Shareholders' Obligations in the Process of Dissolution and Self-liquidation of Limited Liability Companies

Fangfang Tang*

Beijing Tianchi Juntai Law Firm, Beijing, China

*Corresponding author, e-mail: tangfangfang@tiantailaw.com

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Abstract: *The Chinese Company Law clearly stipulates that when a company is dissolved due to the expiration of the business term or the articles of incorporation or when the business license is revoked, ordered to be closed or revoked by the administrative organ, the company is obliged to set up a liquidation group within fifteen days from the date of the above-mentioned dissolution to start the dissolution and liquidation of the company. This article mainly discusses the limited liability company in the face of the above dissolution and liquidation of the situation, the shareholders should assume the relevant obligations.*

Key words: *Dissolution; Liquidation; Shareholder obligations*

Obligation to Establish Liquidation Group

The Company Law clearly stipulates that the liquidation group of a limited liability company is composed of shareholders, and if the shareholders are negligent in performing this duty and overdue for liquidation, then the creditors have the right to apply to the people's court at this time, requesting the people's court to appoint relevant persons to set up a liquidation group to carry out liquidation work. Therefore, it is the primary obligation of the shareholders to set up a liquidation team to carry out the dissolution and liquidation work. The judicial interpretation of the Company Law also provides that if the shareholders of a limited liability company fail to establish a liquidation group within the statutory period to commence liquidation, resulting in the devaluation, loss, destruction or loss of the company's property, the creditors have the right to claim that the shareholders are liable for the company's debts to the extent of the damage caused. If the company's main property, account books and important documents are lost due to negligence, the creditor has the right to claim joint and several liability for the company's debts. Therefore, it is crucial to set up a liquidation team and start the liquidation for the shareholders of the limited liability company in the first task of self-liquidation. In the following, if not specifically stated, the liquidation group is the shareholders, the obligations of the liquidation group is the obligations of shareholders.

In practice, the company generally through the form of shareholders meeting, voting to determine by all shareholders or part of the shareholders to form a liquidation team, responsible for the liquidation of the company affairs, the exercise of liquidation duties. Another liquidation involves cleaning up the company's property, so some companies may include non-shareholder financial personnel into the liquidation team

members, in order to better carry out the liquidation work, while some of the more complex assets of the company may also be entrusted to external accounting firms to assist the company to clean up its property, the preparation of relevant asset statements.

Obligation to Make a Record Registration

After the liquidation group is established, the second obligation of the liquidation group follows. According to the "Regulations on Company Registration", if a company is dissolved and should be liquidated according to law. The liquidation group should file the list of members of the liquidation group and the person in charge of the liquidation group with the company registration authority within ten days after its establishment. The company liquidation group for the record registration is the legal responsibility given to the company registration authority. In practice, if shareholders disagree with the filing results of the liquidation and revoke them, in most cases, the administrative agency's act of approving the filing and registration of the liquidation team does not set new rights and obligations for the relevant right holders, and will not its legal rights have adverse practical effects and are difficult to be revoked in the end. Therefore, it is recommended that when the company is liquidated due to dissolution, all shareholders, no matter how small their shareholdings are, must keep abreast of the liquidation progress, actively participate in the liquidation work and reasonably exercise the relevant rights, master the progress of the liquidation work of the company, object to the acts that may endanger their interests in the liquidation process or take other ways to defend their rights in a timely manner to avoid losing their interests in the liquidation process because they are unaware of it.

Obligation to Notify Creditors

In addition to the obligation to register the liquidation group for filing within ten days after the establishment of the liquidation group, there is another obligation that needs to be required to be completed by the liquidation group within ten days, and that is to notify the creditors of the company within ten days after the establishment of the liquidation group. The creditors mentioned here generally refer to the known creditors, should be notified in writing to the company settlement liquidation matters to them, if not notify the creditors to declare claims, resulting in creditors failed to declare claims in time to obtain liquidation, shareholders may be liquidated after the company cancellation will also face the creditors filed shareholders damage to the interests of the company's creditors liability disputes, bear joint and several liability, so be sure to strictly The obligation to notify must be strictly performed in accordance with the law. Since there are known creditors, there may also be potential creditors, so there should also be a newspaper announcement within sixty days, and the judicial interpretation of the Company Law provides that the announcement should be made in the national or provincial influential newspapers of the company's registered office according to the company's scale and business geographical scope. The obligation of notice and announcement is also very critical for the liquidation team and shareholders, and if they fail to fulfill the requirements resulting in creditors failing to file in time and not being paid, they will face compensation for the economic loss caused to creditors as a result.

When creditors file their claims, the liquidation team should carefully register them and should not pay

them during the filing period. Because the company's assets have not been liquidated at this stage, whether it is sufficient to pay all the claims is unknown, if the creditors are liquidated at this stage, it may lead to the situation that some creditors are fully liquidated and some creditors are partially liquidated, or even some creditors are not liquidated at all. And the result of such uneven liquidation is extremely unfair to the creditors who have not been liquidated, so the law prohibits the liquidation of creditors at the filing stage, which is also the legal obligation that the liquidation team should follow.

Liquidation of Company Assets and Preparation of Related Statements

After the completion of the claim filing, the liquidation team is also responsible for the preparation of the company's balance sheet and property list, the formulation of the liquidation report, and reported to the shareholders' meeting for confirmation. The liquidated company assets should be paid in a statutory order, which is related to the interests of many parties. In the order of the remaining property distribution company is at the bottom, a liquidation group to verify the results of claims of the creditors will directly influence the shareholders of a company can be allocated to the remaining property of balance, so usually we decided that the shareholders of a company for a liquidation group to make the company creditor's rights and debts of verification results have direct interests relationship. If the shareholders of the company infringe on other rights holders during the verification and confirmation process, the liquidation report may face the risk of being revoked. If creditors have any objection to the claims approved by the liquidation group, they can request the liquidation group to re-approve them according to the law; if the liquidation group does not re-approve them, or if creditors still have objection to the re-approved claims, creditors can file a lawsuit to the people's court with the company as the defendant. Therefore, shareholders are required to review and confirm the liquidation report prepared should be honest and trustworthy, dutiful and factual.

