Warwick Legal Network

HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN…

A PRACTICAL HANDBOOK

This practical guide provides a general overlook into the main legal and administrative aspects regarding the liquidation of a limited liability company in different countries worldwide.
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“HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN…”

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CHAPTER 1

HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN AUSTRIA

(A) Introduction

A Limited Liability Company may be dissolved in Austria for reasons specified in the law (§ 84 Abs 1 GmbHG) or for contractually agreed reasons stated in the articles of association (§ 84 Abs 2 GmbHG). The dissolution of a Limited Liability Company usually does not result in its loss of its legal personality; it rather enters the stage of liquidation. In the stage of liquidation, the corporate purpose consists in the termination of current business and the settlement of the company assets.

(B) Reasons for dissolution

B.1. The reasons for dissolution are stated in § 84 GmbHG (Austrian Law on limited liability companies).

Reason for Dissolution	**Hints**
Expiry of the **time** stipulated in the articles of association	Unless otherwise agreed, a limited liability company is deemed to have been concluded for an indefinite period of time. The termination due to the lapse of time requires an effective agreement on a dissolution date or a specific period of time in the articles of association. The subsequent introduction of a time limit by changing the articles of association is possible.
Resolution of the shareholders	In principle, it can be passed with a simple majority. The articles of association may provide for a different majority or may depend the resolution on the existence of an important reason. The resolution must be notarized, otherwise it is not registrable in the company register.

Resolution to **merge** with a joint-stock company or another limited liability company (§ 96 GmbHG)	In the case of a fusion (merger) no liquidation will follow the dissolution. The company's assets are transferred to another legal entity by way of universal succession.
Opening of **bankruptcy proceedings** or finality of decision of a resolution, with which bankruptcy proceedings are withdrawn due to the lack of sufficient funds	One of the most common reasons for dissolution. Bankruptcy proceedings must be filed on application of the company or a creditor. There is an obligation to submit an application of opening bankruptcy proceedings, if the company is either insolvent (§ 66 IO) or overindebted (§ 67 IO).
Order of an administrative authority	Due to § 86 GmbHG an administrative authority may order the dissolution of a company, for example if a company exceeds its sphere of activity set by the provisions of GmbHG, or if the managing directors in the operation of the company are guilty of a criminal offence and, depending of the type of criminal offence committed in connection with the character of the company, there is a risk of further misuse of the same.
Resolution of the Commercial Court	§ 84 Abs 1 Z 6 GmbHG (dissolution of a company because of a resolution of the commercial court) is always must be read in connection with other legal provisions. A company may be dissolved, for example, if certain (legal) requirements were not fulfilled at the beginning, and thereafter the registration in the company register should not have happened in the first place.

B.2. Furthermore, being accepted as reasons for dissolution:

- Nationalization (§ 95 GmbHG; no liquidation in this case)

- Reorganization (transformation, splitting; no liquidation in this case)

- Action for declaration of nullity of a company (§§ 216 ff AktG analog)

(C) Stage of Liquidation

C.1. The dissolution of the company usually is followed by the stage of liquidation (§§ 89 ff GmbHG). The dissolution of the company must be registered at the company register of the commercial court by the managing directors. If the managing directors refrain from registration, the dissolution of the company may be registered ex officio by the commercial court (§ 88 GmbHG).

C.2. With the beginning of the stage of liquidation, the corporate purpose changes (settlement of the company assets). If the articles of association or a resolution of the shareholders do not determine something different, the managing directors will become liquidators as soon the company enters the stage of liquidation, or the dissolution is resolved. Liquidators may also be appointed by the court if the dissolution is registered ex officio. The activity of the other organs of the company (supervisory board, general assembly) is also continued thru the stage of liquidation. The liquidators are obliged to terminate all ongoing business and sell or distribute all company assets (§§ 90 ff GmbHG).

(D) Steps of Liquidation in short

Steps of Liquidation	**Hints**
Creation of a **Liquidation Balance Sheet** (§91 Abs 1 GmbHG)	With the beginning of the liquidation proceedings there must be an actual liquidation balance sheet created. It consists of a point-in-time statement of assets.
Creditor Call (§ 91 Abs 1 GmbHG)	The liquidators are obliged to publish the dissolution or liquidation of the company in the public bulletins. The creditors are to be requested to get in contact with. All known creditors are to be notified in person.

Realization of company assets and **termination** of current business	The realization of company assets and the termination of current business is in the responsibility of the liquidators.
Satisfaction and securing of the creditors	§ 91 Abs 2 and 3 GmbH states in example out, that funds available when the company is dissolved, and the funds received during the liquidation are to be used to satisfy the creditors.
Allocation of remaining assets under the shareholders	Proceeds in relation to the paid-in capital contributions. Please note the three-month waiting period (according to § 91 Abs 3 GmbHG remaining assets must not be allocated to the shareholders before 3 months after the creditor call)
Deletion and Full Termination	After the liquidation-process has ended the company has to be deleted from the company register (§ 93 GmbHG). Full termination is achieved if the company is deleted, and no assets are left.

D.1. After the liquidation-process has ended (Creation of an “End of Liquidation Balance Sheet”, Allocation of remaining assets), the liquidators must be disengaged or relieved by the shareholders. This must happen by a resolution which has to be signed by all shareholders.

D.2. Furthermore, it must be secured, that all books and documents of the already dissolved company are stored by a shareholder or a competent third person for a time period of seven years.

(E) Timing and Costs

E.1. The timeline and cost of a liquidation depends very much on the certain circumstances and cannot be answered in general.

E.2. Depending on the size of the company, the number of creditors and the assets which have to be realized, pending court cases etc, liquidation can last from a couple of months to several years.

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CHAPTER 2

HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN BELGIUM

(A) DEFINITION

The liquidation procedure in Belgium is defined as an action through which one or more liquidators sell a company's assets, pay the company's debts and if any amount of money remains, it will be distributed to the shareholders according to the law or Articles of Association of the company.

