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Dissolution and liquidation of company in a single deed: some points of special interest

The dissolution and liquidation of a company is accompanied by a whole series of administrative obligations. In order to alleviate this burden, since 2012 it is (once again) possible to dissolve and liquidate a company in a single deed. The conditions for this simplified procedure were tightened up in 2014. Practice has taught us that many of the actors involved are informed inadequately (or not at all) about this procedure, and so we thought it useful to briefly review the key points below.

In order to qualify, as a company, for dissolution and liquidation in a single deed, four conditions must be fulfilled, the first three being: (i) no liquidator may be appointed, (ii) all shareholders or partners must be present or validly represented at the general meeting and must unanimously adopt the dissolution/liquidation resolution, and (iii) the remaining assets are taken back by the partners themselves.

A lack of clarity has long persisted about the fourth condition. When the regulation was introduced in 2012, the legislature described this vaguely as follows: "there are no liabilities according to the statement of assets and liabilities". This description generated a lot of discussion in the legal doctrine. It also appeared that some tried to exploit the vagueness in order to leave creditors out in the cold. So it was thus imperative for the legislature to clarify and tighten up this provision.

In 2014 this condition was reformulated as follows: "all debts vis-à-vis third parties have been reimbursed or the monies necessary for satisfying them have been consigned".

This adaptation obliges all of the involved parties to exercise greater vigilance. Not only does the liability go up, but a sufficient period must also be provided for drawing up the step-by-step plan and the timing in order to successfully make proper use of this mechanism (including the necessary timing for requesting and for obtaining the so-called "clean" tax and related certificates). That said, the adapted formulation of this condition is and remains most welcome, since this greater focus and these additional "pre-dissolution steps" lead to a clearer situation in the event of dissolution/liquidation (ergo: fewer post-liquidation disputes).

For more information on this specific subject, please contact Wout De Cock (the author) and Gwen Bevers (head of department).

Mechelsesteenweg 127A, b1 - 2018 Antwerp

Regentschapsstraat 58 PO box 8 - 1000 Brussels

t. +32 3 260 98 60 | +32 2 790 44 44

info@schoups.be

www.schoups.com