

Companies' dissolution and liquidation

Italian and European Company Law – A.A. 2024/2025

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→ Articles 2484-2496 c.c.

→ The regulations are set for all limited liability companies

Grounds for dissolution:

- 1) expiration of the time limit set in the instrument of incorporation
- 2) the achievement of the corporate's object or the impossibility to achieve it
- 3) the inability of the shareholders' meeting to function or its continued inactivity
- 4) the reduction of share capital due to losses below the legal minimum
- 5) Resolution of the extraordinary shareholders' meeting to dissolve as a result of the withdrawal of one or more shareholders, or inability to reimburse shares without reducing the share capital, or the upholding of the opposition of corporate creditors to the material reduction
- 6) the extraordinary shareholders' meeting pass a resolution to dissolve the company before the time limit set in the instrument of incorporation
- 7) any other reasons provided for by the instrument of incorporation or by the bylaws

→ For S.A.P.A. (Partnership limited by shares) the Civil Code states another cause of dissolution: if all the managing partners cease to hold office, the partnership shall be dissolved unless they are replaced and the replacement managing partners accept their appointment within 180 days (art. 2458, par. 1, c.c.)

Art. 2485 c.c.

- verification and publicity of the cause of dissolution
- running of effects
- company's name (art. 2487-*bis*, par. 2, c.c.)
- liability of the directors

Liquidation

- purpose of the liquidation procedure
- directors: powers (art. 2486 c.c.)
- other bodies: shareholders' meeting and board of statutory auditors (art. 2488 c.c.)

- revocation of liquidation status (art. 2487-*ter* c.c.)

Liquidators

- appointment and content of the resolution (art. 2487, par. 1, c.c.)
- duration of their office
- removal (art. 2487, par. 4, c.c.)
- publicity (art. 2487-*bis*, par. 1, c.c.)

Liquidators' powers, duties and liabilities (art. 2489 c.c.)
are based on the powers, duties and liabilities held by the directors, with some adaptations

→ they have to carry out their duties with the diligence and professionalism required by their role

→ they must receive the company's assets and the other documents handed over by the directors and they have to draw up an inventory of all the company's assets

→ they must take all action necessary to liquidate the company,
unless otherwise provided in the bylaws or in their appointment

→ Their main task is to liquidate the company's assets and pay the company's creditors:

- prohibition to distribute the company's assets among the shareholders (exception by providing suitable guarantees)
- insufficiency of funds

→ They have to draw up the financial statements and submit it to the shareholders' meeting for the approval every year, as long as the liquidation lasts (art. 2490, c.c.)

→ When the liquidation is complete liquidators must draw up the final liquidation financial statements and the so-called distribution plan (art. 2492 c.c.)

- filing in the Business register (also with the report of the statutory auditors and of the external legal auditors)

→ approval mechanism: each shareholder/quotaholder (not the meeting) – tacit approval (art. 2493 c.c.)

- complaints from shareholders/quotaholders within 90 days from the filing

- if there are no complaints within this 90 days, the final liquidation financial statements shall be deemed approved

Cancellation of the company from the Business register (art. 2495 c.c.)

- after the approval of the final liquidation financial statements, the liquidators ask for the cancellation of the company from the Business register
- If there are company's creditors who have not been paid, they may ask for the payments to the shareholders/quotaholders but only up to the limit of what they have received from the liquidation. Also, they can ask the payments still due to the liquidators if the non-payment is due to their fault