(B) TYPES OF LIQUIDATION

There are three types of liquidations possible in Belgium:

1. **Voluntary liquidation**

   In case of voluntary liquidation, the General Assembly decides to dissolve the company. This report of the General Assembly must be published in the Belgian Official Gazette.

2. **Judicial liquidation**

   Judicial dissolution is decided by the court at the request of a shareholder, partner, public prosecutor, or other concerned party.

3. **Liquidation by operation of law**

   In this case, the company is dissolved by a certain event. For example, when a company is founded for a certain time and this time expires or because of the death of a partner.

(C) STEPS TO LIQUIDATE

Before a company is dissolved, there are several other steps that can be taken:

1. The out-of-court amicable settlement

The out-of-court amicable settlement is a debt settlement in which a company in difficulty sits down with at least two of its creditors. The creditors and the company are free to negotiate any discounts, waivers, or repayment plans.

If the company should later go into liquidation, the trustee cannot dispute certain agreements between the company and the creditor. In this way, the creditor does not lose the benefits of the agreement in the event of liquidation.

An out-of-court amicable settlement can be approved and declared enforceable by a judge, but it is not mandatory. If the company does not keep its promises after the declaration of enforceability by a judge, the creditor can use this title to go straight to a bailiff in order to execute its claim, without first having to go through the Court.

However, the disadvantage of this procedure is that creditors are not obliged to conclude an agreement and the company can therefore still be declared to be liquidated by these other creditors that were not involved or did not approve the settlement.

2. Judicial reorganization (comparable to a chapter 11 procedure)

The judicial reorganization is aimed at maintaining the continuity of the company in difficulty under the supervision of the court.

The judicial reorganization must be requested by the debtor via a petition with a number of mandatory annexes to the Company Court. The filing of this petition entails an important protection for the debtor, namely the mini-suspension. The mini-suspension means that the company cannot be declared bankrupt, and that no monetization of movable and immovable assets can take place. In addition, this suspension also extends to the debtor's next of kin, co-debtors, and holders of personal securities. There are exceptions to the benefits of the mini-suspension in the event of late filing of the petition.

The judicial reorganization can be done by *an amicable settlement*, a variant of the out-of-court amicable settlement. Here the debtor does enjoy the protection of suspension, unlike in the out-of-court amicable settlement, and there is a mandatory homologation.

Judicial reorganization can also be done by a *collective agreement*. In this case, the company in difficulty draws up a reorganization plan for approval by the creditors, whereby a majority must agree to the plan. The court homologates this reorganization plan after approval. This reorganization plan corresponds to a fictitious sale of the company to the creditors. Herein, there is still a distinction in position of an ordinary claim and an extraordinary claim in the moratorium.

The judicial reorganization by transfer under judicial authority. This procedure results in a liquidation. In this process, a prospective bidder can bid on the current contracts and thus take them over.

(D) LIQUIDATION PROCEDURE

In a dissolution or liquidation, all debts must be paid, and the remaining assets distributed among the partners and shareholders.

Two different procedural forms of liquidation exist:

1. **Liquidation in two steps**

The first step was discussed in title one. In the second step, a liquidator is appointed. His appointment is published in the annexes of the Belgian Official Gazette. The liquidator will sell the remaining assets and the proceeds will be distributed to the shareholders and partners.

2. **Liquidation in one step**

This procedure is called the turbo liquidation. Four conditions must be met for this procedure to take place, namely:

- All shareholders or partners agree to the discontinuation.
- No liquidator is appointed.
- All debts to third parties are repaid or blocked on a special account (consignment) or there is written confirmation from the creditors concerned that the debt no longer needs to be paid.
- Any remaining assets are distributed among the shareholders or partners.

In addition, it should also report on:

- The governing body justifying the dissolution and its consequences.
- The statement of assets and liabilities that is not older than 3 months.
- An audit report by the statutory auditor, an auditor, or an external accountant on the statement of assets and liabilities.

(E) LIABILITY OF THE LIQUIDATOR AFTER CLOSURE OF LIQUIDATION

When a company is dissolved, it is deemed to continue to exist until the end of the liquidation. The liquidator takes over the duties of the liquidated company and is liable to the company for five years after the end of the liquidation for the performance of its duties (the realization of the assets, the composition of the liabilities and the discharge of the liabilities with the proceeds from the realization of the assets). If the tax authorities still have claims on the company after the liquidation (e.g., a tax debt), they can therefore still claim them against the liquidator for a period of five years after the announcement of closure of the liquidation.

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CHAPTER 3
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN BULGARIA

(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 voluntary liquidate a company?

There are four 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) Notification to the National revenue agency;

3) Execution of the liquidation procedure;

4) Termination of the company, which occurs after the company has been cancelled from the Commercial Register to the Registry Agency.

It should be noted that thought the voluntary liquidation procedure it is not possible to terminate a company directly, without liquidation process, no matter 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 who shall certified a single document as well as an attorney who draw up the winding-up the necessary documents and deposit them at the Commercial Register to the Registry Agency.

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

The liquidation procedure of a company takes about 8-9 months and proceeds as follows:

1) It starts by sending a notification to the National Revenue Agency, announcing that it has started a process of liquidation of the company. As a result, the NRA issues a certificate for the notification within 60 days of its receipt;

2) Preparing and declaring before the Commercial Register the documents necessary for starting the liquidation procedure. At this stage should be announced that the company completes all commercial activities and begins liquidation process, and shall be invited all creditors of the Company to submit

their claims within 6 months from the publication of the invitation. In addition, at this time should be appointed a liquidator of the Company, who can be the current manager of the company or other third party.

3) After submission of the documents under the previous point, if that the company is registered for VAT, the same need to declare if prefer to be deregistered within 15 days from the entry of the documents in the commercial register. If the company prefer to remain registered for VAT for the period of liquidation (within 6 months), then for this purpose it is necessary to be submitted an explicit request to the NRA.

4) During these 6 months' period, the company should terminate all relationships with its customers and suppliers, as well as terminate the employment relationship with its employees.

5) During these 6 months' period, all payrolls must be submitted to the NSSI, and for this purpose an application must be submitted to the NSSI for submission of the payrolls. Then the NSSI determines the day on which the statements will be submitted.

