

LIQUIDATION OF A LIMITED LIABILITY COMPANY IN AUSTRIA

1. 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.

2. Reasons for dissolution

2.1. 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	<p>Unless otherwise agreed, a limited liability company is deemed to have been concluded for an indefinite period of time.</p> <p>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.</p> <p>The subsequent introduction of a time limit by changing the articles of association is possible.</p>
Resolution of the shareholders	<p>In principle, it can be passed with a simple majority.</p> <p>The articles of association may provide for a different majority or may depend the resolution on the existence of an important reason.</p> <p>The resolution must be notarized, otherwise it is not registrable in the company register.</p>

<p>Resolution to merge with a joint-stock company or another limited liability company (§ 96 GmbHG)</p>	<p>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.</p>
<p>Opening of bankruptcy proceedings or finality of decision of a resolution, with which bankruptcy proceedings are withdrawn due to the lack of sufficient funds</p>	<p>One of the most common reasons for dissolution.</p> <p>Bankruptcy proceedings must be filed on application of the company or a creditor.</p> <p>There is an obligation to submit an application of opening bankruptcy proceedings, if the company is either insolvent (§ 66 IO) or overindebted (§ 67 IO).</p>
<p>Order of an administrative authority</p>	<p>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.</p>
<p>Resolution of the Commercial Court</p>	<p>§ 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.</p> <p>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.</p>

2.2. 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)

3. Stage of Liquidation

- 3.1. 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).
- 3.2. 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).

4. 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.

- 4.1. 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.
- 4.2. 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.

5. Timing and Costs

- 5.1. The timeline and cost of a liquidation depends very much on the certain circumstances and cannot be answered in general.
- 5.2. 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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