

VOLUNTARY LIQUIDATION AND DISSOLUTION OF TRADING ASSOCIATIONS

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ABSTRACT

Through this abstract I will try to present the paper which needs a scientific treatment. After new circumstances created after the war, it is an immediate necessity to build and create a new mentality for the Voluntary Dissolution of Trading Associations. Voluntary Dissolutions in the past and nowadays had an important and great role in economy, be that national or global. In Kosovo, Voluntary Dissolution is regulated by Law No.02/L-123 for Trading Associations, whereas in Albania with the Law No.9723 for the National Center of registration. Since 2000 when the registration of businesses has started until the date 31.09.2015, in the Kosovo Agency for Business Registration there have been 140178 registered businesses, whereas 16607 businesses were dissolved. The paper will be structured into two parts: In the first part the elaboration of the respective legislation of Kosovo and Albania for the Voluntary Dissolution will be done. In the second part it will be discussed about the conditions for voluntary dissolution of businesses. The paper will analyze voluntary dissolution in general and at the end there will be a tabular summary were included you will find different kinds of businesses, dissolved in respective municipalities and also conclusions.

Keywords: KBRA, Law, Dissolution, LLC, JSC etc.

VOLUNTARY DISSOLUTION AND LIQUIDATION OF OVERALL PARTNERSHIPS

One of the forms of ending the activity is also the voluntary dissolution of the trading associations for all sorts of businesses.

Unless it has been differently defined in the agreement of the overall partnership and according to the dispositions of the law for bankruptcy, Overall Partnership can be dissolute and liquidated with the majority of votes from the overall partners. In such cases, unless it has been differently defined in the partnership agreement and according to the dispositions of the law for bankruptcy, overall partners have to name a third unbiased person who will work as a liquidator. The Liquidator becomes the holder of the partnership's wealth in order to implement the bankruptcy procedure and takes charge of all the general partners' competences. Within a deadline of twenty-one (21) days from the day of the naming, the liquidator has to: previously consult books, notes and the wealth of the partnership and also the creditors' potential pretensions against the OP, and respectively decide if the partnership was solvent (able to pay) at the time when he/she was named as a liquidator and if the sale of the partnership's wealth can generate enough income to cover the valid pretensions of all the creditors.(Law No.02/L-123 on Business Organizations, Article 65, Pristina 17.05.2008). If the liquidator concludes that the partnership was insolvent at the time of his/her naming or that the sale of the partnership's wealth cannot generate enough money to cover all the valid pretensions of all the creditors, then the liquidator immediately initiates the bankruptcy procedure according to the law for bankruptcy. If the liquidator is not able to assess and come with a decision as required by law within the aforementioned deadline, then anyone from the creditors or general partners can head to the court to execute the liquidation according to the

law for bankruptcy. If the liquidator concludes that the partnership was solvent at the time of his/her naming or that the sale of the OP's wealth can generate enough income to pay the creditors, the liquidator then has to, no later than 30 days after his naming, publish a notification in Albanian, English and Serbian for his/her naming as a liquidator in the Official Gazette of Kosovo and two other widespread newspapers in Kosovo, similar to the initial notification that is required to be published from the liquidator in case of bankruptcy, only if the notification makes it clear that all the creditors of the OP are free to ask for the cover of their pretensions to anyone and everyone of the general partners of the OP. After the initial publication, the liquidator has to gather OP's wealth and implement the liquidation procedure in accordance to the law for bankruptcy, with the condition that the liquidator will not have any competence.

- a) To declare a previous transaction as harmful and fraudulent for the creditors,
- b) To retake money or property that was the case of the previous transaction.

Termination and Dissolution of the activity of Limited Partnerships

A Limited Partnership can continue its activity as long as at least one general partner and one limited partner are still part of the limited partnership Unless it is otherwise defined in the agreement of the company society, limited partner is not authorized to dissolve the limited partnership. Unless it is otherwise defined in the agreement of this society, during the liquidation of assets of the limited partnership, net assets of the limited partnership are equally distributed to limited and general partners. (Law No.02/L-123 on Business Organizations, Article 77, Prishtina 17.05.2008).

