LEGAL AND ACCOUNTING ASPECTS OF THE WINDING-UP REORGANISATION

Associate Professor Neculina CHEBAC, PhD
Senior Lecturer Carmen CREŢU, PhD in progress
"Danubius" University from Galati

Abstract: *Ceasing the existence of any company requires the performing of certain operations meant to put an end to firm activity and breaking off of its legal person status. These operations are directly connected to company's liquidation procedures.*

For the company to perform its debt payment operations, it has to convert its possessions into money. Company liquidation, as a step subsequent to its dissolution, is governed by certain principles which outline the legal status of the firm in liquidation.

Keywords: company dissolution, accounting law, patrimony assets

Jel Classification*: M4 - Accounting and Auditing, M41 – Accounting, M - Business Administration and Business Economics; Marketing; Accounting*

Ceasing the existence of any company requires the performing of certain operations meant to put an end to firm activity and break off its legal person status. These operations are directly connected to company liquidation procedures.

Subsequent to dissolution, the new status of the company does not allow it to perform new trade operations. However, operations yet unfolding must be completed that is the company has to make the most of those rights originating in the legal activities that are previous to the dissolution.

For the company to perform its debt payment operations, it has to convert its possessions into money, by way of public action.

Finally, net assets are to be divided among partners, in strict compliance with their own rights.

Company liquidation, as a step subsequent to its dissolution, is governed by certain principles which outline the legal status of the firm in liquidation.

The general principles co-ordinating company's liquidation are the following:

1. the legal person status of the company is a necessary step for the liquidation to proceed;
2. liquidation is to be performed in the best interest of partners;
3. firm's liquidation is optional and by no means compulsory.

The winding up the company has certain effects upon its status. Thus, its aims and objectives can be noticed to change according to liquidation purposes. Then, company superintendents are to be replaced with liquidators, the latter becoming the managing board of the company. Finally, company's administration is handed over to liquidators, which are to administrate the winding-up firm.

Liquidators are those persons changed with organizing and leading firm winding-up operations. Considering their role in administrating the company in clearance, it is the law that settles the conditions of their appointment, competence and responsibilities.

In the absence of any legal restraint, liquidators' may as well be partners or persons outside the company. Law does accept the case in which administrators them selves become liquidators.

As the liquidation step does not allow for new operations to begin, any dormant partner may become a liquidator. Liquidators are appointed by partner assembly decision. They are considered as firm fiduciaries and have all competences deriving from this position. The managers' commission is considered in terms stipulated by law and by contract. Certain prerogatives of liquidators are granted by partners having the same majority as that required in their appointment.

Besides partnership – originated prerogatives, art.178 of Law 31/1990 stipulates quite a series of other puissance warrants of liquidators:

1. they must perform and complete the trade operations involving the liquidation process;
2. they have to wind up as well, as they cash the company debts;
3. they are indebted to put up to action all company movable and fixed assets;
4. they may contract bill obligations and loans, not pertaining to mortgage, and sing up any other paper referring to the liquidation;
5. they may sue or be sued, if this is in the best interest of the liquidation.

Firm clearing off does concern the performing of several operations resulting in the liquidation of the company patrimony. These operations consist in liquidating firm's assets and liabilities. The purpose of these assets and liability – winding up procedures is that of converting company's assets into money so as to pay off firm's debts. Any contingent net assets are to be distributed to extant partners.

Clearance sale operations affecting firm's assets refer to converting firm's patrimony into money and cash all debts owed by the third parties.

Converting company goods into money is performed by public auction. According to legal provisions, liquidators can sell by public auction any movable or real asset belonging to the company (art.178 letter c). Law 31/1990). As a precautionary step, law does not allow liquidators to sell company's assets, that is it bans their selling firm's patrimony at an overall contractual price. Consequently, each asset to be put up auction is to receive an individual assessment.

Firm liability liquidation stands for paying off all company debts to its creditors. Liability winding up is performed by liquidators in a strict compliance with legal provisions. Paying off the debts owed to creditors is to be worked out with that money resulted from the clearance sale of firm assets. As shown above, in order to pay off the debts, liquidators may legally contract bill obligations or contracts.

As the winding up procedure does not influence the legal interdependence between the company and its creditors, debt paying off is to be affected completely as well as scheduled for a precise settling day.

When the company ceases to exist, as a consequence of its dissolution and liquidation, partners must each receive a share equal to that formerly contributed to either founding the company or increase its registered capital; they ought as well to receive a share of the unearmarking benefits. However, such rights can be turned to account only after having paid off all debts owed to company creditors and only if a positive balance has been left.

Sometimes, firm's assets do weigh a lot as compared to liabilities, so liquidators can pay partners certain amounts in the owed money account, before concluding clearing off operations.

However, mostly, it is after having concluded winding up operations that liquidators can find whether there are net assets to further be divided among partners. In this respect, liquidators must work out the final balance and, if it is the case, make suitable propositions to split up the net assets and distribute them to partners.

After having ended the operations of distributing the net assets among partners, company's liquidation is concluded. Two last formalities are to be settled so as liquidation consequences to finally work:

1. the firm is to be erased from the Register of Companies;
2. steps must be taken to keep up cash books and other company documents intact.

The end of winding up operations and of company's existence, as a legal person, is connected to the responsibility for any possible debt owed to creditors that did not receive their money all along the clearing off process.

If the clearance sale is over and the company does no longer exist (that is it has been erased form the Register of the Companies), the responsibility for social obligations is that of the partners who, according to the law, have unlimited bondage for social obligations. This is the case of general partnership associates and limited partnership general partakers.

