

WINDING-UP / LIQUIDATION

Joint stock companies

OVERVIEW

- Why?
- Directors: powers and duties
- Shareholders'/quotaholders' meeting
- Liquidators: powers and duties
- Cancellation

STEPS

1. VERIFICATION OF A CAUSE OF TERMINATION
2. DECLARATION OF IT BY THE DIRECTORS
3. BUSINESS REGISTER
4. THE DIRECTORS CALL THE SHAREHOLDERS' MEETING
5. THE SHAREHOLDERS' MEETING APPOINTS THE LIQUIDATOR
6. THE DIRECTORS "DELIVER" THE COMPANY TO THE LIQUIDATOR
7. THE LIQUIDATORS CARRY OUT ALL THE ACTIONS APPROPRIATE TO THE LIQUIDATION
8. CANCELLATION OF THE COMPANY

Why? 2484 c.c.

- Duration of term is expired
- The purpose of the company is realised or there is the ascertained impossibility of its realisation (but the meeting...)
- It is impossible for the shareholders' meeting to operate
- The shareholders' meeting is inactive for a prolonged period of time
- The corporate capital is reduced below the minimum
 - 2447
 - 2482ter

Why? 2484 c.c.

- 2437quater and 2473: procedures after withdrawal of the quotaholder
 - The shareholders' meeting resolves upon the termination
 - Other causes provided by articles of association or bylaws
 - Causes provided by the law
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- WHAT HAPPENS?

Duties of the directors (2485)

- They must ascertain without delay the occurrence of a cause of dissolution
- They must register a declaration in the Business Register
 - **effect**



If not, they are personally and jointly and severally **liable for the damages** to the company, to the shareholders, to the company's creditors and to third parties

Duties of the directors (2487)

- Concurrently with the ascertainment of the dissolution causes, they shall **call the shareholders'** meeting in order for the meeting to resolve upon...



If not, the Court shall call the meeting based on a request from one of the shareholders or directors or statutory auditors

Powers of the directors

- **Manage** the company for the sole purposes of the **conservation** of the corporate assets' **integrity and value**



If not, they are personally and jointly and severally liable for the damage caused to the company, to the shareholders, to the company's creditors and to third parties

Art. 2486 - Poteri degli amministratori (testo riformato dal D.LGS. N. 14 DEL 2019)

[I]. Al verificarsi di una causa di scioglimento e fino al momento della consegna di cui all'articolo 2487-bis, gli amministratori conservano il potere di gestire la società, ai soli fini della conservazione dell'integrità e del valore del patrimonio sociale.

[II]. Gli amministratori sono personalmente e solidalmente responsabili dei danni arrecati alla società, ai soci, ai creditori sociali ed ai terzi, per atti od omissioni compiuti in violazione del precedente comma.

[III]. Quando e' accertata la responsabilità degli amministratori a norma del presente articolo, e salva la prova di un diverso ammontare, il danno risarcibile si presume pari alla differenza tra il patrimonio netto alla data in cui l'amministratore e' cessato dalla carica o, in caso di apertura di una procedura concorsuale, alla data di apertura di tale procedura e il patrimonio netto determinato alla data in cui si e' verificata una causa di scioglimento di cui all'articolo 2484, detratti i costi sostenuti e da sostenere, secondo un criterio di normalità, dopo il verificarsi della causa di scioglimento e fino al compimento della liquidazione. Se e' stata aperta una procedura concorsuale e mancano le scritture contabili o se a causa dell'irregolarità delle stesse o per altre ragioni i netti patrimoniali non possono essere determinati, il danno e' liquidato in misura pari alla differenza tra attivo e passivo accertati nella procedura

Shareholders'/quotaholders' meeting

Must resolve upon:

- Number of the liquidator(s)/functioning rules
- Appointment of the liquidator(s)
- Rules for the functioning of the liquidators' body
- Liquidator(s) who represent the company

Shareholders'/quotaholders' meeting

- Criteria for the liquidation, in particular
 - Powers of liquidator(s) regarding
 - Sale of company's going concern
 - Relevant branches
 - Single assets/rights/blocks
 - Measures for conservation of the value to achieve its best liquidation
- temporary carrying-on of business

After the appointment of the liquidators..

- Appointment and powers shall be entered in the Business Register
- In the corporate name must be added “in liquidazione”
- The directors cease to office and
 - Shall deliver to liquidators
 - Corporate books
 - Report on the accounts
 - Report on the management in the period after the last approval if the financial statements

Liquidators

POWERS AND DUTIES

- Carry out all the actions useful/appropriate for the liquidation
 - Examples
 - Sell the premises
 - Sell intellectual property rights
 - Sell movable goods
 - ...

Liquidators

- Prepare financial statements and submit them to the shareholders' meeting
- If the available funds are insufficient for the payment of corporate debts, they can ask proportionally to the shareholders payments outstanding
- Final financial statements
- ASK THE CANCELLATION OF THE COMPANY FROM THE BUSINESS REGISTER

Liquidators

- Final financial statements
 - Approval
 - Every shareholder/quotaholder
 - Tacit approval

Liquidators

LIABILITY

- Professionalism and diligence required by the nature of their office
- Rules provided for directors' liability

CANCELLATION OF THE COMPANY

- 2495 C.C. once the final liquidation financial statements have been approved (even tacit)

After the cancellation

The creditors of the company  have not been paid may ask



to the shareholders up to
the sum received after the
liquidation



to the liquidators if the
reason of not payment is due
to the liquidators' fault

REVOCATION OF THE LIQUIDATION STATUS

- If the cause of dissolution has been eliminated
- By a resolution of the shareholders'/quotaholders' meeting
 - Majority rule
- Effective only 60 days after the entry of the resolution in the Business Register
- Creditors