Voluntary Dissolution of a Limited Liability Company

A limited liability company will be dissolute and its trading activity will end in cases such:

- a) If there is an expiration date put on the statute or in the company's agreement;
- b) Owners' decision to dissolve or cease to exist as a company according to Article 107-g of Law No.02/L-123 for Trading Companies;
- c) Receiving an order from the Court in which it is requested that the end of existence or dissolution of the company to be done in dispositions of the applicable law in Kosovo (Including, but not limiting, the bankruptcy law), if the date for complaining in this request has expired and there is no pending complaint to be reviewed from a higher level court.

If the dissolution of the company is done according to "a" and "b" (voluntary dissolution), company's activity is terminated and assets are liquidated according to act 118 of Law No.02/L-123 for Trading Companies.(Law No.02/L-123 on Business Organizations, Article 117, Pristina 17.05.2008)

If the dissolution of the company is done according to "c" and the company is not bankrupted, the Court will supervise the termination and liquidation process according to defined procedures in the article 118 of Law No.02/L-123 for trading companies, ore other procedures set from the Court.

Activity termination and liquidation of an association

After the voluntary dissolution according to “a” or “b” of article 117.1, the company continues to exist same as before, but it cannot perform trading activities unless those necessary for terminating and liquidating the company, which include:

- a) Collecting the money and property that different parties owe to the company;
- b) To pay or arrange the payments that the company owes to creditors;
- c) Selling the company’s non-monetary assets according to article 118.2 and;
- d) Distributing remaining assets after the selling and fulfilling creditors’ pretensions.

These activities are performed from managing directors of the company, unless the company hires a professional liquidator or another person or company to perform these activities, and they have to be paid from monetary assets of the company. As soon as possible, but no more than five (5) working days after the voluntary dissolution of the company, the company has to hand to KBRA “Notification for Voluntary Dissolution” according to article 40 of this law. The company must not sell or distribute any of its assets for at least forty-five (45) days after handing the notification to KBRA. Premature sales or distributions can be declared invalid from the Court based on the request of an unpaid creditor (Law No.02/L-123 on Business Organizations, Article 118.2, Pristina 17.05.2008). Notification for Voluntary Dissolution states in every official language:

- a) That the company has decided to terminate its trading activity and liquidate all its assets;
- b) Date of the event that caused the dissolution;
- c) A place for creditors’ pretensions submission
- d) Date or dates on which the company is planning on selling and distributing its assets according to Article 118, dates that can be set in less than forty-five (45), but not more than ninety (90) from the day of the handing the Notification for Voluntary Dissolution in KBRA; and
- e) The time and place in which the sale and distribution will happen.

Within three (3) working days after the handing of the Notification for Voluntary Dissolution to KBRA, the company has to send a copy of this notification to the known owners and creditors of this company, and the company allows every secured creditor to have in possession the wealth in which the creditor has secured interest. (Law No.02/L-123 on Business Organizations, Article 118.4, Pristina 17.05.2008). If the company has in its possession a property in which a secured party has secured interest, the company hands this property to the secured party. The secured party sells or take in possession the property according to the applicable law for the secured interest. If the sale or the possession of the property generates surplus of income, the secured party has to hand back the surplus to the company. “Surplus of income” means the surplus that has exceeded:

- a) The necessary sum to pay the secured debt and;
- b) Other sums that the creditor is by law allowed that as a fine and/or compensation for the expenses made during the process of selling or taking in possession the aforementioned wealth.

Within a period of thirty (30) days after the event that caused this dissolution, the company has to:

- a) Complete a record of books and archives;
- b) To formulate an inventory of all the assets and a list with all its debts;
- c) To make the inventory and the aforementioned list available for public to inspect and review at least eight hours per day during the five working days immediately after the

date of the Notification for Voluntary Dissolution for the selling of the company assets. Unless the applicable law demands a public selling and/or a specific method of selling, the sale can be private or public and can be done in any reasonable business way.

