

Възобновяване на ликвидационното производство на търговски дружества

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Визираме нормативни актове:

ВЪЗБНОВЯВАНЕ НА ЛИКВИДАЦИОННОТО ПРОИЗВОДСТВО НА ТЪРГОВСКИ ДРУЖЕСТВА

Възможно е да се възобнови ликвидационното производство след заличаването на дружеството от търговския регистър.¹ Необходимост от допълнителни ликвидационни действия е налице при освобождаване на суми, заделени за спорни, респективно условни вземания. Освобождаването на предоставените от дружеството суми съгласно чл. 272, ал. 3 ТЗ може да е следствие на това, че съдът не е уважил претенциите на кредиторите и е отхвърпил предявените от тях искове, както и на обстоятелството, че условието, обуславящо възникването на вземането на кредитора, не е настъпило. Също така е възможен вариант, при който активите, предмет на дадените обезпечения, се оказват по-големи от сумите, които дружеството дължи. Освободените суми подлежат на разпределение между съдружниците/акционерите.

Предприемането на действия с цел окончателното приключване на ликвидацията на дружеството може да е свързано и с установяването в един по-късен момент на неразпределено дружествено имущество (движими и недвижими вещи, ценни книжи, нематериални блага, вземания и др.). В този случай се удовлетворяват първо вземанията на кредиторите, които не са погасени по давност.² Ако след изплащане на кредиторските претенции е останало новооткрито имущество, то се разпределя между бившите дружествени членове съразмерно на ликвидационните им дялове. Разпределението се извършва след осребряване на имуществото, но няма пречка дяловете да бъдат в натура (по аргумент от чл. 268, ал. 2 ТЗ).

Когато дружеството е заличено след изтичане на шестмесечния срок от обявяване в търговския регистър на поканата за предявяване на кредиторските вземания, макар не всички те да са удовлетворени, също е възможно да започне допълнителна ликвидация, независимо от това дали има освободени суми, първоначално заделени за спорни вземания, или е налице новооткрито имущество. Ликвидационното производство следва да бъде възобновено, тъй като по същество ликвидацията не е приключила - не са уредени всички вземания, каквото е изискването на закона - чл. 268, ал. 1 във връзка с чл. 272, ал. 2 ТЗ. След възобновяване на ликвидационните действия, ако липсва имущество, от което да се удовлетворят съответните кредитори, ще се приложи чл. 272а във връзка с чл. 611, ал. ³ ТЗ и от производство по ликвидация ще се премине към производство по несъстоятелност.

Действията, свързани с доосъществяване на ликвидационните цели, се извършват от досегашните или от нови ликвидатори. Последните се назначават по искане на заинтересованите лица. Такива са: неудовлетворените кредитори, чиито вземания не са станали известни на ликвидаторите и не са били предявени в производството по ликвидация (тези вземания не следва да са погасени по давност според общите разпоредби на гражданското законодателство); кредиторите, чиито вземания не са били удовлетворени, тъй като са били предявени след изтичането на 6-месечния срок по чл. 2721 ал. 1 ТЗ и след извършеното разпределение на чистото имущество между дружествените членове; кредиторите, които не са предявили вземанията си и вложената от ликвидаторите сума съгласно чл. 272, ал. 3 ТЗ се е

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Padhraic Smyth



Nebankovskaia Kreditnaia Organizatsiia Sozdanie Funktsionirovanie I Likvidatsiia:

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