LIQUIDATION OF 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.