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THE ACCOUNTING OF ASSET LIQUIDATION IN DISSOLVING COMPANIES

Abstract: *As complex socio-economic systems, companies are not characterized by stability but rather by change and transformation- being subject to the universal law of impermanence according to which everything that is the outcome of a combination of elements must necessarily dissolve when different causes from those leading to the emergence of the combination occur. Consequently, in their quality as nonmechanical socio-economic systems they are born, live, grow and die, going equally through evolutions and involutions that are closely linked to some forces that interact and condition each other.*

Sometimes, whether resulting from random internal fluctuations or from external forces, or from both of these causes, the relative equilibrium of companies is broken, requiring **the dissolving and liquidation of their assets.**

The following factors can lead to company dissolution, and consequently to asset liquidation:

- the expiry of the company's duration;
- the impossibility of carrying out its main business activity;
- a decision made by partners;
- bankruptcy;
- loss of half of the share capital or its decrease below the legal threshold, unless the partners decide to increase it;
- the reduction of the number of shareholders to less than five in joint stock companies, unless this has been completed within six months;
- the reduction of the number of partners to one as a result of bankruptcy, the incapacity, exclusion, withdrawal or death of one or several partners, in general partnerships and private limited companies;

- the death of the only active partner or of the only sleeping partner in limited partnerships and limited partnerships with shares, unless there is a clause for continuation by heirs;
- the incapacity, exclusion, withdrawal or bankruptcy of the only active partner or of the only sleeping partner in limited partnerships and in limited partnerships with shares.

Company dissolution must be recorded at the Trade Register and published in Romania's Monitorul Oficial, except for those cases when the company is dissolved as a result of the expiry of its duration.

In the case of general partnerships, limited partnerships and private limited companies, registration and publication will be done only with the consent of all partners, within 15 days from authentication and by statement in front of the judge from the Trade Register Office.

In the case of public limited companies and of limited partnerships with shares, the dissolution resolution of the general meeting must be filed in court within 15 days, so as its legality is checked and the application is resolved.

Only when the dissolution statement is final will the resolution of the general meeting be filed at the Trade Register Office, in order to be written down and published in Romania's Monitorul Oficial.

The dissolution of companies before the expiry of their duration will become effective to third parties only after 30 days from publication in Romania's Monitorul Oficial.

Once the company has been dissolved, **the directors have to proceed to its liquidation**, unless the law, the articles of association, the memorandum of association, the general meeting or the judge pronouncing the dissolution decide differently.

From the dissolution moment, the directors will not be able to perform other operations; otherwise, they are personally and as a group liable for the performed operations.

Once the company has been dissolved, the next stage will be the liquidation and allocation of its share capital.

The appointment of liquidators in general partnerships, limited partnerships, or private limited companies must be done by all partners, unless otherwise stipulated in the articles of association. In the absence of unanimity, the appointment of liquidators will be done by a court of law, at the request of any partner or director, with the approval of all partners and directors.

The appointment of liquidators for public limited companies and for limited partnerships with shares will be made by the general meeting, which decides the liquidation- with the majority stipulated for the memorandum change, unless the articles of association or the memorandum of association stipulate differently. If a majority has not been obtained, the appointment will be made by a court of law, at the request of any partner or director, with the citation of the company and of those making the request.

The court sentence can be appealed by partners or shareholders and directors within 15 days from its pronouncement.

The company directors will provide the liquidators with a report regarding the management of the company from the date of the last approved balance sheet to the beginning of the liquidation.

The liquidators can approve the report or draw up and defend any complaints against it.

When one or several directors have been appointed as liquidators, the report on the company's management will be filed at the Trade Register and published in Monitorul Oficial, together with the final liquidation balance sheet.

When the management exceeds the financial year, this report must be attached to the first balance sheet, which the liquidators will present to the general meeting.

If the liquidation exceeds the financial year, the liquidators must draw up the annual balance sheet in compliance with the law, the articles of association and the memorandum of association.

