Liquidation of Limited Liability Companies (April 2006)

The current status of the law in respect of dissolution and liquidation of limited liability companies is set forth below:

The dissolution of the company must be communicated to the public by its registration in the Commercial Register, and its publication in two local daily Arabic language newspapers. The dissolution may only be asserted against third parties upon the date of its publication.

Immediately upon its dissolution, the company enters its liquidation stage, whereby it retains its corporate identity as necessary only for the acts of liquidation. The phrase "Under Liquidation" must be added to the name of the company.

The authority of the managers shall cease upon dissolution, and the liquidator shall after his appointment represent and manage the company. The institutions of the company remain during the liquidation process but their authority is limited to those areas that are beyond the competence of the liquidator.

Immediately upon his appointment, the liquidator has to make an inventory of the company's assets and liabilities upon coordination with the company's managers who shall supply all the necessary accounts and documents. The details of the company's assets and liabilities are signed by the liquidator and the managers and then recorded by the liquidator.

The liquidator must do all that is necessary to protect the interests of the company and shall collect all dues owed to the company in order to immediately deposit them in the bank account of the company. However, he cannot demand of the partners the remainder of their contributions to the company's capital unless the acts of liquidation require it. In all circumstances he must ensure that equality is maintained in the treatment of the partners.

It is the task of the liquidator to undertake all acts necessary in the representation of the company during the process of liquidation, including representing the company in the courts, paying all the debts and selling all moveable assets. He may not sell all the assets at once unless he has the approval of a General Assembly resolution.

No new business is to be conducted during this process, if the liquidator continue the business during the process of liquidation he is held personally liable to the full extent of his own assets for such business.

All creditors should be notified immediately by recorded mail upon the dissolution of the company by the liquidator, upon which time all deferred debts become payable. If the relevant creditors' addresses are unknown, they are to be invited to present their claims by means of publication in two local daily Arabic language newspapers. The period for the presentation of creditors'

claims cannot be less than 45 days from the date of the notice to present their claims.

Where the company's assets are insufficient to settle all claims, the liquidator must settle them proportionately without prejudice to the rights of the various creditors. In instances where some creditors fail to state their claims, the amount of their debts is to be deposited in the company's treasury. As long as the liquidator acts within the scope of his powers, the company is bound by his acts, and he does not bear personal responsibility in relation to such actions.

Where there are multiple creditors, their acts in pursuit of their claims are not valid unless made by their unanimous approval. This fact however, may only be asserted by the company upon registration of liquidation in the Commercial Register.

The time frame within which the liquidator has to perform his duties is to be set out in the liquidator's appointment document, if more time is required to complete the process of liquidation the liquidator submits a report to show the reasons why the process has not been completed. The period can be extended by the resolution of the partners or by the General Assembly. If such a period is not so specified, each partner may refer the matter to court to fix a limitation period. If the court fixes a period, only the courts may extend this period should the need arise.

The liquidator has to submit a report on the acts of liquidation to the General Assembly every 6 months, and shall give any information requested by the partners.

Funds of the company resulting from the liquidation are distributed amongst the partners only after the company's debts are paid. Each partner is to receive an amount equal to the value of the share contributed to the capital of the company, and the remainder of the company's funds are distributed amongst the partners proportionately with each partners' share in the profit. If the funds of the company are insufficient to cover the full payment of the partners' contributions, the deficiency is distributed amongst them according to the percentage specified for the distribution of losses.

Upon completion of liquidation, the final accounts of the liquidator must be ratified in the General Assembly of the partners, upon which time such acts of liquidation cease immediately. The liquidator has to notify the public of the completion of liquidation in the same fashion as before, by registering the fact in the Commercial Register, and then he shall request that the company's registration be deleted from the Commercial Register.

As noted earlier, the law clearly provides that **Where the company's assets are insufficient to settle all claims, the liquidator must settle them proportionately without prejudice to the rights of the various creditors.**

But what if the Company has insufficient funds even for a partial settlement of the creditors' dues, and that none of the Company's assets is realizable?

This instance is not covered by the laws in effect. The logical and prudent course of action under such circumstances and which therefore should be taken by the appointed liquidator is to send letters to all creditors stating the inability of the Company to make even a partial settlement and advising write off of claim. The liquidator in fact would be merely stating a fact rather than creating one.

Ultimately, the liquidator is only responsible if he has conducted affairs improperly and is liable to indemnify damages suffered by third parties as a result of his faults.

As for the liability of the shareholders and whether there is a claim on their personal assets in case the Company is bankrupt, the shareholder's liability in an LLC is limited to the value of his shares, and he may not in principle be held personally liable for the Company's debts.

However, any personal guaranties given by the shareholders will be enforceable against them.

In fact, Article (73) and Article (74) of the Federal Law No. (18) of 1983 in respect of Commercial Transactions respectively provide that:

ARTICLE (73):
"A guarantee shall be commercial if the guarantor has guaranteed a debt which is deemed in regard to the debtor to be commercial unless otherwise provided for by law or agreement, or if the guarantor is a trader and has an interest in guaranteeing the debt".

ARTICLE (74):
"In a commercial guarantee, the guarantors shall be jointly liable with each other and with the debtor".

Hence, if a personal guaranty is provided by one of the shareholders, for the purpose of securing the Company's commercial debts towards a third party, then such shareholder may be held jointly liable with the Company for such a debt, to the extent of his guaranty.

Moreover, if the shareholder is a manager of the Company, he may also be held liable in case he is proven to have committed a contravention to the laws or to the Company's regulations, or a fault in administrating the Company, which has resulted in accumulating the company debts, pursuant to Article (237) and Article (111) of the Commercial Companies Law.

In fact Article (237) and Article (111) respectively provide that:

ARTICLE (237)

"Unless the powers of the manager are fixed in the company Memorandum of Association, the company manager shall have full powers to carry out management affairs of the company, and his actions shall be binding on the company, provided that they are substantiated by the capacity under which he acts.
Provisions pertaining to liabilities of Directors of a joint-stock company shall apply to the said manager, and any condition stipulated in the company Memorandum of Association to the contrary hereby shall be revoked".

ARTICLE (111)
"The chairman and the Directors shall be liable toward the company, the shareholders and third parties for acts of fraud and misuse of powers and for any act of default with regard to the law or the company regulations and for fault in administration…..".

The shareholder/manager liability towards the company's creditors as a manager is conditioned upon establishing a certain misuse of power or fault in administration in the scope of the relationship with such creditors, and obtaining a court ruling to that effect.

As for cases filed against the Company under liquidation, it is to be noted that where there are multiple creditors, their acts in pursuit of their claims are not valid unless made by their unanimous approval. Furthermore, it is the task of the liquidator to undertake all acts necessary in the representation of the company during the process of liquidation, including representing the company in courts.

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