6) After the expiration of the 6 months' period from the start of the procedure, the company can be closed from the Commercial Register, with which the liquidation procedure is finalized and the company is officially liquidated.

In summary, in order to liquidate the company, it is necessary to repay all its liabilities, if any, and to collect all receivables that the company has from its debtors. Also, before the last stage of the liquidation (point 6) all bank accounts of the Company must be closed. 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 Commercial Register to the Registry Agency.

(D) What are the criteria for the protection of Creditors?

Upon declaring the dissolution of the company the liquidators must invite its creditors to make their claims. The notice shall be addressed in writing to the known creditors, and shall be published in the commercial register.

The company's property shall be distributed only if six months have passed from the date of publication of the notice to the creditors in the commercial register. Should a creditor duly notified not assert his claim, the due amount shall be deposited in a bank account in his name. Where a debt is disputed, the property shall be distributed only after providing a security to the creditor. The managing body of the company may, upon satisfaction of the creditors, write off any non-collectible claims of the company. Such decision shall be taken by simple majority.

The property remaining after the satisfaction of the creditors shall be distributed among the partners, or the stockholders as the case may be.

(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 liquidators shall be obliged to complete any pending transactions, to collect debts due, to convert the remaining company's property into cash and satisfy the creditors. They may enter into new transactions only if necessary for the purposes of liquidation.

The liquidators may, subject to the consent of the partners or, respectively, the stockholders and the creditors, transfer to them particular items of the assets under liquidation, provided that this does not prejudice the rights of the remaining partners and creditors.

The liquidators must inform the National Revenue Agency of the liquidation which has commenced. The liquidator shall be obliged to exercise his competencies with the care of a diligent merchant.

(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.

(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 8-9 months (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 2.000,00 up to hundreds of thousands.

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CHAPTER 4
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN CZECH REPUBLIC

(A) How many types of liquidation do exist?

It is possible to distinguish two 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 the court orders that the company is being terminated and enters into liquidation.

It should be also noted that the company may be dissolved by the court without liquidation and deleted from the Commercial Register without further ado in following cases:

1) the bankruptcy of the company was cancelled after fulfilling a resolution on the distribution of property; or
2) the bankruptcy of the company was cancelled due to the fact that the property of the company is absolutely insufficient for satisfaction of creditors' claims.

(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, i.e., either a resolution of the shareholders or a resolution of the court;
2) Execution of the liquidation procedure;
3) Termination of the company, which occurs after the company has been deleted from the Commercial Register.

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

In case of voluntarily liquidation of the 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 resolution of the shareholders must be executed in the form of a notarial need.

The liquidator shall publish, at least twice in a row and with at least a two-week interval, an announcement on the liquidation, including a call for the company's creditors to register their claims by the liquidator. The announcements are published in the Commercial Journal (available online at: https://ov.ihned.cz). The creditors may register their claims within 3 months following the publication of the second announcement in the Commercial Journal.

The liquidator shall sell all assets and settle all liabilities of the company. If it is not possible to sell some of the assets or settle some of the liabilities, such assets or liabilities are usually taken over by someone (usually the shareholders), so as to allow the liquidator to terminate the liquidation process. Once the liquidator completes the liquidation process, he shall prepare a final report on the course of the liquidation. The final report shall be approved by the shareholders of the company.

Once the liquidation is terminated, the liquidator shall submit a motion for deletion of the company from the Commercial Register. The company will cease to exist once it is deleted from the Commercial Register.

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

General rules used in case of most liquidations are following: If the company is not insolvent, the liquidator shall satisfy the claims of employees first. If the assets of the company are not sufficient for satisfaction of all creditors, the creditors are satisfied proportionally. There are also some specific rules applicable in case that the company has been terminated by a judicial resolution.

(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.

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

When a company is in liquidation, it can be seen from an excerpt from the Commercial Register (available online at: https://or.justice.cz/ias/ui/rejstrik). During the liquidation, the company uses its company name with an addition “v likvidaci” (in English: “in liquidation”). The notifications on the liquidation are published in Commercial Journal (available online at: https://ov.ihned.cz).

(G) Liquidation timing and costs

The time required for the liquidation process depends on the size of the company and on its size and quality of assets. Given the deadline set by the laws, the process takes at least 3-4 months but it can take longer, depending on the size of the company, amount of assets and liabilities to be settled, ongoing court proceedings to be terminated etc.

The liquidation costs may as well vary also depending on the size of the company and go along with the duration of such process. They costs may start from about Euro 4.000,00.

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CHAPTER 5
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN GERMANY

(A) What are the reasons for the liquidation of a limited liability company?

According to German law, a limited liability company is dissolved by:

1) by expiry of the time specified in the articles of association;
2) by resolution of the shareholders;
3) by a court decision or by a decision of the administrative court or the administrative authority.

The aforementioned reasons for dissolution are those which require a conscious decision on the part of the shareholders. Other grounds for dissolution are to be left aside in this article.

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

In the following, the procedure of liquidation on the basis of a shareholders' resolution will be discussed, which is the standard case. The liquidation of the limited liability company takes place in three steps:

1) Shareholders' resolution on the dissolution of the company.

Subject to other provisions of the articles of association, the resolution to dissolve the company is adopted by a three-quarters majority of the votes cast and does not generally require notarization. The dissolution of the company must then be filed by a notary public for entry in the Commercial Register. In addition, the liquidator must publish the dissolution of the company together with the call to creditors in the electronic Federal Gazette. The announcement in the electronic Federal Gazette is independent of the entry of the dissolution of the company in the Commercial Register and marks the beginning of a one-year lock-up period, after the expiry of which the distribution of the company's assets to the shareholders may only take place.

Once the resolution to dissolve the company has been passed, this leads to a change in the purpose of the company. The company in liquidation becomes a liquidating company, the purpose of which is the turning of the assets into money, the settlement of the liabilities and the distribution of the surplus.