Even if the articles of association and the memorandum of association stipulate **norms regarding the liquidation and allocation of the company's share capital**, at least the following **general rules** must be followed:

a) until the liquidators start their activity, the directors will remain in office unless otherwise stipulated by the articles of association, the memorandum of association, a decision of the general meeting or a decision of the law court that pronounced the dissolution;

b) the liquidators' appointment deed or the sentence replacing it, as well as any subsequent document that might lead to changes in their person, must be filed at the Trade Register through the liquidators' care in order to be written down and published in Romania' Monitorul Oficial. Only when these formalities have been completed can the liquidators present their signature at the Trade Register and commence activity. From

this moment on, no action can be carried out for or against the company except in the liquidators' name or against them.

All documents issued by the company must show that this is in liquidation.

As soon as their appointment becomes effective, the liquidators together with the administrators of the company are to **take the inventory** and draw up the **liquidation balance sheet** showing the exact situation of the company's assets and liabilities, and sign them.

The liquidators have to receive and keep the company's assets, the account books from the directors and the company documents. They will also have to keep a book with all the liquidation operations, in the order of their dates.

The liquidators carry out their office under the censors' supervision.

Apart from the special powers conferred to them by the partners, with majority required for their appointment, the liquidators will also be able to:

- stand trial in the interest of the liquidation;
- carry out and complete trading operations regarding the liquidation;
- auction the company's buildings and any other real estate assets; the sale of these assets will be done individually;
- engage in transactions;
- liquidate and collect the company's receivables, even if the debtor is bankrupt, and issue a receipt;
- make payments by bills of exchange, take out loans other than mortgages and carry out any other duties;

However, if there are no special stipulations in the articles of association, the memorandum of association or in their appointment deed, **the liquidators cannot take out mortgage loans secured on the company's assets, unless they are authorized by a law court and with the censors' agreement.**

The liquidators who perform new trading operations without any liquidation purposes are liable personally and as a group for the performance of these operations.

The liquidators cannot pay the partners any sums of money they are entitled to receive from the liquidation before the company has paid its debts to its creditors. However, the partners may request that these amounts be deposited with the Savings Bank or with the local tax office, and allocated according to the number of shares even during

liquidation, if apart from what is necessary in order to cover all the company's debts that are or will be due for payment, an amount of at least 10 per cent remains available. In a general partnership, a limited partnership or a limited liability company, the partners' private creditors may appeal the liquidators' decisions if they are entitled to do so by a previous executory title.

The liquidators showing evidence from the balance sheet that the company's available funds are not enough in order to cover current liabilities, must request the necessary amounts from those partners who have unlimited liability, or have not made the payments they should have made according to the form of business organization, or if they have debts to the company, for any outstanding payments they should have made as partners.

The company's creditors are entitled to claim the amounts owing from matured receivables, including the company's fixed assets, and only after that turn to partners for the payment of the amounts owed from the value of the subscribed shares or from that of contributions to the company's capital.

After the liquidation of the general partnership, of the limited partnership or of the limited liability company, the liquidators must draw up the **liquidation balance sheet** and propose the **allocation of assets to partners**, while in the case of public limited companies **they will show how much from the company assets is allocated to each share.**

In the case of public limited companies and of limited partnerships with shares, **the balance sheet which has been signed by the liquidators and accompanied by the censors' report will be filed at the Trade Register and published in Romania's Monitorul Oficial.**

The amounts to which the partners and the shareholders are entitled, but which have not been collected within two months from the publication of the liquidation balance sheet will be deposited at the Savings Bank, with the indication of the partner's or shareholder's name and surname, or the share numbers if these are payable to bearer.

After the company liquidation, the liquidators have to request the erasure of the company from the Trade Register.

