

LIQUIDATION OF 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.

Contact persons in Germany

Frankfurt am Main: Christian Beye, Attorney at Law and Notary
E: c.beye@ebl-factum.com
T: + 49 (0) 69 / 7 47 49 – 1 90

Wuppertal: Frank Neldner, Attorney at Law
E: f.neldner@ebl-eschkramer.com
T: +49 (0) 202 / 2 55 50 50