Handling of Outstanding Business of the Company Related to Liquidation

In the process of liquidation of the company, there may still be some concluded obligations, such as unfulfilled contracts or unfinished litigation or arbitration, etc. The liquidation team is responsible for executing liquidation affairs internally and liquidation activities externally on behalf of the company. The liquidation team can only engage in liquidation affairs, and all liquidation affairs are exercised by the liquidation team according to the law. Other company executives who are not members of the liquidation team or responsible for the liquidation team are not authorized by the liquidation team to implement external acts of disposition of debts and liabilities in the name of the company. The judicial interpretation of the company law clearly stipulates that the shareholders' unpaid capital should be used as liquidation property when the company is dissolved, and the liquidation team has the obligation to liquidate the company's property, so the liquidation team should urge the shareholders who have not completed their capital obligations to fulfill their capital obligations, even if the liquidation team does not urge the shareholders who have not completed their capital obligations to pay their capital, the creditors have the right to claim the unpaid capital when the company's assets are not enough to pay off its debts. Even if the liquidation team does not urge the shareholders who have not completed their capital contribution to pay the capital contribution, if the company's assets are not sufficient to settle the debts, the creditors have the right to claim that the shareholders who have not paid

the capital contribution are jointly and severally liable for the debts of the company within the scope of the unpaid capital contribution and are supported by the court. Therefore, we remind all shareholders who have not paid the capital contribution to pay attention to the dissolution and liquidation of the company, should take the initiative to fulfill the obligation of capital contribution.

Order of Payment in the Liquidation of the Company

The Company Law clearly stipulates the order of payment of the company's property in the liquidation process, from the liquidation expenses incurred by the liquidation team because of the liquidation work to the employees' salaries, social security and statutory compensation costs, including the taxes owed to the administrative authorities, all of which are prioritized over the company's debts. Therefore, claims previously declared by creditors in accordance with the law and confirmed by the liquidation team as correct must be settled only after the aforementioned expenses have been paid off. If the company's assets are sufficient to pay off all debts and remaining property, the limited liability company shall distribute the remaining property in proportion to the shareholders' capital contribution, so shareholders note that the company liquidation only in accordance with the aforementioned order of liquidation and the remaining company property, the proportion of capital contribution can be distributed, if not distributed in advance in accordance with the provisions, will eventually face the legal requirements for the return of consequences. When the company's assets are not enough to pay off all debts, the liquidation group shall apply to the people's court for declaring bankruptcy according to law, and after the company is declared bankrupt by the people's court according to law, the liquidation group shall transfer the liquidation affairs to the people's court.

Prepare Liquidation Report, Handle Cancellation of Registration

The liquidation report produced by the liquidation team shall be true and shall not have a false description, and the members of the liquidation team shall also be faithful to their duties. If a false liquidation report deceives the company registration authority for the cancellation of registration of a legal person, the creditor shall have the right to claim the shareholder to bear the corresponding liability for the company's debts. The members of the liquidation team shall also be liable for damages caused to the company or creditors due to intentional or gross negligence. The liquidation team should also be cautious and diligent in the liquidation process, not to omit the company's claims or property interests. After the cancellation of the company, it is found that the claims or property interests omitted in the liquidation of the company belong to all shareholders and shall be distributed by all shareholders in accordance with the articles of incorporation or the law after acquisition.

The liquidation report should generally contain the basic situation of the company, the situation of debts and liabilities and their liquidation, the settlement of taxes and employees' salaries, the expenses incurred during the liquidation period, the distribution plan of the remaining property, etc. After the liquidation report is produced by the liquidation team, it should be reported to the shareholders' meeting for confirmation and then submitted to the company registration authority for cancellation of registration, without confirmation of the liquidation plan, the liquidation team shall not be implemented.

The company is registered for cancellation without liquidation in accordance with the law, and shareholders or third parties who undertake to assume responsibility for the company's debts when the company is registered for cancellation by the company registration authority will be supported by the People's Court in accordance with the law when creditors claim corresponding civil liability for the company's debts after the company is cancelled. At present, in order to build a high-standard market system, build a more mature and established high-level socialist market economic system, the implementation of simple cancellation of unopened and non-listed enterprises without debts, individual business households. Promote the facilitation of enterprise cancellation, in order to facilitate the operation of the situation and the relationship between claims and debts of relatively small-scale enterprises, enterprises can be based on the actual situation, through the "simple cancellation" for cancellation of registration obligations in the enterprise credit information network for simple cancellation notice, notice period of 20 days, the notice period no objection, the notice period to submit Cancellation of registration application can be successfully completed after the cancellation. Some people will be worried that the simple cancellation will help the pawnshop company to evade responsibility, this please rest assured that in the process of simple cancellation, all investors need to sign a commitment, the commitment contains claims and debts have been paid off, there is no outstanding costs and outstanding matters, there is no other circumstances that do not apply to the registration of simplified cancellation of enterprises, if illegal breach of trust will bear the corresponding legal consequences and responsibilities The company will voluntarily accept the constraints and discipline of law enforcement departments, etc.

The process and requirements of enterprise liquidation are clear laws and regulations to follow, and must be taken seriously. It is recommended that shareholders must strictly follow the procedures and processes stipulated in the laws and regulations for liquidation and then deregistration, so as to avoid bearing the corresponding legal responsibilities due to false liquidation or deregistration without liquidation.

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