LIQUIDATION OF A LIMITED LIABILITY COMPANY IN ITALY

(A) How many types of liquidation exist?

It is possible to distinguish three types of liquidation:

1) Voluntary, when the shareholders decide to wind up a company. The shareholders have the freedom to cease operations whenever they wish, even without a specific reason;

2) Judicial, when ordered by a court decision;

3) Compulsory, when ordered by an administrative authority.

(B) What are the steps to liquidate a company?

There are three main phases in the liquidation of a limited liability company:

1) Establishment of the existence of a cause for winding-up of the company;

2) Execution of the liquidation procedure;

3) Termination of the company, which occurs after the company has been cancelled from the Companies Register.

It should be noted that it would be possible to terminate a company directly, without liquidation process, if it no longer has any residual debts or claims, or if it is inactive.

Except for what is provided hereunder, the liquidation process needs the involvement of a notary to draw up the winding-up deed and deposit it at the Companies Register.

In the following three cases it is possible to liquidate a company without the intervention of a notary:

1) Lack of plurality of shareholders;

2) Expiry of the term provided for in the incorporation deed and no extension is agreed by the shareholders;

3) Achievement of the corporate purpose or impossibility of achieving it.

(C) Are there specific procedures to follow in order to liquidate a company?

The first step in the liquidation process is to ascertain the cause of dissolution of the company. Such activity pertains to the administrative body of the company, which shall then convene the shareholders' meeting, that shall resolve upon the beginning of the liquidation process and the appointment of the liquidator.

The liquidation ends with the cancellation of the company from the Companies Register.

In the cases indicate under Section (B), last par., above, the liquidation of a limited liability company may be carried out by means of a simplified procedure, whereby the administrative body, without the intervention of a notary, ascertains the cause of dissolution and convenes the shareholders' meeting for the appointment of the liquidator after the relevant finding has been filed with the Companies Register.

It should be noted that the liquidation procedure may end before all company's creditors have been satisfied. However, the remaining debts shall be in any case taken over by someone (usually the shareholders), to allow the company to be wound up, without liability for the liquidator. It is important to note that creditors also include the tax authorities. Therefore, a company with tax records cannot proceed to the last stage of liquidation if this claim has not first been satisfied (or assumed personally by the shareholders).

(D) What are the criteria for the order of payment of creditors?

The main criterion to be followed in the payment of the creditors is the so-called "*par condicio creditorum*" (i.e., all the creditors shall be treated the same). This criterion is to be followed either in case of the assets being sufficient to repay all outstanding debts and more especially in the event of the assets being insufficient with respect to the total amount of the company's debts. However, there might be creditors with privilege over the others and therefore rank before the others in outpayment of the proceeds made by the liquidation of the assets of the company. Legitimate causes of priority are pledges, privileges, and mortgages. There are also other legal privileges, such as for the payment of salaries or of professional fees and costs related to the liquidation process itself. The “*par condicio creditorum”* principle is applicable also within the different categories of creditors.

(E) What are the tasks and responsibilities of the liquidator?

The liquidator becomes the legal representative of the company substituting its director(s) and he carries out the liquidation procedure aimed at repaying all creditors and settling any surplus among the shareholders.

The liquidator is personally and unlimitedly liable for the payment of the company´s debts and foremost for the application of the criteria of repayment of the creditors.

(F) How can I tell if a company is in liquidation?

When a company is in liquidation, it can be seen from an excerpt of the Companies Register. The liquidator must disclose the liquidation procedure to the public by mentioning it in the company's acts and correspondence. Violation of this obligation is punished with a monetary administrative sanction in a range between Euro 103 and 1,032.

(G) Liquidation timing and costs

The time required for the liquidation process very much depends on the size of the company and on its size and quality of assets. It can vary in fact from few weeks (e.g., for distributing companies with very few assets and employees) to years (e.g., for big industrial companies with many assets, employees, and possibly ongoing court proceedings).
The liquidation costs may as well vary also depending on the size of the company and go along with the duration of such process. Therefore, they may start from about Euro 6.000,00 up to hundreds of thousands.

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