2) Liquidation

After the resolution has been passed, the liquidation procedure is carried out in accordance with the statutory rules, or the rules provided for in the articles of association. It is the task of the liquidator to ensure the proper liquidation of the company. They have the duty to prepare an opening liquidation balance sheet and a closing liquidation balance sheet, which must be approved by the shareholders. The closing balance sheet must be published, and the tax returns based on it must be filed. In addition, the liquidator shall arrange for the retention of the books and records of the limited liability company for the statutory period after the liquidation has been completed.

3) Termination and deletion of the limited liability company

The condition for the termination of the limited liability company is that the blocking year has expired and there are no more distributable assets. On the day of distribution, the liquidator may register the conclusion of the liquidation, the extinction of the company and the termination of the office of the liquidator with the Commercial Register with the assistance of a notary public. This initiates the procedure for the final deletion of the limited liability company from the Commercial Register and, if there are no remaining assets in the limited liability company, brings about its full termination.

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

The payment of debts is a prerequisite for the distribution of the company's assets to the shareholders. The liquidator shall record the existing liabilities and provide the necessary funds. However, there is no ranking among the creditors. In particular, no differentiation is made between old and new creditors and there is also no general principle of equal satisfaction. If the company is insolvent or over-indebted, the initiation of insolvency proceedings must be applied for anyway, in which the principle of "*par conditio creditorum*" is then realized. However, if the liquidator disadvantages a creditor by paying out all other creditors until the funds are exhausted, he is personally liable to the limited liability company. He can only avoid personal liability by filing for insolvency in good time during the liquidation proceedings.

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

The liquidator is the corporate representative body of the company in the liquidation stage. He shall ensure the proper liquidation of the company and represent it in and out of court. The scope and extent of the liquidators' power of representation in this respect corresponds to that of the managing directors. The standard for assessing the liquidators' actions is the purpose of liquidation. The liquidator may not enter into any new transactions if they do not serve the purpose of liquidation. Furthermore, if the limited liability company becomes insolvent, the liquidator is obliged to file for insolvency. The liquidator is obliged to fulfill the tax obligations of the company. In the event of a breach of the duties incumbent upon him, the liquidator is threatened with a personal claim by the limited liability company for damages.

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

In addition to the publication of the dissolution of the company in the Commercial Register and in the electronic Federal Gazette, the liquidation must be openly stated in legal transactions by means of an appropriate addition to the company name (e.g., "i. L."). This must also be observed in the case of subscription by the liquidator. In the event of a breach of this duty, the registration court may enforce compliance with the duty of disclosure by setting a penalty payment of up to € 5,000.00.

(F) Liquidation timing and costs

The liquidation of a limited liability company usually takes at least one year, as the expiry of the blocking year must be awaited. The costs for the liquidation of a limited liability company depend on the individual case and, among other things, on the size, structure, and the resulting scope of the documents to be prepared for the

liquidation. The main costs are, in particular, the notary's fees and the costs for the preparation of the opening and closing balance sheets by a tax advisor.

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CHAPTER 6
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN HUNGARY

(H) How many types of liquidation do exist?

It is possible to distinguish three types of liquidation:

4) 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. This is called "**voluntary winding-up procedure**".

5) Judicial, when ordered by a court decision. This is the so called "liquidation procedure".

6) Compulsory, when the fact of termination of the company is established by the Company Court due to specific reasons, and the company must be deleted from the Companies Register. This is called "involuntary de-registration procedure".

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

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

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

6) Execution of the liquidation procedure;

7) Termination of the company, which occurs by the action of deleting the company from the Companies Register.

(J) 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 and the liquidation ends with the cancellation of the company from the Companies Register. But it should be noted that the liquidation procedure may end before all creditors of the company have been satisfied. A Hungarian company not always have the assets to satisfy every creditor, and that is why there is a satisfaction order between creditors, prescribed by Article 57 of the Liquidation Act – based on which claim category the creditor has (these categories and their order are determined by law).

For those creditors who have not been satisfied, there is a possibility to establish the (unlimited) liability of shareholders for any transfer of partnership shares done in bad faith as per Article 63/A of the Liquidation Act liability or to establish management liability as per Article 33/A of the Liquidation Act.

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

As mentioned above, there is a so called "**satisfaction order**" in the Hungarian Liquidation Act (Article 57). It is important to note that creditors also include the tax authorities (category e) claims), which in general

forego other creditors who have only “normal” claims (so called category f) claims). However, salary claims of Employees forego all the above (because these are considered as “liquidation costs”), so they have a good position as category a) claims.

(L) Which are the tasks and responsibilities of the liquidator?

The liquidator becomes the legal representative of the company substituting its managing director(s). The liquidator shall collect the claims of the debtor when due, enforce his claims and sell his assets. If consented by the creditors, the liquidator may invest the debtor’s assets into private limited-liability companies, limited companies, or cooperatives as non-pecuniary assets (contribution) if it promises to draw a better price this way.

If the amount of money received during the liquidation procedure is sufficient to cover the claims of creditors, the liquidator may prepare an interim liquidation account (hereinafter referred to as “interim financial statement”) following the deadline for the notification of claims. The interim financial statement shall contain the data of the balance sheet, closing the activities of the economic operator and the particulars of the opening liquidation account. It is mandatory to prepare the interim financial statement each year after the time of the opening of liquidation proceedings. Upon conclusion of the liquidation proceedings the liquidator shall prepare the final liquidation balance sheet, the statement of revenues and expenditures, the final tax returns, the closing report, and a proposal for distribution of assets, and shall send all these to the court and, on the day that follows the date of the final balance sheet, to the tax authorities and shall arrange for the placement of the economic operator’s documents. Upon filing the final tax return with the tax authority, the applicable tax shall be paid as well.

In the event of any illegal action or negligence by the liquidator, the aggrieved party, as well as the creditors’ selected committee and the creditors’ representative, may file a complaint against the liquidator within fifteen days of gaining knowledge thereof at the court which has ordered the liquidation.

(M) 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 Court ordering liquidation must send this notice and the person of the liquidator to the Company Court who discloses the liquidation procedure to the public by mentioning the starting date, file number and the data of the liquidator.

(N) 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 to several years.

