

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Company Liquidation

I. Introduction

For foreign investors doing business in Ukraine, the liquidation of a Ukrainian company is the ultimate ‘fall back’ position, allowing the foreign investor(s) to leave the Ukrainian market in full compliance with Ukrainian legislation. As a general reference, the discussion below provides an overview of the documents and procedural steps necessary to liquidate a Ukrainian company. A more detailed liquidation procedure is set forth in Law No. 755-IV “On State Registration of Legal Entities and Natural Persons-Entrepreneurs”, dated May 15, 2003 and is discussed separately herein.

II. Liquidation Procedure

A. Applicable Legislation

According to Article 19 of the Law “On Economic Associations,” No. 1576-XII, dated September 19, 1991, (the “Company Law”), company activities may be terminated by reorganization (including merger) or liquidation taking into account the requirements of the current legislation on the protection of economic competition. The termination of a company’s activity via reorganization usually involves a change of its legal-organizational form and the appearance of a legal successor due to the fact that a “new” legal entity takes the place of an “old” legal entity. The legislation governing such types of liquidation can be simultaneously complex and legally vague; therefore, the text below focuses on classic liquidation cases.

In contrast to reorganization, Ukrainian legislation provides a somewhat more detailed procedure for liquidating a company. First and foremost, Article 19 of the Company Law states that a business company (including a limited liability company and a joint stock company) may be liquidated in the following circumstances:

- (a) upon expiration of the term for which such company was established or after achieving the purpose stated at the time of the company’s creation;
- (b) by resolution of the highest body of the company (voluntary liquidation);

- (c) by decision of a court of law at the recommendation of the company's bodies which exercise control over the activity of the business company in the event of repeated or gross violation of legislation by the business company; or on the basis of a commercial court's decision according to the procedure established by the Law "On Restoration of the Solvency of a Debtor or Recognition of Debtor as Bankrupt," dated June 30, 1999, No. 784-XIV; and
- (d) for any other reason provided in the company's foundation documents.

The following analysis focuses on the general liquidation procedure pertaining to points (a) and (b) above. An analysis of the liquidation procedure under bankruptcy proceedings or for other reasons provided in a company's charter is beyond the scope of this general overview.

B. Analysis

Article 20 of the Company Law provides that business companies are voluntarily liquidated by a so-called "liquidation commission," which is appointed by the duly authorized governing body of such company. From the date of its appointment, the liquidation commission has the authority to transact all company business up until the point of preparing the company's final liquidation balance sheet.

Procedurally, within three days from its appointment, the liquidation commission must publish an announcement in one of the official publications, stating the term for filing creditor claims. Additionally, within the above time frame, the liquidation commission must appraise the company's property, identify and settle with any of the company's debtors and creditors, take all possible measures to repay debts to third parties and its participants, and prepare the liquidation balance sheet for submission to the company's highest governing body (or the body which appointed the liquidation commission).

The authenticity and completeness of the annual balance statement and reports of the company must be approved by an auditor or an audit firm, unless the company has an annual turnover of less than two hundred and fifty (250) non-taxable minimum incomes. For reference purposes, one non-taxable minimum income is currently equivalent to 17 Ukrainian Hryvnia (or just over three USD).

Article 21 of the Company Law provides the procedure for distributing a company's assets during its liquidation. Accordingly, the first in priority are any unpaid wages and other salary obligations to the company's employees and obligations to the company's creditors. Next, the remaining monetary assets of the company, including all proceeds from the sale of its property during liquidation, must be distributed among the founders or shareholders of the company. Such distribution must take place within six months after the publication of the announcement of the company's liquidation pursuant to the terms and conditions for such distribution in the company's foundation documents and in the Company Law.

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