PATRIMONY LIQUIDATION IN THE CASE OF A COMPANY DISSOLUTION

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Abstract

In the "life" of a company it happens that periods less favorable appear so that, sometimes, the respective company dissolution may occur involving the patrimony liquidation. Such activity requires going through several stages which consist in turning the company assets into active capital and the payment of all the debts and, should something remain, such excess will be divided among the shareholders. But there is a fact which should not be omitted, i.e. turning the patrimonial goods into active capital is not an easy activity as it may happen that the capitalization of such assets may be done at the liquidation value and not at the market value, that is a decreased value which may be much lower than the market value. And then, the asset value could be less than the liabilities value which means that the shareholders, instead of receiving money subsequent to the patrimony liquidation, would have to complete the amounts necessary to the full liquidation of the respective company's liabilities. Preferably, one should not reach such a situation.

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1. Introduction

A company is set up to develop a profit generating economic activity, either for a specified period or for a limited period, as provided for in the articles of association. In companies established for an indefinite period, the economic activity must continue even after the death of the partners, but at some point, any company can disappear from the market because, as in the case of people, destiny is one: it is born, lives and dies.

According to the legislation in this field, a company is considered an association of natural and / or legal persons for the achievement of a common interest, the realization of a profit from this association, profit that must be shared between the shareholders. The company is the entity which one or more persons organize through the articles of association, in order to achieve benefits, providing the goods necessary for the accomplishment of some trade deeds, in accordance with the field of activity. (Ungureanu, O., & Munteanu, C., 2013).

The concept of a company involves the association of natural or legal persons, who share certain assets in order to carry out an economic activity and the resulting benefits. (Letea, C.-M., 2008). At the same time, a company may disappear. as an economic, social and legal entity along with its dissolution and liquidation.

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2. The dissolution of a trading company

The dissolution and liquidation of companies refers to the same process, namely the one through which the entities cease their activity. The dissolution has the effect of the legal disappearance of the company and, finally, the deletion from the Trade Register. The liquidation begins after the company has been dissolved and involves the transformation of the asset into money for the payment of creditors and the sharing of net assets between the partners. Basically, it can be considered that the liquidation of a company is preceded by its dissolution. (Pop & Asocioaţii, 2022).

The main reasons standing at the base of a trading company dissolution:

- The passage of the time set up as the duration of the company;
- Impossibility to achieve the company field of activity or its performance;
- Declaration of the company nullity;
- Resolution of the general assembly;
- The decision of the court, upon the request of any shareholder, for good reasons, such as serious misunderstandings between the shareholders, which impede the operation of the company;
- Company bankruptcy;
- Other causes provided by law or by the company articles of association.[1]

One should not overlook the fact that art. 237 of the same Law no. 31/1990, as republished, provides that the company is dissolved in the following cases:

a) the company no longer has statutory bodies or such bodies can no longer meet;
b) within 6 months from the expiry of the legal time limits, the company has not submitted the annual financial statements or other documents which, according to the law, are submitted to the Trade Register Office;
c) the company has ceased its activity, does not have a known registered office or does not meet the terms regarding the registered office or the shareholders have disappeared or do not have a known domicile or known residence;
d) the company has not completed its share capital under the terms of the law.

Temporary inactivity does not lead to the dissolution of society. However, such inactivity must be notified to the tax authority and filed with the Trade Register. The duration of inactivity may not exceed 3 years. The dissolution of the company is carried out in three ways: by law, by the will of the shareholders

[1] Law no. 31/1990 regarding societies, republished in the Official Gazette of Romania no. 1066 from 17 November 2004, art. 227.

and by court order. Each of these dissolution routes requires compliance with certain conditions provided by law.

Company dissolution by law. In the case of the company dissolution by law, the dissolution occurs automatically, if the hypothesis of the law is satisfied. Consequently, no formalities are required for the dissolution of the company. The law deals with only one case of company dissolution by law: expiry of the term set up for the duration of the company. Since the shareholders have set up, by the articles of association, the company duration and that fixed term has expired, the company is dissolved, by law, on the date of that term expiry. As the dissolution takes place by law, no shareholders' manifestation of will and no formality of publicity is required. (Nagy, C. M. & Ghica, E. D., 2020)

Company dissolution by the shareholders' will. The company can be dissolved by the shareholders' will, expressed in the general assembly. For the dissolution of the company by the shareholders' will, the conditions set up by law must be observed by amending the articles of association (art. 204 of the Law no. 31/1990, as republished). The resolution on dissolution is taken in compliance with the quorum and majority conditions provided by law for the extraordinary general meeting.

The instrument which ascertains the resolution regarding the dissolution of the general assembly is submitted to the Office of the Trade Register to be entered in the register, then it is sent, ex officio, to the Official Gazette, for publication, except for the case provided in art. 227, paragraph 1, letter A of Law no. 31/1990, as republished. In the case of the company dissolution before the expiry of the term fixed for its duration, the dissolution produces effects towards third parties only after a period of 30 days from the publication in the Official Gazette. (Nagy, C. M. & Ghica, E. D., 2020).

Company dissolution by court order. The company may be dissolved by a court order. In the case of bankruptcy, the company dissolution is decided by the court invested with the bankruptcy procedure (art. 232 paragraph 3 of the republished Law no. 31/1990). According to law, any shareholder may ask the court for the company dissolution on good grounds. The law presumes as well-founded reasons the serious misunderstandings between the shareholders, which prevent the functioning of the company. It is understood that the only solution is to dissolve and liquidate the company if, due to the misunderstandings between the shareholders, a blockage is created that makes it impossible to carry out the activity. (Nagy, C. M. & Ghica, E. D., 2020) Once the company dissolution determined, the respective procedure results in the opening of the liquidation procedure and the prohibition of new commercial operations.