When the calculations and allocation have been approved, the **account books and documents of general partnerships**, limited partnerships and private limited companies will be entrusted to the partner designated by the majority, while for public limited companies and limited partnerships with shares they will be filed at the Trade Register, where

any interested party may have access to them under the authorization of a law court. The books of all types of businesses will be kept for five years.

„Net assets” will be calculated from the „liquidation balance sheet” by using the following formula:

$$\text{NET ASSETS} = \text{ASSETS} - \text{LIABILITIES}$$

Note: assets and liabilities are inventoried and evaluated as utility value

and the „company treasury” will be calculated based on the relation:

$$\text{TREASURY} = \text{LIQUID ASSETS} - \text{LIABILITIES}$$

If liquid assets do not cover the company’s debts towards third parties, the liquidators will start the realization of the assets, that is their conversion into cash by the sale of some, or all assets. The sale of all assets must also be done if several partners have decided that the capital repayment will be in cash.

Example: Hermes plc has the following liquidation balance sheet at the time when the liquidation decision was made.

LIQUIDATION BALANCE SHEET FOR HERMES PLC

-thousands of lei-

Assets			Liabilities		
1	Machinery and equipment	1200	1	Subscribed share capital paid	1000
2	Securities	700	2	Other reserves	400
3	Stocks	400	3	Long-term loans	500
4	Accounts receivable	200	4	Suppliers	600
Total assets		2500	Total liabilities		2500

Note: Let’s assume that equipment and machinery are sold for 1,500,000 lei, and stocks for 400,000 lei.

a. Asset realization at Hermes plc

a₁) sale of equipment and machinery

1.785.000	461	=	%	
			7583	1.500.000
			4427	285.000

a₂) invoice collection for sold equipment and machinery:

1.785.000	5121	=	461	1.785.000
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a₃) Sale of stocks:

476.000	4111	=	%	
			707	400.000
			4427	76.000

a₄) invoice collection for sold stocks:

476.000	5121	=	4111	476.000
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a₅) VAT received from the state budget:

361.000	4427	=	4423	361.000
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a₆) VAT payment to the state budget:

361.000	4423	=	5121	361.000
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a₇) Sale of securities:

700.000	461	=	7641	700.000
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a₈) Deducting securities sold to third parties:

700.000	6641	=	261	700.000
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a₉) Collection of securities sold to third parties

700.000	5121	=	461	700.000
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a₁₀) Collection of accounts receivable:

200.000	5121	=	4111	200.000
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a₁₁) Deduction of sold equipment and machinery:

1.200.000	6583	=	2131	1.200.000
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a₁₂) Deduction of sold stocks:

400.000	607	=	371	400.000
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b. Debt repayment to creditor third parties

b₁) Repayment of long-term bank loans and payment of debts to suppliers:

	%	=	5121	1.100.000
500.000	162			
600.000	401			

c. allocation of assets to shareholders (partners)

c₁) the final financial result from asset sale at HERMES plc:

c₁₁) incorporating expenses into the financial result:

2.300.000	121	=	%	
			6583	1.200.000
			607	400.000
			6641	700.000

c₁₂) incorporating incomes from asset realization:

	%	=	121	2.600.000
1.500.000	7583			
400.000	707			
700.000	7641			

c₁₃) corporate tax on asset realization:

48.000	691	=	441	48.000
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c₁₄) Payment of corporate tax:

48.000	441	=	5121	48.000
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c₁₅) Deducting expenses with the corporate tax:

48.000	121	=	691	48.000
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c₁₆) Allocation of net profit:

252.000	121	=	457	252.000
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c17) Divident tax owed to the state budget:

40.320 457 = 446 40.320

c18) Divident tax transfer to the state budget:

40.320 446 = 5121 40.320

c19) Payment of dividends owed to shareholders (partners):

211.680 457 = 5121 211.680

c21) Repayment of share capital to the shareholders (partners):

	%	=	456	1.400.000
1.000.000	1012			
400.000	1068			

c22) Transfers of amounts owed to partners:

1.400.000 456 = 5121 1.400.000