УДК 336.279

LIQUIDATION OF THE LEGAL ENTITY IN UKRAINE: HOW TO MAKE THE PROCEDURE EFFECTIVE

Sylenko Nataliia Mikolaiivna
Ph.D. in Law, Associate Professor
Kharkiv, Ukraine
silenko.natalia@gmail.com
Golub Yana Yurievna
Student
Simon Kuznets Kharkiv National Economic University
Kharkiv, Ukraine
yannessitija@gmail.com

Annotation. In Ukraine a significant number of enterprises are closed annually. At the same time, the existing liquidation procedure encounters unexpected difficulties and causes ambiguous reactions among representatives of state authorities, participants and creditors of such business entities. The solution of these problems is possible by creating an orderly and effective liquidation procedure.

Key words. Liquidation, legal entity, creditor, bankruptcy, liquidation commission, liquidator.

Liquidation of the enterprise means complete cessation of its activity. Liquidation of a legal entity in Ukraine can be done by the decision of its owners and by a court decision, when the establishment of such a legal entity was made without any compensation violations of other cases are directly provided by law (at the suit of the state body) according to the Article 110 of the Civil Code of Ukraine [1].

In general, the liquidation procedure is quite complicated and long. According to the Article 105 of the CCU [1] and Article 111 of the CCU [1], the liquidation

commission carries out actions on liquidation of the enterprise, in particular, the following:

1. Be sure to conduct an inventory in a continuous manner.

2. Performs actions to collect receivables. The liquidation commission (liquidator) notifies each of the debtors in writing about the liquidation of the enterprise and declares claims / lawsuits to recover the debt in case of need.

3. Closes all current accounts of a legal entity, except for one, which is elected by the liquidation.

4. Conducts an independent assessment of property in cases provided by law.

5. "Experiencing" inspections by regulatory authorities.

6. Destroys seals. The procedure for destruction of seals is not regulated by regulations.

7. Organizes the withdrawal of the liquidated legal entity from the companies (if the company is a participant / owner of other legal entities), otherwise the legal entity is not liquidated

8. Accepts claims from creditors. Creditors may file their claims within the period specified in the liquidation decision.

9. Settled with creditors in the order of priority established in Part 1 of Art. 112 CCU [1].

10. Create a liquidation balance sheet after the end of the term for creditors' claims, which is submitted for approval to whom the decision about liquidation was made.

11. Settled with the owner (participants) of the legal entity at the expense of the property which remained after satisfaction of creditors' requirements.

12. Submits documents to the archive.

13. Draws up the liquidation balance sheet, which must also be approved by the body that made the decision on liquidation (Part 11 of Article 111 of the CCU) [1].

14. Draws up an act of the liquidation commission. The act shall indicate: the date of compilation, the list of members of the commission, all actions carried out in the liquidation procedure (in chronological order), the documents obtained as a result

of these actions. The act is signed by the members of the liquidation commission and approved by the owner of the legal entity.

Today, the liquidator shall not be obliged to notify creditors that an enterprise is being liquidated. In essence, creditors learn from the USR about the deadlines for filing claims and that the company is in the process of liquidation.

In the case of liquidation of a solvent enterprise, the participants of the legal entity in their decision on the liquidation of the legal entity,

prescribe the procedure and deadline for creditors to declare their claims. This period can last from 2 to 6 months.

In the case of liquidation in the bankruptcy process, creditors may file their demands (which arose before the day of the opening of bankruptcy proceedings) within 30 days from the date of official publication of the announcement of the opening of bankruptcy proceedings (Part 1 of Article 45 of Law № 2597) [2].

Claims for the obligations of the bankrupt debtor, which arose during the bankruptcy proceedings, may be filed only within the liquidation proceedings within 2 months from the date of official notification of the debtor's bankruptcy and the opening of liquidation proceedings. The specified term is limiting and is not subject to renewal.

Creditors whose claims are stated after the deadline for their submission, or not stated at all, are not competitive, and their claims are repaid in the sixth stage in the liquidation procedure (Part 4 of Article 45 of Law № 2597) [2].

Claims on the debtor's bankrupt obligations that arose during bankruptcy proceedings may be made only within 2 months from the date of official publication of the announcement of bankruptcy proceedings and the commencement of liquidation proceedings. This period shall be the deadline and may not be restored.

Creditors, whose demands are claimed at the end of the term prescribed for their submission, or not declared at all is not competitive, and their claims are repaid in the sixth stage in the liquidation procedure (Part 4 of Article 45 of Law № № 2597) [2].

