

ISTRUZIONI PER LE LEZIONI ONLINE

REGISTRATE E TRASMESSE TRAMITE MICROSOFT TEAMS



NON REGISTRARE

Non registrare le lezioni con dispositivi esterni alla piattaforma. Ricorda che **è vietato registrare esami o sessioni di laurea.**



TUTELA LA TUA IMMAGINE

Se non vuoi apparire nella registrazione della lezione **disabilita o copri la webcam.**



STUDENTI E STUDENTESSE



TUTELA I TUOI DATI

Non usare la piattaforma o la chat per **comunicazioni non pertinenti** alle lezioni, per finalità estranee o per domande personali.



TUTELA IL CONTESTO

Disabilita il microfono se non necessario e usa la funzione **sfocatura dello sfondo** se attivi la videocamera. Presta attenzione ai contenuti presenti nel campo di ripresa.



ITALIAN AND EUROPEAN COMPANY LAW

AA 2021/2022

JOINT STOCK COMPANIES

JOINT STOCK COMPANIES

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 "HAND OVER" 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
- Insolvency procedure (!)
- WHAT HAPPENS?

Art. 8 D.L. 118 DEL 24/8/2021 CONV. IN LEGGE 147 DEL 21/10/2021

Sospensione di obblighi e di cause di scioglimento di cui agli articoli 2446, 2447, 2482-bis, 2482-ter, 2484 e 2545-duodecies del codice civile

1. Con l'istanza di nomina dell'esperto, o con dichiarazione successivamente presentata con le modalita' di cui all'articolo 5, comma 1, l'imprenditore puo' dichiarare che, sino alla conclusione delle trattative o all'archiviazione dell'istanza di composizione negoziata, non si applicano nei suoi confronti gli articoli 2446, secondo e terzo comma, 2447, 2482-bis, quarto, quinto e sesto comma, e 2482-ter del codice civile e non si verifica la causa di scioglimento della societa' per riduzione o perdita del capitale sociale di cui agli articoli 2484, primo comma, numero 4), e 2545-duodecies del codice civile. A tal fine, l'istanza o la dichiarazione sono pubblicate nel registro delle imprese e gli effetti di cui al primo periodo decorrono dalla pubblicazione.

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 and in case rule the decisions

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 – Directors' powers(testo riformato dal D.LGS. N. 14 DEL 2019)

[I]. Should grounds for dissolution rise, the directors shall retain their power to manage the company until the handover referred to by Article 2487-bis, for the sole purpose of preserving the integrity and value of the company's assets.

[II]. The directors shall be personally and jointly liable for any damage caused to the company, its shareholders/quotaholders, its creditors and to any third parties, resulting from actions or omissions in violation of the previous paragraph.

[III]. If directors' liability pursuant to this Article is ascertained, and unless a different amount can be proven, the compensable amount is presumed to be equal to the difference between the shareholders'/quotaholders' equity amount as at the date when the director(s) ceased to hold office or, if insolvency proceedings have been initiated, as at the date when said proceedings began, and the shareholders'/quotaholders' equity amount calculated as at the date when a reason for dissolution first arose as per Article 2484, deducting any costs incurred and to be incurred, based on normal criteria, after the reason for dissolution has arisen and until the liquidation is completed. If insolvency proceedings have begun and accounting entries are missing or contain irregularities or if, for other reasons, the shareholders'/quotaholders' equity amounts cannot be calculated, then damages shall be paid equal to the difference between assets and liabilities as ascertained by the proceedings.

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 hand over 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

- Draft 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 who 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

REVOCACTION 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