



Liquidation of a German corporation

A Counselhouse Whitepaper

This whitepaper shall provide valuable information to CEOs and main decision makers in regard to winding up a company, registered in Germany, under German regulations

1. The resolution of the shareholder's meeting initiates the opening of a liquidation process

There might be several reasons to close an operating company in the German market place. Especially in an economic downturn the definition of a well-thought exit strategy might represent the best way to protect stakeholders, partners and employees from major financial damage.

The liquidation of a company which is registered in Germany is initiated by a resolution adopted by a common agreement along all shareholders or the corporation. Unless otherwise provided by the articles of incorporation, such a resolution usually needs the majority of votes provided by each of the individual shareholders.

In principle, either the board of directors or an appropriate representative shall carry out the liquidation process. According to the applicable law and the very specific article of incorporation the shareholders may agree on appointing one or several external liquidators, which would represent a non-member of the board of directors. When appointing external liquidators the shareholders have to keep in mind that at least one of the liquidators has to be located in Germany.

1.1. The status during the liquidation phase

The corporation will retain its status as a German legal entity throughout the whole process of liquidation until the process has been successfully completed by either the board of director or the appointed external liquidator. Until the final completion of the overall liquidation process the corporation retains its corporate name, however, which needs to be extended with the words "in liquidation".

2. The duties of the external liquidators

2.1. Main duties

It is the liquidator's duty to wind up the current business and all relating affairs, as well as to collect unpaid contributions for shares if necessary. The liquidators also represent the corporation in all legal transactions which are related to the liquidation process itself. Furthermore the liquidators may appear in court or enter into settlement agreements or agreements to arbitrate on behalf of the corporation.

In addition, the liquidators may also sell assets at their own discretion unless otherwise provided by the shareholder's meeting. If necessary the liquidators may also enter into upcoming business transactions.

2.2. Notice to claimants

Once the actual liquidation process has been initiated all the creditors of the corporation recorded in the corporation's accounting books are to be notified about the started liquidation process. The liquidator has to publish the dissolution of the company and the request to all creditors of the company to assert their claims in the German Federal Gazette once.

2.3. The Balance sheet

The liquidators shall prepare a balance sheet based on the liquidation value. The liquidation value should be audited by the statutory auditors and be approved by a shareholders' meeting. In the case the liquidation is planned for a longer period of multiple years, the liquidators shall prepare annual interim balance sheets.

2.4. Insolvency

In the case that the liquidators discover a financial distress within the company which leads to an insolvency, the liquidators are in charge to immediately inform the responsible judge. The judge will then officially declare the corporation to be bankrupt.

3. Liability

3.1. Corporation

The corporation is liable for damages resulting from unlawful acts committed by a liquidator while performing his duties.

3.2. Liquidators

Any person entrusted with the liquidation of the corporation is liable to the corporation, any shareholder and any creditor of the corporation for damages caused by willful or negligent violation of their duties.

4. The completion of the liquidation process

4.1. Distribution of Assets

After all the liabilities have been cleared, the assets of the liquidated company are to be distributed to the shareholders. The distribution may take place until the expiration of one year to be calculated from the day on which the call registration of claims has been issued. A distribution can be done before the expiration of that period provided that a confirmation of a specially qualified auditor that all creditors' claims have been settled and the interests of third parties are not jeopardized.

Unless mentioned otherwise in the articles of association, the allocation of the assets to each shareholder has to comply with the contribution of such shareholder to the total share capital paid in, subject to such rights as may be connected with each share.

4.2. Final shareholder's meeting

For the finalization of the liquidation process, the liquidators must prepare a final balance sheet. A liquidation report is not required to be presented in the final shareholder's meeting by the German law but preferred. A final shareholder's meeting has to approve the final balance sheet, a preferred liquidation report and has to discharge the liquidators.

4.3. Shares

All shares must be declared invalid (e.g. by punching).

4.4. Cancellation of entry in the commercial register

Upon completion of the liquidation the name of the corporation has to be cancelled from the commercial register which is executed by the liquidators. The entry of the firm is cancelled after receiving a written authorization from the German tax authorities.

However, the cancellation of the corporation's name from the commercial register upon termination does not mean the definite end of the corporate existence.

The cancellation has only a declarative effect. The incorporation loses its status as a legal entity with the final completion of all liquidation proceedings.

4.5. Keeping of books of the incorporation

For 10 years the books of the corporation have to be kept in a safe place designated by the liquidators or by the office of the commercial register, if the assigned liquidators fail to agree on such place.



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