Not more than thirty (30) days after handing the Notification for Voluntary Dissolution to KBRA, the company has to publish a notification with the size of 1/10th of the page, in a widespread newspaper in Kosovo, in all the official languages, including:

- a) The name of the company and trading names used by the company;
- b) Registration number;
- c) Information about the place and time where the public sale of the assets will be done and information about the place and time of the legal sale of a private asset of the company.
- d) Information about the time and place where and when the company's assets inventory and the list of debts will be available for reviewing, and
- e) Information about the procedures which creditors and other interested parties have to follow to submit their pretensions or information about the deadline to submit the pretensions. (Law No.02/L-123 on Business Organizations, Article 118.6, Pristina 17.05.2008).

The company cannot postpone the date of the public selling announced according to Article 118.6. The company does not have to pay the requests (pretensions) that are not included in the debt list. The company has to evaluate the validity of all requests before including requests for the debt list. Submitters of these requests who think that their request has been damaged because of the rejection of the company to include their request in the debt list can dispute this rejection in Court.

Distribution of wealth of a company in liquidation

During the liquidation, company assets will be paid and distributed according to the rule of advantage defined in the Law for Bankruptcy. (Law No.02/L-123 on Business Organizations, Article 119, Pristina 17.05.2008)

Voluntary Dissolution of Shareholding Associations

Shareholding Associations can dissolve, and liquidate their activity, at any time with a decision from the board of directors and shareholders, as follows:

- a) The board of directors or shareholders has/have to approve a ruling over the proposed dissolution or liquidation and has to hand it for approval in the shareholders' meeting, which can be an annual or extraordinary meeting. They have to offer a plan consisting of dissolution and liquidation, with the procedures that have to be followed, schedules and time-tables for the liquidation process, and procedures for the distribution of the remaining property of the corporation to its shareholders, after the fulfillment of creditors' pretensions(requests);
- b) Written notification of the plan and proposal has to be sent to all the shareholders who will be part of the meeting;
- c) In the meeting, the proposal has to be voted affirmatively from at least 2/3rd of the shareholders who hold a right to vote for this proposal, unless a specific category of shareholders has the right to vote for a group proposal. The proposal is approved if it is affirmatively voted from at least 2/3rd of the votes of the shareholders of each group that has a right of a group vote for a change and the total number of shareholders who have a right of change vote. Special voting from a voting group in any company is

necessary if this is requested in the company's statute. (Law No.02/L-123 on Business Organizations, Article 229.1, Pristina 17.05.2008).

The statute of the company can replace the voting of the 2/3rd which is demanded according to article 229.1, noting any method of voting that surpasses 2/3rd of votes from the shareholders with a right of vote in matters and not fewer than 2/3rd of shareholders of each voting group who have a right for group voting about that matter.

Termination of the activity and Liquidation of the Company

After the voluntary dissolution, the company continues existing as before, but it cannot perform any activity, except the ones necessary for liquidation purposes, including collecting and selling of the wealth, paying creditors and distributing the remaining wealth among members. Aforementioned activities are performed from the board of directors and officials who perform the same duties as before, unless the company hires a professional liquidator or another person for performing such activities. Compensation for such person is paid from the company's wealth.

After the event that caused the voluntary dissolution the company has to archive a notification about the voluntary dissolution to KBRA as soon as possible, according to Article 40 of this law. If said notification is not archived and published at least 30 days before the initiation of the sale of company's wealth according to this act, sale can be cancelled from the court, if an unpaid creditor files a request. The notification, written in official languages of Kosovo, has to define that the company has decided to liquidate its wealth; dates of the events that caused the dissolution; the place where the creditors can file their pretensions, and the deadline for submitting such pretensions, time and location for inspecting the list of assets and pretensions; and the sale of the company's wealth has to start not sooner than 30 days after the publication of the notification. (Law No.02/L-123 on Business Organizations, Article 230.2, Pristina 17.05.2008)

The company has to send its known creditors a written notification and has to allow secured parties to withdraw their wealth. If the company has a property where secured parties have secured interest on, then the company has to hand them said properties. The secured party then sells or otherwise acts with the property according to the applicable mortgage law. If the sale generates more income than those needed to cover the secured debts, then the secured party returns the surplus to the company.

