

LIQUIDATION OF 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:

- 1) Fast-track voluntary liquidation
- 2) Regular voluntary liquidation
- 3) Bankruptcy
- 4) 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.

- 1) 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.
- 2) 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.
- 3) 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.
- 4) If no objections were raised within two months, the actual distribution takes place.
- 5) 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.

Reference contacts in the Netherlands

Sjef Bartels

sjef.bartels@labre.nl

+31 20 305 2030

Jelmer Feenstra

jelmer.feenstra@labre.nl

+31 20 305 2030