In the case of liquidation of a solvent legal entity, the claims of its creditors are satisfied in the following order (Art. 112 of the Civil Code) [1]:

1) first of all, claims are satisfied for health damages and claims of creditors secured by collateral or otherwise;

2) secondly, the requirements of employees related to labor relations, the author's requirements for payment for the use of the result of his intellectual, creative activities;

3) in the third place, the requirements for mandatory payments are met;

4) in the fourth place all other requirements are met;

The demands of one priority are satisfied in proportion to the sum of the claims belonging to each creditor of that priority. For claims of creditors under insurance contracts priority is established by the Law of Ukraine "On Insurance" from 07.03.96 № 85/96-VR [3]. The priority of satisfaction of creditors' claims under insurance contracts is established by law.

In case the liquidation commission refuses to meet the creditor's claims or avoids their consideration, the creditor has the right to apply to court within one month from the moment when he learned about such refusal. By court decision, creditor's claims may be satisfied at the expense of the property remaining after liquidation of the legal entity.

If the creditor's claims have been claimed after the expiry of the term established by the commission for their submission, they shall be satisfied by the property of the legal entity remaining after the creditors' claims declared within the established term have been satisfied.

Claims shall be deemed settled for the absence of property of the legal entity, by court decision or if the creditor has not applied to the court within one month after receiving the notification on full or partial rejection of the liquidation commission to recognize its claims. If the creditor files an application after the entry "suspended" in the Unified State Register, he will not receive anything, because by virtue of Art. 609 of the Civil Code [1] and Part 3 of Art. 205 of the Civil Code, the obligation is terminated [1].

We know that lots of companies exist because of the moneylenders. In Ukraine there are lots of risks that creditors will be left without nothing and this affects the investment climate of our country.

An orderly and efficient liquidation procedure can solve problems between creditors, creating opportunities for equal treatment of creditors and maximization of assets to be distributed among them [4].

One of the goals of an effective procedure should be the task of maximizing ownership for further division between creditors. In general, there are many aimed at achieving this goal. For example, encouraging creditors to provide finance for the continuation of temporary business activities, the inclusion of provisions to help return assets disposed of by the debtor to the detriment of creditors, or the appointment of a liquidation commission.

But very often the broad powers given to the liquidation commission to allow the cancellation of already concluded transactions and changes in the terms of existing contracts can undermine predictability in contractual relations, which is very important for investment.

Another goal is to treat creditors fairly. Bankruptcy proceedings will only work properly when all parties consider them fair. This can be obtained through certain processes, such as the creation of a reimbursement system and others.

Also such system should be a mechanism that will facilitate investment decisions. If lenders are confident in the protection of their rights, it will encourage investment. Lenders need to understand that they are to some extent managing the risks that may occur in the future. For example, this can be done by allocating after-service priorities.

Articles of the Civil Code also contain provisions on the procedure for satisfying creditors' claims, but such claims do not necessarily have to be confirmed by a court decision.

As a general rule, only the bodies of the state executive service can enforce the decision, only they can take measures to ensure its execution: seize, write off funds,

describe and sell property, and so on. In the event of closure, the creditor will be deprived of the opportunity to actually ensure such performance.

And even when termination occurs, there is almost always a hidden allocation or accession, but no liquidation. It is good when a creditor can prove this in court, but such cases are the exception. After the seizures are lifted, the debtor almost always transfers the assets to related structures, which makes it much more difficult to obtain the funds due by court decision.

The problem does exist, and it is best if it is solved by the legislator. Obviously, the state can oblige its official to carry out the decision made in its name. It may allow the execution of such a decision and a private contractor. However, court decision cannot be enforced by the person who lost the case. Nor can the state allow a liquidator to be appointed to avoid the execution of the decision. The very possibility of liquidation without implementing the decision must be eliminated.

While these goals are as a rule commonly strengthening, they may also in some cases contrudict each other. Without a doubt, one of the challenges in making an efficient and effective liquidation procedure is to strike the proper adjust between competing targets.

Conclusion. For the liquidation of a legal entity there are certain procedures that must be carried out by the liquidator and the legal results that he must achieve, such as dismissal of the team, debt collection and others. From a broader point of view, such liquidation procedures constitute an important disciplinary force, which is an important element of a stable debtor-creditor relationship. Therefore, the creation of an implemented and effective system of liquidation of the enterprise is a necessary action for Ukraine. For example, providing an orderly and predictable mechanism by which the rights of creditors are protected. Such procedures provide creditors with confidence in their loan decisions. Thus, they can be seen as promoting the interests of all economic actors, as they contribute to the development of financial markets.

Reverences:

1. Civil Code of Ukraine. Online access: *https://zakon.rada.gov.ua/laws/show/435-15#Text*

2. Code of Ukraine on Bankruptcy Procedures. Online access: *https://zakon.rada.gov.ua/laws/show/2597-19#Text*

3. The Law of Ukraine "On Insurance" from 07.03.96 ¹ 85/96-VR. Online access: *https://zakon.rada.gov.ua/laws/show/85/96-вр#Text*

4. Report of the IMF about Orderly & Effective Insolvency Procedures. Online access: *https://www.imf.org/external/pubs/ft/orderly/index.htm*