Within 30 days after the decision for dissolution, the company has to finish checking its books and data and to formulate an inventory for all its wealth and the list of its debts. The company also has to come up with a reasonable trading method for its wealth sale and the time and place for its sale. The sale can be public or private and can be done in any reasonable trading method. The company has to offer the possibility of inspecting the wealth inventory and also the debts list, for at least eight hours a day for the five working days previous to the date of the sale.

Within 30 days after the decision for the dissolution of the corporation, the company has to publish a notification not smaller than 10 % of the page in a widespread selling newspaper in all the official languages of Kosovo. This notification has to include the name of the company and all trading names that have been used by the company, the time and place where the public sale is going to be or the time when the private sale is going to start, whereabouts of

the inventory of wealth, debts list and a declaration which defines when the inspection of the inventory of wealth and the debt list can be made. The notification has to also describe the procedures and deadlines for submitting their pretensions to all supposed creditors and other interested parties.

Unless with a court's decision it is said that the company cannot cover any of the pretensions which are not included in the debts list. The company has to determine the validity of every pretension before including it in the debts list. Pretenders who are affected by the council's rejection of including those requests in the debts list can head to the court to oppose this rejection. The company can postpone the date of sale publicly announced, but can set a new a date for the sale if the sale is not complete.

Dissolution of a company after the expiration of its mandate

The company is dissolute and its activity terminated, after the expiration of its mandate defined in its statute or other circumstances defined in statute which lead to the dissolution of the company. In such cases, the company terminates its activity and liquidates according to Act 230 of Law No.03/L-123 for Business Organizations. (Law No.02/L-123 on Business Organizations, Article 231, Pristina 17.05.2008).

Forced Dissolution of a Company

A company is dissolute and its activities ended, in the following circumstances:

- a. In case of not notifying about the registered agent according to part II of this law and the expiration of the respective period according to the conditions of this Part;
- b. In case of an order from the court for dissolution because it is not capable of continuing its trading activity as a consequence of invalidities, blocking in decision-taking or other reasons;
- c. Inability to make payments or company's bankruptcy or dissolution according to the Law for bankruptcy;
- d. In case of violation of the Article 155.5- (Prepayment for the capital will not lead to the basic capital to be less than 10.000 euros for more than two days in any case)

On the dissolution case, if the company is not able to make payments as is defined by the applicable law for bankruptcy, the court will supervise the termination of the activity and the liquidation of wealth according to procedures from the Article 230 or other procedures set from the court. If the dissolution is done according to point "c" or the company is incapable for payments, the applicable law for bankruptcy has to be followed. (Law No.02/L-123 on Business Organizations, Article 232.2, Pristina 17.05.2008)

Notification for the Voluntary Dissolution; Revocation

To realize the voluntary dissolution of a business, "Notification for Voluntary Dissolution" has to be handed in KBRA, in accordance with the paragraph 2 of article 118 or paragraph 2 of article 227 of Law No.02/L-123 for Trading Companies. The authorized person can revoke the Notification for Voluntary Dissolution within the period of one hundred and twenty (120) days from the day of the handing of the notification. (Law No.02/L-123 on Business Organizations, Article 40.3, Pristina 17.05.2008)

This revocation has to be authorized in the same way as the initial notification. For this revocation to be valid, an authorized person has to sign and hand to KBRA the notification for revocation. Notification for revocation includes:

- a) The name and the number of registration of the business,
- b) The date of the validation of the voluntary liquidation now being revoked,
- c) The date of the authorization of this revocation,
- d) A statement that proves that the person who signed this notification is an authorized person and that this person has been legally authorized to hand the notification to KBRA.

The notification for revocation becomes valid in the date of the handing in ARBK.