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 net Euro 1,200 (from this net EUR 300 is the procedural duty and net EUR 900 is the minimal fee of the liquidator) up to hundreds of thousands.

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CHAPTER 7
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN INDIA

The safest and conclusive way to exit /close the company

The objective of seeking closure of a company is to end the corporate life of a company registered under Companies Act. The closure is/might be required due to several reasons, like: completion of the objective, policy changes, unviable businesses/operations, voluntary closing of the business, etc. This also saves one from the unnecessary compliances and the rigors of corporate governance.

The formal closure is obtained through dissolution of the company which must be arrived at after running through a set of processes and procedures as laid out in IBC (Insolvency and Bankruptcy Code 2016). With the notification of IBC in 2016, the option of members voluntary winding option under Companies Act, 2013 is no more available. All such cases need to go through the Voluntary Liquidation (VL) process as laid out in IBC.

Regulation 4 of Voluntary Liquidation Regulations by IBBI states effects of Liquidation as follows

"The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business."

As per IBC **Dissolution** is a stage where the assets of the corporate debtor have been completely liquidated and distribution of surplus made, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

Different Routes of Dissolution:

1. **Voluntary Liquidation under IBC 2016**
2. Liquidation under IBC due to failed CIRP
3. Winding up under Companies Act 2013 (Chapter XX)
4. Strike Off names of companies from ROC Companies Act 2013 (Chapter XVIII).

Hence, dissolution marks the culmination of the liquidation of the corporate entity and is the last mandatory step.

A normal Liquidation is different from the Voluntary Liquidation, as VL gets initiated by the Management/Shareholders and then the process is as per laid-out norms. The pre-requisite for a VL is assured solvency, whereas the normal Liquidation of a corporate entity (in Indian context) cannot be initiated directly but is a result of a failed CIRP (corporate insolvency resolution process), where a fair chance has been given for a resolution/revival of the corporate entity, an entity which is faced with an insolvency phase.

VL gets initiated by the Management/Shareholders. Insolvency Professional is appointed as the Liquidator. He takes over the process as laid-out under IBC. Management is expected to assist him in the closure of operations and the related process. Involvement of NCLT is the minimum. Normally only the preliminary and a final report is all that is required to be submitted by the liquidator to NCLT. Claims are sought by the liquidator and assets are sold to pay off all the liabilities. (The pre-requisite is the undertaking that the VL is not being initiated to defraud any stakeholder and is for legitimate cause and there is no intent to not pay any legit dues whether known or getting discovered through claims submission process).

Often, there is a comparison between Strike Off and Voluntary Liquidation and a distinction is attempted though the table below:

Basis	Voluntary Liquidation	Strike Off
Purpose	Dissolution of any company to end its existence	Fast track exit mode for Defunct Companies. Companies who haven't commenced business or a dormant company who has not obtained status of Dormant are most suitable
Eligibility	The provisions are applicable to all companies	Some Companies are restricted as per Companies Act 2013
Approach/Process	More robust approach as the claims/liabilities are invited from all the Creditors/Stakeholders to pay them as per law	No such provision of calling claims. Hence the process is not conclusive, and company can be restored in next 20 years
Creditors Position post procedure	Creditors must file claims and the disposal of liabilities. Liabilities not claimed during the liquidation proceedings shall be deemed extinguished post liquidation process	Position of creditors of the company does not materially affect, because they may enforce their claims against every director, secretaries and treasurers, manager, or any other officer of company and against every member of the company.
Finality of Closure Process	The Company gets dissolved and can't be restored back for any recovery	Companies dissolved can be restored within 20 years from the date of publication of the notice intimating that the name of the

		company has been struck off
Conclusion	The process is open for any company registered. Especially for companies where earlier there have been operations, assets are available for distribution and liabilities need to be settled (ensuring adequacy of assets)	The process is open for Defunct companies or the companies not in operation for at least two years. No Assets or Liability to settle

After completing the process as laid out, the liquidator submits the final report to NCLT informing about the completion of the process and requesting for the dissolution order, which then is submitted to ROC (Registrar of Companies) which would then strike off the name of the corporate entity from its records, after which the company would seize to exist.

Therefore, Voluntary Liquidation under IBC has provided an easy exit & a time bound process for corporates who are in a solvent stage or can pay their debts and it also creates a balance between debtors and creditors.

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CHAPTER 8
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN ITALY

(O) How many types of liquidation exist?

It is possible to distinguish three types of liquidation:

7) 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;

8) Judicial, when ordered by a court decision;

9) Compulsory, when ordered by an administrative authority.

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

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

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

9) Execution of the liquidation procedure;

10) 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.

(Q) 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).

(R) 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.

(S) 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.

(T) 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.

(U) 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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CHAPTER 9

HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN MALAYSIA

The liquidation of limited liability companies in Malaysia is comprehensively laid out in the Companies Act 2016 ("**Act**").

(A) Types of liquidation of limited liability companies

There are three methods of dissolution, namely:

1) Voluntary winding up (either by members or creditors);

2) Compulsory winding up (by court); and

3) Striking off by the Registrar.

(B) Procedure and/or requirement for dissolution of company

1. Voluntary winding up

If a company is solvent, it may be wound up by the shareholders. If a company is insolvent, it may be wound up by its creditors.

A company may be voluntarily wound up -

(a) By passing a resolution in a general meeting; or

(b) By passing a special resolution if the company so resolves.

The company is then required to lodge a copy of the resolution with the Registrar within 7 days from the passing of the resolution and give notice of the resolution in one widely circulated newspaper in the national language (Malay) and one in English language within 10 days after the passing of the resolution.

Difference between members' voluntary winding up ("**MVWU**") and creditors voluntary winding up ("**CVWU**")

MVWU	**CVWU**
Effected when the company is solvent, and the liquidator is appointed by the members at the members' meeting.	Effected when the company is insolvent, and the liquidator is appointed by the creditors at the creditors meeting.
Company's directors are required to make a declaration of solvency of the company that the company will be able to pay its debts in full within the period of 12 months after the commencement of winding up.	Declaration of solvency of the company is not made.
Decision to commence process of winding up rests with the company (directors and shareholders).	Decision to commence process of winding up rests with the company (directors and shareholders).