Dissolution cases mentioned by Title IV Chapter 1 in the Law of Companies 31/1990, republished, may be classified of follows:

1. *General cases* of dissolution that may be applied to all types of company (art.222/1/):
    a) the elapse of the time period settled for company existence;
    b) the impossibility of carrying out the object aimed at by the company or, on the contrary, its achievement;
    c) the company nullity resolution;
    d) law decision, at the request of any partner, if it is based on solid grounds, together with serious disagreements among partners, which do not allow the company to operate properly;
    e) firm bankruptcy;
    f) other cases stipulated by the law or the company's founding document.
2. *Special cases* of company dissolution with application to certain legal types of company:

a) the dissolution of joint stock companies, in the case and terms stipulated by art.153 Law 31/1990, republished, when the registered capital is reduced under the "legal minimum" – as stipulated by law – or the number of shareholders falls under the legal minimum (art.223 (1) and (3) Law 31/1990 republished);

b) the dissolution of limited partnership with a share capital or of limited liability companies occurring in case of having lost its registered capital, or

according to the case, when having reduced this capital under the legal minimum, if such cases are not deterred in nine months from their detection (art.233 (2) and (3) Law 31/1990, republished);

c) the dissolution of general partnership or of limited liability companies in cases of bankruptcy, expulsion, incapacity, withdrawal or demise of any of the partners, when, subsequent to these causes, there is only one associate left, except for the situation in which the founding documents include an heir-co-participating clause and for the case in which the remaining associate decides upon continuing company existence in the form of a one – partaker Ltd. (art.221 (1) and (2) Law 31/1990 republished);

d) provisions of art. 224 (1) and (2) Law 31/1990, republished, do also refer to limited partnerships and to limited partnerships with a share capital, if additional clauses concern the only either dormant or general partner.

3. Other dissolution clauses pronounced by the Court, at the request of Chamber of Commerce and Territorial Industry or of any other interested party (art. 232 (1) and (2)):

a) the company has no left statutory organs or the latter cannot assemble;

b) the firm has ceased for three years in a row to hand in the accounting balance sheet on other documents which, according to legal provisions, must be handed in at the Register of Companies' Office;

c) the firm has ceased its activity or it has no known location or it partakers vanished or, finally, its premises are not made public, except for the case in which the firm activity has been declared as temporary to fiscal authorities and enlister at the Register of Companies, and inactivity does not go beyond three years from Register enlisting.

Settlement sanctioned by Order 1223 on June 12th 1998 of the Ministry of Finance refer to the following liquidation – concerned operations to be effected at company dissolution, in the cases stipulated by art. 222, 1st paragraph (except for the dissolution pattern mentioned at letter f) and by art. 223 – 232 Law 31/1990 republished:

1. inventorying and assessment of patrimony assets of winding up firms, in conformity with the provisions of point 19 letter b and points 127 – 132 in the Accounting Law Enforcing Regulations no 82/1991 and with the settlements sanctioned by Minister for Finance Order 2388/1995;

2. the working out of the clearing-off company's accounting balance sheet on the code 10 form, as settled in the Methodology Regulations on drawing up,

checking out and centralizing the accounting balance sheet of economic agents, for the year previous to the liquidation;

3. general meeting or partner assembly agreement on which operations are to be effected by the liquidator, on behalf of the company;

4. turning patrimony asset components (selling immovable and stock, cashing debts and temporary investments etc.) to the best account;

5. effecting budget debt remittance operations, paying off social insurance sums, paying all debts to third parties or employees etc.;

6. establishing the winding up result (profit or loss);

7. calculation, retaining or budget remittance of the tax on the profit resulted from company clearance sale, of that on the dividends obtained by shareholders or partners, as a consequence of firm liquidation, or of any other tax, levy or contribution owed by the company at issue;

8. working out the partition – opening balance sheet of the form mentioned at point 2nd;

9. operating the company net asset partition, derived from the liquidation and in compliance with:

- the company status or contract provisions;
- the general meeting decision, as mentioned in the meeting register book;
- the company capital participating quota.

The partition consists in dividing the net assets resulted from the liquidation among shareholders or partners.

The operation to proceed to in case of bankruptcy (which is to be affected in compliance with art.72 – 122 of Law 64/1995, with the subsequent alterations) is the following:

1. the sealing of firm's patrimony assets, which is an operation to be carried out by the insolvency practitioner or, depending on the case, by the liquidator, who are to take all necessary steps in order to preserve all involved assets;

2. the inventorying and assessment of firm patrimonial assets with abiding by the provisions of point 19 letter b) and point 127 – 132 in the Accounting Law Enforcing Regulations no. 82/1991 and by the settlements sanctioned by Order 23388/1995 of the Minister for Finance;

3. working out the liquidation – opening balance sheet, on the code 10 form, as stipulated in the Methodological Norms concerning the drawing up, the

checking out and the centralizing of economic agents' accounting balance sheets, for the year previous to that of the liquidation;

4. the selling of perishable or impending debased goods;

5. the selling of the assets in which the debts is interested (lands, factories, equipment), as quickly as possible, at the best price and with having creditors' previous agreement;

6. the depositing at the bank, in the debtor's account, of all the money resulted from having sold the assets;

7. the establishing of the passive mass, that is the working out of the list of creditors;

8. the earmarking of liquidation – resulted sums, according to the plan of distribution among creditors, in that order stipulated by the law;

9. the working out and approving of the final report;

10. the drawing up of the liquidation – ending balance sheet.

If liquidation goes beyond a fiscal period, liquidators must work out the annual accounting balance sheet and hand it in at the country General Directorate for Public Finances or at the Bucharest D.G. when settled by the Ministry of Public Finances.

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