LIQUIDATION OF COMPANIES

Introduction

Under Turkish law, the provisions that govern the liquidation of the JSCs apply to the LLCs as well. In other words, a JSC and an LLC are liquidated by following the same procedures. Throughout our article, we will be using the term "company" as long as the same rules apply regardless of the company being a JSC or an LLC.

Liquidation in General

Under Turkish commercial law, there are two forms of liquidation: 'Voluntary' and 'compulsory'. When the decision to liquidate a company is taken by its general assembly, this is called a voluntary liquidation. A compulsory liquidation arises when the decision to liquidate the company is given by a court.

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We will be discussing the voluntary liquidation throughout this article.

Reasons to Liquidate a Company

The Turkish Commercial Code divides the liquidation reasons into two subcategories; general and specific reasons. The general reasons for liquidation of companies are;

a) At the end of the duration of the company, if it has a specified duration,
b) When the purpose of the company is fulfilled or it becomes impossible to fulfil it, provided that it was established for fulfilling a purpose,
c) Materialization of any reason given in its articles of association (AoA),
d) A resolution of the general assembly in that direction,
e) When an adjudication order regarding the company is given, and
f) Other reasons that may be stipulated by laws.

The specific reasons mentioned in the commercial code are lack of compulsory organs, failure to convene the general assembly and liquidation by justifiable reasons.

When a compulsory organ of a company, such as the board of directors for a JSC, has ceased to exist or the general assembly of the company has not convened for a considerable period of time, upon the demand of the shareholders or the creditors of the company, the competent court first gives the company reasonable time to constitute the lacking compulsory organ or convene the general assembly. If the company does not comply within the period granted, the court may decide the company to be liquidated.

In case there are justifiable reasons for liquidation, such as the use of the company's assets for the benefits of the majority, the shareholders who represent at least 10% of the shares in a company can ask the competent court to render a verdict on the liquidation of the company. The court may decide either;

a) the company to be liquidated, or
b) the plaintiff shareholders to be squeezed out by redemption of their shares, or
c) any other reasonable solution, such as granting the minority representation in the board of directors.

Status of the Company in Liquidation

The legal personality of the company does not come to an end directly after going into liquidation. It will only be lost when the liquidation process is complete, and the company is deleted from the trade registry.

As mentioned above, a company in liquidation is managed and represented by the liquidator.

A company in liquidation can continue its business operations as long as they support the liquidation procedure. Similarly, throughout the liquidation process, the powers of the organs of the company are restricted to the issues that are required for the purposes of liquidation but cannot be performed by the liquidator because of their nature.

The name of the company must include the words 'in liquidation' during the whole liquidation process.

The Liquidator

When a resolution for liquidating the company is taken in the general assembly, one or more individuals are appointed as liquidators either from within or outside the company.

The liquidator cannot transfer his authorities. However, when there is more than one liquidator, they can share their tasks among themselves. For fulfilling certain transactions, third persons can also be delegated by the liquidator.

The powers of the liquidator should be mentioned in the general assembly resolution. In general, the liquidator is appointed to represent the company and carry out the procedures to liquidate the company. The liquidator's duties include collecting the unpaid capital contributions of the shareholders, encashing the assets and collecting the receivables of the company, paying all its debts, etc.

"The liquidator has to invite the creditors of the company ... so that they can declare their claims against the company."

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The liquidator appointed by the general assembly can be dismissed at any time by the general assembly while a court-appointed liquidator may only be dismissed by the court if deemed necessary.

At least one liquidator must have Turkish citizenship and reside in Türkiye. The resolution of liquidation which includes the appointment of the liquidator is registered at the trade registry office and announced in the trade registry gazette.

The liquidator, in parallel to the management of an active company, has fiduciary duties and is personally liable for his actions or negligence towards the company and third parties.

Preparatory Steps for Liquidation

The first step that will be taken by the liquidator is to analyse the company and prepare an inventory and the balance sheet of the company. An independent expert can be assigned to prepare a valuation report for the assets of the company.

The inventory statement, balance sheet, and the valuation report will then be submitted for the approval of the general assembly. The liquidator can start the liquidation process after getting the approval of the general assembly.

Invitation for the Creditors

The liquidator has to invite the creditors of the company by registered mail and trade registry gazette announcements so that they can declare their claims against the company. The invitation must be published on the website of the company as well.

If a creditor of the company neglects to make such a declaration within the specified period of time, the sum necessary to pay off such debt must be deposited into a bank account.

The liquidator has to file for bankruptcy if the debts turn out to be higher than the assets of the company.

Additional Liquidation

The Turkish Commercial Code allows for re-registering the company and re-opening the liquidation process if the process is closed and the company is liquidated without fulfilling all the necessary tasks, e.g. leaving receivables uncollected or assets not encashed. The liquidators, directors, members of the board of directors, shareholders or creditors may ask the competent court to cancel the decision to delete the registration of the company so that the unfinished tasks can be fulfilled. Once the additional liquidation proceedings are completed, the company is again deregistered from the trade registry.

Revocation of Liquidation

The general assembly, by taking a resolution in that direction, can revoke an already started liquidation process until the distribution of the assets of the company. In that case, the company will survive the liquidation process and go back to its normal business operations. Upon the resolution of the general assembly, the liquidator registers and announces the resolution for revocation.

Closure of Liquidation

After extinguishing all the debts of the company, if there are still remaining assets, the liquidator first refunds the share capital to the shareholders. The remaining assets will then be distributed between the shareholders in proportion to their contribution to the company's capital unless stipulated otherwise in the company's AoA.

The general assembly is then convened for the last time. The liquidator presents the last balance sheet and his report regarding the liquidation process in the final meeting of the general assembly. Upon approval of the general assembly, the decision regarding the closure of the liquidation process is registered and finally, the name of the company is permanently deleted from the trade registry. The deregistration of the company is announced in the trade registry gazette as well.

Upon closure of the company, the liquidator delivers the books and documents of the company to a court or a notary public as fiduciary. The company records must be kept by the fiduciary for a minimum period of 10 years.

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The liquidator is dismissed from his duties at the end of the process.

Taxation during Liquidation

Once the resolution of the general assembly is registered at the trade registry, the tax office where the company is registered must be notified. The notification must be made at the end of the liquidation process as well.

A company in liquidation is subject to the same tax treatment as that of an active company. Within that context, the company has to pay corporate tax as well as VAT. It is the liability of the liquidator to continue to submit the relevant tax office the required financial statements, balance sheet, etc.

A company in liquidation uses the 'liquidation period' rather than the 'financial year' for taxation purposes. The liquidation period starts when the resolution of the general assembly is registered at the trade registry and ends when the company is permanently deregistered from the trade registry.

As explained above, after extinguishing all the debts of the company, the liquidator first refunds the share capital to the shareholders. Receiving such a refund will not trigger corporate or income tax for the shareholders. However, if there are still remaining assets at the end of the liquidation process, the distribution of these assets to the shareholders in proportion to their contribution to the company's capital will be subject to corporate or income tax.

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