	Creditors will have the power to decide the appointment of the liquidator of the company in order to protect their interest.

2. Winding up by court (also known as Compulsory Winding Up)

The process begins with the presentation of a petition in court.

The petition may be commenced by –

(a) The company itself;

(b) Any creditor;

(c) A contributory or any person who is the person representative of a deceased contributory or the trustee in bankruptcy or the Director General of the Insolvency of the estate of a bankrupt contributory;

(d) The liquidator;

(e) The Minister of Domestic Trade and Consumer Affairs;

(f) The Central Bank of Malaysia;

(g) Registrar; or

(h) The Malaysia Deposit Insurance Corporation.

A company may be ordered the winding up if –

(a) The company has by special resolution resolved that the company is to be wound up by the Court;

(b) The company defaults in lodging the statutory declaration under subsection 190(3);

(c) The company does not commence business within a year from its incorporation or suspends its business for a whole year;

(d) The company has no member;

(e) The company is unable to pay its debts;

(f) The directors have acted in the affairs of the company in the directors' own interests rather than in the interests of the members as a whole or acted in any other manner which appears to be unfair or unjust to members;

(g) When the period, if any, fixed for the duration of the company by the constitution expires or the event, if any, occurs on the occurrence of which the constitution provide that the company is to be dissolved;

(h) The Court is of the opinion that it is just and equitable that the company be wound up;

(i) The company has held a licence under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, and that the licence has been revoked or surrendered;

(j) The company has carried on a licensed business without being duly licensed or the company has accepted, received or taken deposits in Malaysia, in contravention of the Financial Services Act 2013 or the Islamic Financial Services Act 2013, as the case may be;

(k) The company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order, or morality in Malaysia; or

(l) The Minister has made a declaration under section 590 for investigation of affairs of company.

3. Striking off

The Registrar of Companies may strike off a company either on his own motion or through the application by a director, member, or liquidator of a company to the Companies Commission of Malaysia.

The Registrar may strike off a company if it is satisfied that –

(a) The company is not carrying on business or is not in operation;

(b) The company has contravened the Act;

(c) The company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia;

(d) in any case where the company is being wound up and the Registrar has reasonable cause to believe that-

i. no liquidator is acting;

ii. the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him; or

iii. the affairs of the company have been fully wound up under a winding up by the Court and there are no assets or that the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company.

(C) Claim against wound up company

The claim against a wound-up company is subject to any leftover assets of the company and the type of debt (secured or unsecured). Secured creditors are entitled to realize their security regardless of the winding up process.

Unsecured creditors are required to submit proof of debt to the liquidator by way of a sworn affidavit verifying and specifying the debt. The said proof of debt may then be accepted and admitted by the liquidator.

The unsecured creditors will be paid in accordance with the preferential priority, ranked from costs and expenses of winding up, wages and salary, workers' compensation, remuneration, contributions and lastly federal tax.

(D) Liquidators

In Malaysia, the liquidator could be the Director-General of Insolvency, the government official designated to be in charge of the administration of bankruptcy and winding up matters in Malaysia.

Alternatively, a private liquidator could be appointed.

Mainly, a liquidator's duty is to take control of all the company's assets, sell off the assets, and then distribute the proceeds. The liquidator's other duties are:

(a) To investigate the affairs and assets of a wound-up company;

(b) To investigate the conduct of company directors and other related persons;

(c) To investigate claims made by creditors and third parties; and

(d) To collect and realize the company's assets to meet its liabilities.

The detailed powers and duties of a liquidator are explicitly listed out in the Act – Eleventh Schedule for voluntary winding up and Twelfth Schedule for winding up by court.

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

A winding up search may be conducted via the Insolvency Department. Each search costs RM10.00.

(F) Timing and costs

The process of dissolution differs according to the mode of dissolution. Voluntary winding up (either MVWU or CVWU) incurs lower costs and has a shorter time frame in comparison to winding up by the court. Regarding a winding up by the court, costs are relatively higher as it involves the litigation process. Said costs and time taken may vary according to the complexity of the matter, and whether it is a contested matter.

A liquidator begins by taking possession of the company's assets. Subsequently, the liquidator must realize or liquidate the assets concerned. This will allow the liquidator to raise funds to pay any valid claims which may exist against the company. The liquidator will then distribute the proceeds of the sale among the company's creditors, and if there are any excess, to each member.

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CHAPTER 10
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN THE NETHERLANDS

(A) Types of liquidation

A limited liability company (*besloten vennootschap* or *BV*) can be liquidated and/or dissolved in several ways:

10) Fast-track voluntary liquidation

11) Regular voluntary liquidation

12) Bankruptcy

13) Dissolution by the Chamber of Commerce

This article focuses on the two types of voluntary liquidation.

(B) Fast-track liquidation

Fast-track liquidation (often referred to as 'turbo' liquidation in the Netherlands) is an unofficial expedited form of voluntary liquidation which means immediate dissolution and termination of a BV, without appointing a liquidator. This is possible if the BV has no assets at the time of its dissolution, even if the BV has debts. The idea is that without any assets to liquidate, there is no need for a liquidation process or liquidator. Therefore, if the management board of a dissolved BV indicates that the BV has no assets, the Chamber of Commerce will proceed to terminate registration of the dissolved BV, in effect terminating the BV's existence with immediate effect.

In practice, companies often choose to first liquidate their assets without going through the formal (regular) liquidation process, and to dissolve and terminate the company once this has been done. Data from the Dutch tax authorities shows that in recent years, approximately 85% of all voluntary liquidations took place by means of fast-track liquidation rather than by 'regular' voluntary liquidation.

Fast-track liquidation is prone to abuse and has for that reason become the subject of legal debate. If a BV had debts at the time of its fast-track liquidation and a court rules that fast-track liquidation was unjustly used, the (former) directors of the BV may personally be held liable for any damage suffered by creditors of the BV because of the fast-track liquidation. This can be prevented by going through the 'regular' voluntary liquidation process.

