Court of Chancery Permits $4.3 Billion Interim Distribution in Altaba Dissolution

The opinion also provides important guidance with respect to several other issues that arise in long-form dissolutions, and, given the unprecedented size and complexity of Altaba's dissolution, it will likely be the first of a number of opinions and orders to do so in this case.

By Nathaniel J. Stuhlmiller, Catherine G. Dearlove and Russell C. Silberglied

Delaware Business Court Insider
November 4, 2020

In *In re Altaba*, the Delaware Court of Chancery, ruling at a preliminary stage of the dissolution process, authorized Altaba Inc. to make an interim liquidating distribution of up to $4.3 billion to its stockholders. Vice Chancellor J. Travis Laster's opinion is noteworthy because it is one of the few opinions to authorize an interim distribution in a case arising under Sections 280 and 281(a) of the General Corporation Law of the state of Delaware, Delaware's so-called "long-form" dissolution statutes, and is the first opinion to authorize a liquidating distribution of this magnitude. The opinion also provides important guidance with respect to several other issues that arise in long-form dissolutions, and, given the unprecedented size and complexity of Altaba's dissolution, it will likely be the first of a number of opinions and orders to do so in this case.

Prior to its dissolution, Altaba was known and operated as Yahoo Inc. In 2017, the company sold the Yahoo business to Verizon Communications Inc. and changed its name to Altaba. From that point on, Altaba's assets primarily consisted of the proceeds from the Yahoo sale and shares of capital stock of Alibaba Group Holding Limited, a Chinese internet services and technology company.

In 2019, Altaba sought and obtained approval from its stockholders to dissolve the company and filed its certificate of dissolution on Oct. 4, 2019. Prior to the filing, Altaba made a pre-dissolution dividend to its stockholders of approximately $26.75 billion. Despite its substantial pre-dissolution dividend, Altaba still retained approximately $12.9 billion in cash at the time its certificate of dissolution was filed, making it one of the largest dissolutions (if not the largest) of all-time in Delaware. As required by Delaware's long-form dissolution statutes, Altaba provided notice of its dissolution to potential claimants whereupon such claimants were required to submit any claims to Altaba by a specified date or risk having such claims statutorily barred. Thereafter, Altaba petitioned the Delaware Court of Chancery to determine the appropriate amount of security to be reserved by Altaba as a holdback for the various disputed claims in the dissolution.

Recognizing the size and complexity of certain of the claims submitted by creditors and the fact that the proper amount to reserve for many claims was likely to be disputed, Altaba proposed a two-step process whereby Altaba would reserve the full amount requested by each of its claimants (with two material exceptions) on an interim basis and would then propose reduced "final" reserves at a later date based on a more developed record. This approach differs from most long-form dissolution cases, where the dissolved corporation typically seeks a final determination from the court with respect to the appropriate amount to reserve for each claimant and makes its first liquidating distribution to stockholders thereafter. Altaba argued that its proposed two-step process, while not expressly contemplated by Delaware's dissolution statute, appropriately balanced the interests of Altaba's creditors and stockholders and was fair in light of the fact that Altaba was exceedingly solvent. In fact, Altaba believed that even if it

reserved the full amount requested by each claimant, it would still be able to distribute billions of dollars in excess cash to its stockholders.

The first exception to Altaba's full-reserve proposal related to the request for an $800 million holdback for certain class action lawsuits pending in Canada resulting from data breaches disclosed by Yahoo in 2016. Altaba had negotiated a $50 million holdback for the claims with certain class representatives appointed by an Ontario court, but had proposed no additional reserve for plaintiffs in a Saskatchewan proceeding who were also seeking appointment as class counsel and class certification. The Saskatchewan plaintiffs argued to the Delaware Court of Chancery that Altaba's proposed reserve would be insufficient if they were able to pursue their claims in the Saskatchewan action because the total damages claim in their case could be much higher than the $50 million proposed reserve negotiated between Altaba and the Ontario plaintiffs.

The second exception was with respect to Altaba's proposed $250 million reserve for any claims against the company that had not yet arisen, but that could arise during the dissolution period. By its very nature, this reserve could not be agreed upon between Altaba and future, unknown claimants, and the amount of the reserve was determined unilaterally by Altaba's board of directors.

The court observed that Altaba's two-step interim distribution procedure is not expressly contemplated by Delaware's dissolution statutes and that, in a long-form dissolution, distributions are typically made only if there are no objecting parties or after a final court determination that the corporation has reserved sufficient funds for its disputed claims. The court stated that while interim distributions may be possible, a court should proceed cautiously in authorizing one because once the funds have been distributed to stockholders "it is highly unlikely, bordering on impossible, that the money could be clawed back from the stockholders." Likewise, the court explained that it is "equally unlikely that directors who relied in good faith on a court order approving an interim distribution would be liable for the claims of a creditor left with inadequate security." Accordingly, the court opined that a dissolved corporation would need to make a "powerful showing" that an interim distribution is justified and that interim distributions should generally be limited to circumstances where the dissolved corporation's potential exposure to future liabilities is "quite clear."

The court concluded that Altaba had met its burden to show that an interim distribution was warranted under the circumstances, but ultimately reduced the amount of Altaba's proposed distribution by requiring that Altaba reserve the full $800 million requested by the Saskatchewan plaintiffs on an interim basis. In so doing, the court sought to balance the interests of Altaba's stockholders in receiving prompt distributions from a clearly solvent dissolved corporation with the potential harm to Altaba's claimants given the risk of undervaluing the Canadian class action claims on a preliminary record. By requiring a full reserve for the Canadian claims, the court declined to resolve the parties' dispute over issues of Canadian law for purposes of the interim distribution, but acknowledged that it might be required to do so at the final hearing on the merits. The court's decision was motivated, in part, by the fact that developments were expected in the Canadian courts in the coming months that could be outcome determinative or at least shed more light on the viability of those claims, and those developments could be considered by the court when setting the final reserve amount for the claims in a future proceeding.

The court accepted Altaba's proposed $250 million reserve for unknown claims on an interim basis, but reserved the right to increase that reserve after considering a more developed record. The court indicated that it was "exceedingly difficult" to assess the company's proposed reserve at such a preliminary stage of the dissolution proceedings, but found that several factors supported a preliminary finding that the reserve was reasonable, including that Altaba had sold its operating business three years ago, that Verizon had agreed to indemnify Altaba for any claims related to its

Yahoo business activities prior to the sale, and that the company had not received any material claims related to its post-sale activities to date. Finally, because Altaba had reserved the full amount requested by its known claimants for purposes of the interim distribution even where it disagreed with those amounts and planned to dispute them at the final hearing, the court concluded that Altaba would likely have additional funds that could be reallocated to the reserve for unknown claims at the final hearing, if necessary.

On Oct. 26, Altaba announced in a Form 8-K that, in light of the court's opinion, its board of directors had approved an interim liquidating distribution of approximately $4.3 billion to its stockholders.

Nathaniel J. Stuhlmiller *(stuhlmiller@rlf.com),* ***Catherine G. Dearlove*** *(dearlove@rlf.com) and* ***Russell C. Silberglied*** *(silberglied@rlf.com) are directors of Richards, Layton & Finger. The views expressed in this article are those of the authors and not necessarily those of Richards, Layton & Finger or its clients.*