

## LIQUIDATION OF A COMPANY IN VIETNAM

### (A) How many cases of liquidation do exist?

Liquidation or dissolution of a company is a procedure for terminating an enterprise where its assets are realized to pay its debts and other financial obligations. In general, such liquidation is governed by the law on enterprises (“**LOE**”), while the bankruptcy of companies shall be carried out in accordance with the law on bankruptcy.

A company may be voluntarily or compulsorily liquidated in the following cases:

- 1) Voluntarily, when the duration of operation of the company as stipulated in the charter expires without a decision to extend;
- 2) Voluntarily, when (i) the company owner (the “**Owner**”) in the case of a private enterprise; or (ii) partners' council (the “**Partners' Council**”) in the case of a partnership; or (iii) members' council (the “**MC**”) or the company owner in the case of a limited liability company (“**LLC**”); or (iv) the general meeting of shareholders (“**GMS**”) in the case of a joint stock company / shareholding company (“**JSC**”), decide to wind up the company;
- 3) Compulsorily, when the company does not have the minimum number of members of the company (at least 2 members of a multiple member LLC or three (3) shareholders of a JSC) for a period of six (6) consecutive months and does not conduct procedures to convert the form of enterprise;
- 4) Compulsorily, when its enterprise registration certificate (the “**ERC**”) is withdrawn by an administrative authority; or judicial, when ordered by a court decision.

An enterprise is only allowed to be dissolved when it ensures it will pay all debts and other property obligations and is not in the process of resolution of a dispute at a court or arbitration agency. The relevant managers and the enterprise, in the case of item (4) above, are jointly responsible for the debts of the enterprise.

### (B) Which are conditions for liquidation of a company?

There are three main conditions for liquidation of a company in Vietnam:

- 1) The company must ensure it is capable of paying all debts and other property obligations;
- 2) The company is not in the process of resolution of a dispute at a court or arbitration agency;
- 3) In case the liquidation of the company is due to the withdrawing of its ERC or as ordered by a court decision, the company and the relevant managers are jointly responsible for the debts of the company.

**(C) What are the steps to liquidate a company?**

For the normal case of liquidation, one that **is not** ordered by the administrative authority or court decision, the liquidation of a company will follow these steps:

- 1) Passing dissolution decision: First, the Owner / Partners' Council / MC / GMS of a company will pass a resolution or decision on dissolution of the company (the "**Dissolution Decision**").
- 2) Within seven (7) working days from the date of passing a Dissolution Decision, the company must display publicly the Dissolution Decision at the head office and send the Dissolution Decision to (i) the Business Registration Authority ("**BRA**"); (ii) the Tax Authority; and (iii) Employees.

If the company has not yet fulfilled its financial obligations, it must send the Dissolution Decision together with a plan on settlement of debts to creditors and people with related rights, obligations, and interests.

The BRA is responsible to make an announcement of the status of the company which is currently conducting procedures for dissolution on the National Business Registration Portal immediately after receiving the Dissolution Decision from the company and must publish the Dissolution Decision and the plan on settlement of debts (if any) together with the announcement.

- 3) After delivery of the Dissolution Decision to the relevant parties, the company will make payments and clear all debts of the company and complete all pending obligations with tax authorities and employees.

The owner of a private enterprise, the members' council or company owner or the board of management shall directly organize the liquidation of assets of the company, except where the establishment of a separate liquidation organization is stipulated by the charter of the company.

After payment of costs of the dissolution proceeding of the company and debts, the remainder shall be distributed to the members, shareholders, or company owner in proportion to their ratio of ownership of capital contribution portions or shares.

- 4) The legal representative of the company shall send an application file for completion of dissolution of the company to the BRA within five (5) working days from the date of payment of all debts of the enterprise.

Within five (5) working days of receipt of the application from the company, the BRA is responsible to update the status of company as "dissolved" on the National Business Registration Portal.

For the special case of liquidation that **is** ordered by the administrative authority or court, a company will follow these steps:

- a) The steps for liquidation of a company will likely be the same as the steps mentioned above. However, such a company is required to convene a meeting to make a Dissolution Decision within ten (10) days from the date of receipt of the decision revoking the ERC or the legally effective decision of the court. In addition to the legal requirement to publish an announcement of dissolution in a newspaper, the Dissolution Decision must be published in at least one printed or electronic newspaper in three consecutive issues;
- b) The manager of the company concerned must be personally responsible for any loss caused by the failure to implement or failure to correctly implement the requirement on dissolution of the company as required by the law.

**(D) What is the priority for the order of payment of debts of the company?**

Debts of the company are paid in the following order of priority:

- 1) Unpaid wages, retrenchment allowances, social insurance, health insurance and unemployment insurance in accordance with law and other benefits of employees pursuant to the signed collective labor agreement and labor contracts;
- 2) Tax liabilities; and
- 3) Other debts.

**(E) How can I tell if a company is in liquidation or is liquidated?**

When a company is in liquidation or is liquidated, the status of the company can be seen on the National Business Registration Portal, it will mention that the company “is in liquidation” or “is liquidated”.

**(F) Liquidation timing and costs**

The time required for the liquidation process depends on the size of the company and on the quantity and quality of its assets. Normally, a small company will take around six (6) months for dissolution. The legal costs for liquidation may also vary depending on the size of the company and the duration of the dissolution process. The legal costs may be around US\$6,000 for a normal case and higher for more complicated cases.

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