Liquidation

10 steps to close a GmbH

1. The shareholder of the GmbH must pass a resolution that at the end of dd.mm.yy, the GmbH will be dissolved. Simultaneously, the shareholder has to appoint a liquidator.

The resolution has to be signed by the shareholder. A notarization of this resolution is not required.

The GmbH managing directors continue in Office as liquidators unless a shareholder resolution has appointed different liquidators. Regarding the qualification of a person for liquidator, the same rules as those for managing directors are applicable. Accordingly, it is not required that the liquidator is German Citizen or has his domicile or residence in Germany.

2. The application must be signed by the liquidator and his signature must be authenticated by a notary. The application must be accompanied by the original of the shareholder resolution to dissolve the Company.

The application to register the dissolution is usually combined with, or accompanied by, the application to register the liquidators.

3. The dissolution of the Company is registered in the local commercial register on the basis of an application which the liquidator must make.

4. The registration of the dissolution must be published ex officio by the court which keeps the commercial register. In addition, the liquidators must publish the dissolution on three different occasions in the Federal Gazette ("Bundesanzeiger")* Such notice published must contain an invitation to the Company's creditors to report to it.

5. Once dissolved, the Company must clearly identify itself as being in liquidation. The dissolution as such does not cause the Company to cease to exist as a legal entity. It merely constitutes the commencement of the Company's liquidation by changing the purpose of the Company. Once dissolved, the Company may not further pursue the business purpose defined in its articles. Its sole purpose becomes the liquidation of its business; that is, to terminate its current business transactions; to discharge its obligations; to collect its accounts receivable; to convert its assets into cash; and finally to distribute the liquidation proceeds, if any, to its shareholder.

6. In principle, the Company in liquidation continues to be governed by the same rules which apply to an on-going enterprise, with the exception of differences in the application of those rules which result from the fact that the Company is in process of liquidation. In addition, the Status, powers, rights and obligations of the liquidators are the same as those of managing directors, except where they differ because their task is to liquidate the Company rather than to pursue its normal purpose.

7. The liquidators must prepare an opening liquidation balance sheet (Liquidationseröffnungsbilanz) as of the date of the dissolution of the Company, and regular financial Statements on an annual basis thereafter. Furthermore, upon completion of the liquidation they must prepare a final liquidation balance sheet as of the date of such completion (Liquidationsschlußbilanz).The rules, in particular the principles of evaluation applicable to liquidation balance sheets, differ to some degree from those applicable to the balance sheet of an on-going business enterprise, due to the change in the purpose of the Company resulting from its dissolution. Furthermore, liquidation balance sheets prepared by the liquidators do not require a shareholder resolution for their adoption, while the annual financial Statements of an on-going business do.

8. The assets of the Company cannot be distributed to the shareholder before all creditors of the Company have been satisfied or secured and a waiting period of one year has elapsed since the date of the third publication of the invitation to the creditors to report to the Company (see above).

9. The Company ceases to exist as a legal entity not upon its dissolution, but only at that moment at which its liquidation has been fully completed and the Company is fully without assets. The extinction of the Company must be entered into the Commercial Register. The registration is made on the basis of a formal application signed by the liquidators of the Company and their signatures must be authenticated by a notary.

10. Upon completion of the liquidation, the books and records of the Company must continue to be available to the shareholder and creditors for inspection for a period of ten years. For this period, they must be deposited with the shareholder or with a third party. The books and records deposited remain available for inspection by the shareholder and his legal successor without restriction. Creditors of the Company, however, may inspect the books only after receiving an authorization from the registry court that permits them to do so. The liquidators are obligated to ensure that the books and records of the Company are duly deposited in accordance with these requirements.