3. Trading company liquidation

The liquidation consists of a set of operations which, after the dissolution of a company, have as object the achievement of the asset's elements (turning the

assets into money) and the payment of creditors, in order to proceed to the distribution of the remaining net assets between the shareholders. Liquidation is the second and final stage in the existence of a company. The liquidation occurs as a mandatory effect of the company dissolution, except for the universal transfer of the patrimony of the dissolved company as a result of the merger or division, as provided by art. 248, paragraph (1) and (3) Civil Code. (Nagy, C. M. & Ghica, E. D., 2020).

Even if the Law no. 31/1990 on trading companies did not provide a definition of liquidation, the specialized literature has issued several definitions of it, so the liquidation of a company consists of all acts and operations that the liquidator appointed under the law must and can do with a view to the destructuring of the assets and the extinguishing of the existing rights and obligations - after the moment of dissolution - in that patrimony, in order to terminate the legal personality acquired by the company and to be able to strike it off the Trade Register in which it was registered (Schiau, I. & Prescure, T., 2009).

In order to liquidate the company's assets, it is necessary to appoint a liquidator, who will deal, voluntarily or judicially, with the liquidation of the assets. The appointment of the liquidator must be made by all the shareholders, unless otherwise provided in the articles of association, and if the unanimity of the votes cannot be met then this appointment will be made by the court at the request of any shareholder or director, with the hearing of all shareholders and administrators (Article 262 paragraphs (1) and (2) of Law No. 31/1990). Anyone, including administrators, may be appointed as liquidator. From the moment of accepting the mandate, the liquidators replace the administrators and start their activity which is governed by the same rules as for the administrators, except for some specific legal provisions or contractual clauses.

Once the company has entered the dissolution procedure, it would be advisable to make a valuation of the company to be liquidated in order to know the value of the assets and liabilities, i.e., to be assessed at the market value. An updated value of assets and liabilities can be an advantage for the shareholders because that way they have a chance to share from the company value.

The assets of a company are represented by assets that can be capitalized, and this capitalization brings the company amounts of money to cover liabilities (debts) of any kind as well as an amount of money which can be distributed to the shareholders in the end, after the payment of all debts.

If the company has real estate items in its patrimony, it is even advisable to make an assessment of them because the market value is almost always higher than the book value and their capitalization at market value is also a certainty that the company's liabilities can be covered by capitalization of assets such as real estate. If these assets are not assessed and are capitalized at a liquidatation forced value, it is likely that these assets will be sold at a value of up to 50% of their actual value, which is not recommended.

The period of time in which the liquidation of the patrimony is desired also matters a lot. A longer period of time allows for a better recovery of assets.

Debts are paid at maturity and in full. At the same time, if they are dissatisfied, the creditors can request the payment of the debts, apart from the company's patrimony, through legal actions, actions that can be directed both against the shareholders and against the liquidators.

In the event that the funds obtained after the liquidation of the assets are not sufficient to cover the debts, the liquidators may ask the shareholders to deposit the funds necessary to cover them in proportion to their ownership quota in the company. If the value of the unpaid debts is higher than the value of the company's debts, the shareholders are no longer obliged to bring additional amounts of money in the company, other than it results from the accounting documents that they would have towards the company in liquidation. Following the liquidation of the liability and, as a result of the surplus of the asset over the liability, the value of the contributions made and any remaining benefits will be paid to the shareholders.

If all the company's assets are not capitalized, they will be distributed to the shareholders proportionate to their participation in the company's capital, together with the cash amounts resulting from the capitalization of other assets.

Once the liquidation balance sheet and the distribution plan are approved, the liquidator's term of office ends, but, in fact, his term of office actually ends only after the request for deregistration of the company from the Trade Register and the payments due to the shareholders, if any. Only after all these formalities have been completed does the liquidator's term of office cease.

The documents of the liquidated company, the registers and the closing balance sheet will be handed to one of the shareholders, elected by a majority vote. Retention of the said documents is mandatory for five years from the date of the closing balance sheet approval.

Conclusions

During the dissolution stage, activities can be carried out that trigger and prepare the company for the cessation of its existence. At this stage the legal personality is not affected but the activity will not develop normally.

However, during the liquidation phase, only activities for the liquidation of the patrimony are carried out, followed by the payment of creditors and the distribution of the balance between the shareholders. During this stage, the company retains its legal personality but the activity is subject to the liquidation requirements.

It is very important to make the best possible use of the company's assets, being recommended a longer period for this capitalization because a short recovery period means that the assets can be assessed at lower prices even than

their book value which can lead to the shareholders' contribution for the payment of debts. If possible, it is advisable to evaluate the assets before capitalizing them.

The dissolution of a company may take place both voluntarily and following events beyond the control of the partners or shareholders. The manner of dissolution and liquidation of the company is established by the articles of association, whether the company is in collective name, in limited partnership, with limited liability (according to art. 7 of the law) or a joint stock company or limited partnership (art. 8 of the law). The procedure is done according to the provisions of art. 237, as well as of art. 238 paragraph (1) of Law no. 31/1990 (the latter providing for specific cases of dissolution for the joint stock company). The completion of the dissolution and liquidation procedures is represented by the deregistration of the company from the Trade Register, from which moment the company ceases to exist. (Nagy, C. M. & Ghica, E. D., 2020).

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