Deregistration of a Trading Subject

In the Law No.9723 in the National Registration Center of the Republic of Albania:

1. Subjects are deregistered from the trading registry in the defined cases of the applicable legislation, to invalidate the legal persons, dissolution of a simple company, in cases of the termination of the economic trading activity of a legal person, and in any other case, defined in the applicable legislation.
2. Deregistration is done:
 - a. In a voluntary manner from the subject;
 - b. With a strict court decision;
 - c. According to specific laws. (Law No. 9723 on the National Registration Center, Tirana 03.05.2007).

Voluntary Deregistration

For natural persons, voluntary deregistration is done through an application for deregistration, which can be done together with the notification of the termination of its economic trading activity or separately. Voluntary deregistration for legal persons, branches and representatives of foreign and simple companies is done through applying and depositing the deregistration application and respective measures, which prove the closure of the liquidation procedures, according to the applicable legislation, are not notified or deposited in the trading registry. These acts are deposited in the form demanded from this law and other dispositions of other applicable laws.

Data of Dissolute subjects

Data for the deregistration are kept in the trading registry, by noting “Deregistered”, and also the name and date of the court decision or from another public authority, according to specific laws, that have decided for the deregistration from the trading registry or in case of a voluntary deregistration, data of act and application, through which the deregistration is performed. These data are kept in the National Registration Center in electronic form and are always accessible for the public.

Different kinds of dissolute businesses in different municipalities since, 01.01.2000 until 30.09.2015. (Ministry of Trade and Industry-Kosovo Business Registration Agency)

Municipality	I.B	O.P.	L.P	L.L.C	J.S.C	Foreign Company	TOTAL
1.Deçan	90	4	0	0	0	0	94
2.Gjakovë	895	57	1	29	8	0	990
3.Gllogovc	420	7	0	4	1	0	436
4.Gjilan	841	31	1	21	1	2	897
5.Dragash	264	2	0	0	0	0	266
6.Istog	118	5	0	3	0	0	126
7.Kaçanik	197	10	1	2	0	0	210
8.Klinë	126	3	0	3	1	0	133
9.F.Kosovë	341	15	0	18	0	3	377
10.Kamenicë	239	6	0	2	0	0	247
11.Mitrovicë	1096	57	0	6	6	0	1165
12.Leposaviq	20	2	0	1	0	1	24
13.Lipjan	377	23	1	7	0	3	411
14.NovoBërdë	12	0	0	0	0	0	12
15.Obiliq	118	4	0	2	0	0	124
16.Rahovec	192	5	0	7	0	0	204
17.Pejë	1115	51	2	10	2	3	1184
18.Podujevë	618	19	0	9	0	0	646
19.Prishtinë	2694	332	6	209	26	60	3327
20.Prizren	2094	91	3	41	1	2	2232
21.Skenderaj	347	13	0	0	0	0	360
22.Shtime	127	2	0	1	0	0	130
23.Shtërpce	72	0	0	0	1	0	73
24.Suhareka	589	13	0	3	3	0	608
25.Ferizaj	977	45	1	10	0	3	1036
26.Viti	204	13	0	3	1	0	221
27.Vushtrri	806	14	0	12	0	0	832
28.ZubinPotok	12	0	0	2	0	0	14
29.Zveqan	11	1	0	0	0	0	12
30.Malishevë	176	7	0	1	0	0	184
31.Graçanicë	24	0	0	3	0	0	27
32. North-Mitrovica.	5	1	0	0	0	0	6
Total	15217	833	17	408	51	81	16607

We find voluntary dissolutions in cases when we have change in form of the business/ownership. According to a Public Explanatory Act No.02/2014 from the Ministry of Finances/ tax Administration of Kosovo in cooperation with Kosovo Business Registration Agency (KBRA), Procedures for Ownership Transfer to the Change of Business Form are defined. When the taxpayer requests a change in form of the business or ownership of a business, example: From an Individual Business in a Limited Partnership, or a change of the owner from the business with owner "X" to business with owner "Y"

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