

## **Liquidation of Swiss corporations**

### **I. Procedure for liquidation**

#### **A. Opening of liquidation procedure by a resolution of the shareholders' meeting**

The dissolution and liquidation of a Swiss corporation is initiated by a resolution adopted at a shareholders' meeting of the corporation. Unless otherwise provided by the articles of incorporation, such resolution requires an absolute majority of votes represented at the meeting of shareholders. The shareholders' meeting at which the dissolution and liquidation is resolved shall take place before a notary public, and a notarized instrument concerning the shareholders' decision must be established. The liquidation resolution must be registered with the commercial register. Until final completion of all liquidation proceedings the corporation retains its corporate name with the addition of the words "in liquidation".

In principle, the board of directors shall carry out the liquidation. According to applicable law and the articles of incorporation the shareholders' meeting may also appoint one or several other liquidators (non-members of the board of directors). At least one of the liquidators shall be domiciled in Switzerland and shall be authorized to represent the corporation.

#### **B. Status during liquidation**

The corporation retains its status as a legal entity during the process of liquidation until the final completion of all liquidation proceedings.

#### **C. Powers**

The powers of the corporate bodies are restricted to the acts which are necessary for carrying out the liquidation and which cannot, by reason of their nature, be carried out by the liquidators.

The shareholders' meeting may remove the liquidators at any time. Upon petition of a shareholder, the court may remove liquidators for cause and, if necessary, appoint new liquidators.

## **D. Duties of liquidators**

### **1. Balance sheet**

The liquidators shall prepare a balance sheet based on liquidation value. It should be audited by the statutory auditors and approved by a shareholders' meeting. If the liquidation continues for a long period, the liquidators shall prepare annual interim balance sheets.

### **2. Notice to claimants**

Creditors of the corporation recorded in the corporation's books are to be notified of the liquidation and requested, by registered letter, to submit their claims.

Creditors whose existence or address is unknown to the corporation, are according to the applicable law and the articles of incorporation to be notified of the liquidation through publication in the Swiss Gazette of Commerce. Such publication must be made three times. It is regularly made on three consecutive days.

### **3. Insolvency**

Should the liquidators discover the corporation to be insolvent, it is their duty to give notice to the competent judge who will then declare the corporation bankrupt.

### **4. Other duties**

The liquidators must wind up the current business and affairs, collect unpaid contributions for shares if necessary, dispose of property and discharge the liabilities of the corporation, unless the balance sheet and the notice to claimants show that liabilities exceed assets.

They must represent the corporation in all legal transactions relating to the liquidation, may appear in court or enter into settlement agreements or agreements to arbitrate on behalf of the corporation.

They may also sell assets at their own discretion unless otherwise provided by the shareholders' meeting. If necessary they may enter into new business transactions.

## **E. Liability**

### **1. Corporation**

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

### **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.

## **F. Protection of claimants**

If known creditors fail to register their claims with the liquidators, the amount of the claims involved must be deposited in escrow with a court. For claims which are not yet due, or disputed claims, an amount corresponding to the potential liability must likewise be put in escrow unless, (a) security (e.g. bank guarantee) of similar value is made available to the creditors, or (b) the distribution of the corporation' s assets is delayed until these obligations are settled.

## **II. Completion of the liquidation**

### **A. Final shareholders' meeting**

After completion of all liquidation proceedings, the liquidators must prepare a final balance sheet. A liquidation report is not provided by the applicable law, but preferable. A final shareholders' meeting has to approve the final balance sheet, a possible liquidation report and to discharge the liquidators.

### **B. Distribution of assets**

The assets of the liquidated corporation are to be distributed to the shareholders, after all liabilities have been settled. The distribution may not take place until the expiration of one year to be calculated from the day on which the call for registration of claims has been issued for the third time. A distribution before the expiration of that period (i.e., after three months from the day on which the call for registration of claims has been issued for the third time, at the earliest) may be effected upon confirmation of a specially qualified auditor that all creditors' claims have been settled and the interests of third parties are not jeopardized.

Unless provided otherwise in the articles of incorporation, the allocation of liquidation proceeds to each shareholder is proportional to such shareholder's contribution to the total paid-in capital, subject to such rights as may be connected with each share.

### **C. Shares**

All shares must be invalidated (e.g. by punching).

### **D. Cancellation of entry in the commercial register**

Upon termination of the liquidation the liquidators may request that the name of the corporation be cancelled from the commercial register. The entry of the firm will be cancelled upon receipt of written authorization from the cantonal and federal tax authorities. It must be noted, however, that the cancellation of the corporation's name in the commercial register upon completion of liquidation does not necessarily mean the definite end of corporate existence.

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

Upon making a showing of an interest worthy of protection, a creditor whose claim has not been satisfied may demand the re-registration of the corporation in the commercial register. Such request would have to be granted where, for example, the liquidators did not comply with the legal requirements as to notification and publication etc., or - apart from such omissions - where new assets of the dissolved corporation are discovered after distribution of the liquidation proceeds. However, unless such special circumstances can be proved, the general rule is that after termination of the liquidation proceedings, creditors' claims can no longer be honored.

### **E. Keeping of books of the corporation**

The books of the corporation shall be kept for ten years in a safe place designated by the liquidators or, if they fail to agree on such place, by the office of the commercial register.

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