorganizes in another jurisdiction, the new jurisdiction’s law will govern the LLC’s future internal affairs, but Delaware law will govern matters that arose before the reorganization.

There is an important caveat to this general rule. In many cases, the LLC’s Operating
Agreement contains a choice of law provision that specifies which jurisdiction’s law governs the agreement. Typically, the choice of law provision will provide that the law of the state where the business is organized governs. But in rare instances, the Operating Agreement may designate a different jurisdiction’s law as the governing law, and that language will typically control. In at least one case, however, the Delaware Court of Chancery determined that the law of the jurisdiction where an entity is organized applied despite a choice-of-law clause that provided otherwise.\(^1\)

**Subject Matter Jurisdiction**

Owners should also know which court will have subject matter jurisdiction over any dispute. Ownership disputes are often litigated in chancery courts, such as the Delaware Court of Chancery. These courts usually have subject matter jurisdiction only where a plaintiff raises an equitable claim or seeks equitable relief – like an injunction, specific performance of a contract, dissolution of the business, or an accounting – or where a statute, such as the Delaware Limited Liability Company Act, confers jurisdiction.

Courts typically have broad subject matter jurisdiction over both domestic and foreign LLCs to resolve issues common to ownership disputes, such as enforcing the LLC’s Operating Agreement and determining the proper managers of the company if that is in dispute. But only courts in the jurisdiction where an LLC is organized may dissolve the company – even if the LLC’s Operating Agreement provides that another state has exclusive jurisdiction over disputes arising out of the agreement.\(^2\)

In our scenario, the Delaware Court of Chancery has broad jurisdiction to decide the issues that could arise during a dispute involving the friends’ Delaware LLC. But if, for example, the company reorganizes under New York law, the Delaware court will retain jurisdiction to resolve pre-conversion matters but, under Delaware law, may not dissolve the company.

Given the importance of choice of law and jurisdictional issues to the outcome of an ownership dispute, business owners should recognize and plan for these issues long before any dispute arises.


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