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Voluntary dissolution/liquidation in Luxembourg

This guide gives an overview of the two options identified in the Luxembourg Company Law[1] for the voluntary winding-up of an unregulated Luxembourg company, highlighting the key differences between the two procedures.

Terminology

In Luxembourg law, the concept of "dissolution" refers to the decision to terminate the legal existence of the company, which, depending on the procedure adopted by the shareholder(s), may also be followed by the "liquidation" of the company. Liquidation refers to the process by which the assets of the company are realised, its liabilities settled and any available residue distributed to the shareholder(s).

The two types of Luxembourg voluntary winding-up

The Company Law identifies two types of procedures:

- The "long-form" dissolution (ie dissolution followed by liquidation)
- The simplified or "short-form" dissolution (ie dissolution without liquidation)

Generally, but not definitively, the assets of a company must exceed its liabilities in order to follow a voluntary winding-up procedure.

The long-form dissolution with liquidation

- The long-form procedure requires three shareholder meetings.
- All annual financial statements due at time of winding-up should be approved by the shareholders and filed with the Luxembourg trade registry (the ***RCS***) prior to the dissolution and the start of the liquidation.
- At the first shareholder meeting, which must be held in the presence of a Luxembourg notary, the shareholder(s) resolve to dissolve the company (ie terminate its legal existence) and appoint a liquidator. A currently dated unaudited balance sheet of the company is tabled.
- Luxembourg law sets no limitation as to who can act as liquidator, and any natural or legal person may be appointed as such. If no liquidator is appointed, the person(s) responsible for the management of the company prior to its dissolution and opening of its liquidation are deemed to be the liquidator(s) of the company. The liquidator represents the company from the moment of its dissolution and the directors are discharged from office. If a legal entity is appointed as the liquidator, a representative of the liquidator, who must be a natural person, will need to be nominated in the notarial deed.
- The notary will lodge the details of the liquidator's appointment (with a description of his/her powers) with the RCS and the notarial deed will be published in the Luxembourg electronic register of companies and associations (the ***RESA***).
- The liquidator is responsible for carrying out the liquidation and is usually given broad powers to realise the assets and settle the liabilities of the company.

[1] The Luxembourg law of 10 August 1915 on commercial companies, as amended.

- On the basis of the balance sheet used at the first shareholder meeting, or, if necessary, an updated balance sheet, the liquidator can make one or more advance liquidation distributions, provided that he/she is satisfied that the company will be able to meet all of its financial obligations, following any distribution.
- Luxembourg law does not set any timing limitation / requirements with regards to the completion of the liquidator's work and/or the completion of the voluntary liquidation of a company. The actual duration of the operation depends on the level of complexity of the actual liquidation operations.
- The Luxembourg Company Law establishes that each year, the results of the liquidation should be submitted to the general meeting of shareholders of the company in voluntary liquidation, together with a statement as to the reasons that have prevented completion of the liquidation. Any filing and publication obligations are limited by the Luxembourg Company Law to the public limited liability company (*société anonyme*), in which case only the company's balance sheet should be published.
- In the normal course, a company is required to be assessed for income tax only at the end of the liquidation process. However, where the liquidation period exceeds three years, an income tax assessment will be done for each tax year during the liquidation period and up to the closing of the liquidation of the company. Notwithstanding this, a return for income tax and net wealth tax purposes is required to be filed annually and the company will be subject to net wealth tax for each year. In that context it will be necessary for the company to prepare annual accounts, even if not filed.
- When the liquidation is complete, ie once the assets have been realised and all liabilities, both actual and contingent, have been settled, the liquidator prepares a report on the liquidation, supported by liquidation accounts, which are tabled at a second shareholder meeting.
- At this second meeting, the shareholder(s) appoint a Luxembourg liquidation auditor, to report on the liquidation.[2]
- The liquidation auditor reviews the liquidator's report and accounts and, if satisfied, issues an audit review report, which is tabled at the third shareholder meeting.
- At this final shareholder meeting, which may (but not necessarily) be held in the presence of a Luxembourg notary, the liquidation is closed and the liquidator and the liquidation auditor are discharged. The shareholder(s) specify where the company's books and records will be stored for a period of five years following the closure of the liquidation.
- The notice of conclusion of the liquidation is filed with the RCS and the liquidation becomes final upon this second publication and the company is deemed to no longer exist except for certain passive powers.
- The duration of the process depends (among other matters) on the assets and liabilities of the company at the opening of the liquidation but the winding-up can generally be finalised within a few months.

The short-form dissolution

- This procedure requires a single shareholder meeting, held in the presence of a Luxembourg notary. At this meeting the sole shareholder declares that the company has ceased all business activities and all liabilities of the company (including dissolution costs) have been paid or duly provided for. The sole shareholder irrevocably undertakes to pay any contingent or other unknown or unpaid liabilities of the company. A currently dated unaudited balance sheet of the company is handed to the notary evidencing the financial position of the company and the absence of any third-party liabilities.
- Immediately upon the signature of the notary on the dissolution deed, the company ceases to exist. The dissolution causes the complete transmission of all assets and liabilities of the company to the sole shareholder, by operation of law. The dissolution is not accompanied by a liquidation process.
- Prior to the dissolution, all the company's annual financial statements due at the time of dissolution, should be approved by the shareholder and filed with the RCS.

[2] In practice it is possible (although not expressly provided for by the Company Law), for the shareholder(s) to waive the requirement to appoint an auditor. Certain conditions will apply for this option to be available, however, and the facts of each specific case must be examined.

- As a prerequisite to the dissolution, the company must obtain and provide the Luxembourg notary with three certificates, obtained from the Luxembourg authorities, confirming that the company has fulfilled its obligations relating to the payment of social security contributions as well as direct and indirect taxes. The authorities can only issue the certificates if all the company's tax returns (direct and indirect) due at the time of the request, have been filed, assessed and all amounts due, including advances, have been paid. These certificates cannot be more than three-months old at the time of the shareholder meeting, held in the presence of a Luxembourg notary.
- Pursuant to the provisions of the Luxembourg Civil Code, a creditor of a dissolved company may, within 30 days of the publication of the notarial deed dissolving the company, request the president of the district court, sitting in urgent proceedings, to order that security be provided for his/her/its debt. The court may not dismiss the application unless collateral is unnecessary in view of the sole shareholder's net worth.

Key differences

- The short-form procedure can only be implemented if there is a single shareholder.
- Under the short-form procedure, the dissolution is not followed by a liquidation process. The company's assets are not realised but are transferred, by operation of law, to the sole shareholder. Should an unknown or unpaid liability materialise after the company's dissolution, the sole shareholder will be responsible for it.
- Under the long-form procedure, the liquidator must deal with all the actual and contingent liabilities of the company and settle or make the adequate provisions for them before distributing the remaining assets and closing the liquidation. Should he/she fail to do so, he/she may be liable for fault in the performance of his/her mandate, pursuant to the provisions of the Company Law.
- The short-form procedure can be quicker than its long-form counterpart. However, the speed of the simplified dissolution is largely dependent on how quickly the company can obtain the three mandatory certificates.
- The short-form procedure may also be less costly compared to the long-form procedure.

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