Fast-track liquidation requires a resolution by a BV's shareholders, in which the shareholders resolve to dissolve the BV and in which they appoint a custodian of the BV's books and records. The dissolution and termination and the identity of the custodian of the books and records can be registered with the Chamber of Commerce with immediate effect by the BV's (former) director(s).

(C) Regular voluntary liquidation

Liquidation of a BV takes place in 5 steps. None of these steps require involvement of a civil law notary.

11) The BV's shareholders resolve to dissolve the BV and to appoint one or more liquidators and the custodian of the BV's books and records. The articles of association stipulate who may be appointed as liquidators. Usually, the BV's directors become its liquidators. The dissolution is registered at the Chamber of Commerce, and the BV must add 'in liquidation' to its name in any external communication. The liquidators become the legal representatives of the company substituting its directors.

12) The liquidators carry out the liquidation procedure aimed at repaying all creditors and distributing any surplus among the shareholders. If the BV has insufficient assets to pay all creditors, the liquidators must ask the court to declare the BV's bankruptcy. If there are sufficient assets, the liquidator must file the BV's liquidation accounts and (if there are more than two shareholders) a distribution plan with the Chamber of Commerce.

13) The liquidators must publish a notice in a nationally distributed newspaper, announcing when and where the liquidation accounts and distribution plan can be consulted. Within two months after publication, creditors may file a formal objection against the plan of distribution with the competent district court. After the two-month term has passed, the liquidators can ask the court for an official declaration that no objections were raised against the distribution plan.

14) If no objections were raised within two months, the actual distribution takes place.

15) After distribution, the BV's termination and the identity of the custodian of the BV's books and records is registered with the Chamber of Commerce.

(D) Liquidation timing and costs

Fast-track liquidation

Fast-track liquidation can take place with immediate effect. There are no costs for registering a BV's dissolution and termination with the Chamber of Commerce.

Regular liquidation

Regular liquidation takes at least two months, because of the two-month waiting period mentioned in step 3. In practice the process takes at least three months, because there is also time involved in drawing up the liquidation accounts and distribution plan, as well as in obtaining a court declaration that no objections were raised.

The costs incurred during the regular liquidation process consist of at least the costs of publication of a notice in a nationally distributed newspaper (step 3), which amount to several hundreds of euros, as well as the costs of applying for a court statement (step 3), which are € 134 in 2022. Since most companies will

require external legal and financial/accounting assistance during the process, the true costs are usually significantly higher. A very rough estimate of the minimal costs of liquidating a BV through the regular liquidation process is € 5,000.

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CHAPTER 11
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN SPAIN

(A) How many types of liquidation do exist?

The types of liquidation can be classified according to the cause of dissolution according to Spanish law:

1. Dissolution as per the law ("automatically")

   - Expiry of the term of duration established for the company;

   - Insolvency liquidation phase, provided for in Royal Legislative Decree 1/2020, of May 5, 2010, approving the Insolvency Law (LC), when in insolvency proceedings, the company cannot reach an agreement with the creditors, (not subject of this overview).

2. Dissolution for causes provided by law or in the by-laws

   According to the Capital Companies Law, article 363 (LSC, Royal Legislative Decree 1/2020, of July 2) the main reasons for the compulsory dissolution of a company are:

- cessation of the activity or activities that constitute the corporate purpose,
- impossibility of achieving the objectives or purposes for which the company was created.
- losses that reduce the net worth to an amount less than half of the capital stock
- reduction of the capital stock below the legal minimum.
- any other cause established in the bylaws.

3. By decision of the General Meeting (voluntary dissolution)

   A company may as well be dissolved by mere decision of the general meeting adopted (voluntary dissolution).

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

The dissolution and liquidation of a limited liability company is carried out in distinct phases: dissolution, liquidation, and cancellation of its entries in the Commercial Registry.

1. Dissolution

The administrators state a cause and convene a Meeting of shareholders

In order to liquidate a company, it has to be dissolved first.

After the dissolution has been agreed by resolution of the majority of the shareholders, the company enters in the period of liquidation; the legal personality is still maintained.

2. Liquidation

Execution of the liquidation

Having decided the dissolution, the Meeting of the shareholders has to pass the resolutions of liquidation of the company and the appointment of the liquidator, who can be the former administrator of the company.

Therefore, the corresponding minutes and certificate must be drafted and signed.

Operations of the liquidator

The liquidator must make an inventory and a balance sheet and a final balance which is proved by the shareholders, collect payments and pay debts, continue with and finalize pending business, terminate labour relations and sell the assets of the company.

The deed of liquidation must be executed and signed before a notary.

3. Cancellation

The notarized deed of liquidation must be presented to the Commercial Register in order to be registered.

Subsequently, the liquidation and the definitive cessation of the activity must be communicated to the competent Tax Office by presenting the required form “model 036”.

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

The process of dissolution and liquidation can be carried out separately (B) or simultaneously in the same act. If the company has no debts to pay or credits to collect, the process can be simplified: the dissolution and simultaneous liquidation (and the appointment of the liquidator) are agreed at the shareholders' meeting, and a certificate is prepared to record these agreements, with which the deed of liquidation can then be executed.

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

The liquidators must pay the creditors of the company first, before distributing any surplus corporate assets to the partners or shareholders.

The priority of claims out of insolvency proceedings is determined by the rules of the Civil Code.

In principle all have the same right to collect; this is known as the "par conditio creditorum" principle; all creditors have the same right.

A privileged credit is a credit that enjoys a collection preference. According to the rules of the Civil Code, the privileged claims that are preferential with respect to movable assets, certain real estate and the debtor's other assets are established.

Unless otherwise provided in the corporate by-laws, partners' or shareholders' liquidation dividends shall be proportional to their participation in company capital.

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

The liquidator must prepare an inventory and an initial balance sheet and to liquidate the assets and liabilities. That means he claims credits, sells assets, and pays creditors, see above (B), operations of the liquidator.

Once these tasks have been completed, a final liquidation balance sheet must be presented to the shareholders' meeting, based on which the remaining net assets will be distributed among the shareholders.

