LIQUIDATION OF 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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