The liquidator of a company may have responsibilities (as is the case with the administrators). In addition, he is the one who will represent the company after its extinction, for the purpose of receiving notifications or claims against it, for example.

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

When the company has entered in the period of liquidation, it must add the expression "in liquidation" to the company name in the official documents.

(G) Liquidation timing and costs

Usually, to carry out all the steps and ensure that the dissolution and liquidation are carried out in compliance with legal requirements, costs start from 2000 € + VAT, which will increase if the company has assets to liquidate, if it is necessary to do accounting work, etc.

In addition, it will be necessary to pay the corresponding fees and taxes of the Administrations and organisms to which we must address (Mercantile Registry, Notary's Office, Treasury, etc.).

The time required for the entire liquidation process depends on the size of the company and the assets and can range between a few weeks and more than a year.

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CHAPTER 12
HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN VIETNAM

(H) How many cases of liquidation do exist?

Liquidation or dissolution of a company is a procedure for terminating an enterprise where its assets are realized to pay its debts and other financial obligations. In general, such liquidation is governed by the law on enterprises ("**LOE**"), while the bankruptcy of companies shall be carried out in accordance with the law on bankruptcy.

A company may be voluntarily or compulsorily liquidated in the following cases:

14) Voluntarily, when the duration of operation of the company as stipulated in the charter expires without a decision to extend;

15) Voluntarily, when (i) the company owner (the "**Owner**") in the case of a private enterprise; or (ii) partners' council (the "**Partners' Council**") in the case of a partnership; or (iii) members' council (the "**MC**") or the company owner in the case of a limited liability company ("**LLC**"); or (iv) the general meeting of shareholders ("**GMS**") in the case of a joint stock company / shareholding company ("**JSC**"), decide to wind up the company;

16) Compulsorily, when the company does not have the minimum number of members of the company (at least 2 members of a multiple member LLC or three (3) shareholders of a JSC) for a period of six (6) consecutive months and does not conduct procedures to convert the form of enterprise;

17) Compulsorily, when its enterprise registration certificate (the "**ERC**") is withdrawn by an administrative authority; or judicial, when ordered by a court decision.

An enterprise is only allowed to be dissolved when it ensures it will pay all debts and other property obligations and is not in the process of resolution of a dispute at a court or arbitration agency. The relevant managers and the enterprise, in the case of item (4) above, are jointly responsible for the debts of the enterprise.

(I) Which are conditions for liquidation of a company?

There are three main conditions for liquidation of a company in Vietnam:

1) The company must ensure it is capable of paying all debts and other property obligations;

2) The company is not in the process of resolution of a dispute at a court or arbitration agency;

3) In case the liquidation of the company is due to the withdrawing of its ERC or as ordered by a court decision, the company and the relevant managers are jointly responsible for the debts of the company.

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

For the normal case of liquidation, one that **is not** ordered by the administrative authority or court decision, the liquidation of a company will follow these steps:

1) Passing dissolution decision: First, the Owner / Partners' Council / MC / GMS of a company will pass a resolution or decision on dissolution of the company (the "**Dissolution Decision**").

2) Within seven (7) working days from the date of passing a Dissolution Decision, the company must display publicly the Dissolution Decision at the head office and send the Dissolution Decision to (i) the Business Registration Authority ("**BRA**"); (ii) the Tax Authority; and (iii) Employees.

If the company has not yet fulfilled its financial obligations, it must send the Dissolution Decision together with a plan on settlement of debts to creditors and people with related rights, obligations, and interests.

The BRA is responsible to make an announcement of the status of the company which is currently conducting procedures for dissolution on the National Business Registration Portal immediately after receiving the Dissolution Decision from the company and must publish the Dissolution Decision and the plan on settlement of debts (if any) together with the announcement.

3) After delivery of the Dissolution Decision to the relevant parties, the company will make payments and clear all debts of the company and complete all pending obligations with tax authorities and employees.

The owner of a private enterprise, the members' council or company owner or the board of management shall directly organize the liquidation of assets of the company, except where the establishment of a separate liquidation organization is stipulated by the charter of the company.

After payment of costs of the dissolution proceeding of the company and debts, the remainder shall be distributed to the members, shareholders, or company owner in proportion to their ratio of ownership of capital contribution portions or shares.

4) The legal representative of the company shall send an application file for completion of dissolution of the company to the BRA within five (5) working days from the date of payment of all debts of the enterprise.

Within five (5) working days of receipt of the application from the company, the BRA is responsible to update the status of company as "dissolved" on the National Business Registration Portal.

For the special case of liquidation that **is** ordered by the administrative authority or court, a company will follow these steps:

a) The steps for liquidation of a company will likely be the same as the steps mentioned above. However, such a company is required to convene a meeting to make a Dissolution Decision within ten (10) days from the date of receipt of the decision revoking the ERC or the legally effective decision of the court. In addition to the legal requirement to publish an announcement of dissolution in a newspaper, the Dissolution Decision must be published in at least one printed or electronic newspaper in three consecutive issues;

b) The manager of the company concerned must be personally responsible for any loss caused by the failure to implement or failure to correctly implement the requirement on dissolution of the company as required by the law.

(K) What is the priority for the order of payment of debts of the company?

Debts of the company are paid in the following order of priority:

1) Unpaid wages, retrenchment allowances, social insurance, health insurance and unemployment insurance in accordance with law and other benefits of employees pursuant to the signed collective labor agreement and labor contracts;

2) Tax liabilities; and

3) Other debts.

(L) How can I tell if a company is in liquidation or is liquidated?

When a company is in liquidation or is liquidated, the status of the company can be seen on the National Business Registration Portal, it will mention that the company “is in liquidation” or “is liquidated”.

(M) Liquidation timing and costs

The time required for the liquidation process depends on the size of the company and on the quantity and quality of its assets. Normally, a small company will take around six (6) months for dissolution. The legal costs for liquidation may also vary depending on the size of the company and the duration of the dissolution process. The legal costs may be around US$6,000 for a normal case and higher for more complicated cases

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