BRIEF INSIGHTS

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JUDICIAL LIQUIDATION BY CREDITOR'S APPLICATION

Pursuant to Article 211 of the Companies Law, a company may be wound up by the Court if the company is unable to pay its debts (section "e" of the article).

According to article 212 of the Companies Law, it is provided that a company is deemed to be unable to pay its debts if the creditor, by assignment or otherwise, to whom the company owes an amount exceeding five thousand euros (€5,000), has delivered to the company delivering at the registered office of the company a demand requiring the company to pay the amount so due, and the company has for the next three weeks neglected to pay the amount or secure or settle it to the creditor's reasonable satisfaction section "a" of the article).

Therefore, before the application is made, a creditor's debt claim (statutory demand) must be served at the registered office of the company and for the next three weeks he or she must neglect or refuse to pay - or secure or settle it - to the creditor's reasonable satisfaction. This debt must exceed the amount of €5000.

The debt must be existent, well founded and liquidated so that it cannot be denied, as is the case for lodging an application for a summary claim where the debt is considered certain.

If the company proves unable to pay its debts, the court prior to issuing its winding-up order takes into account the various factors, including the potential and future liabilities of the company, as well as the number of the creditors, the value of the debts owed to them, their type and motives, and generally the principles of law and commercial ethics.

The written claim to pay a debt from a company (statutory demand) should come from a creditor, that is, from a person whose debt is not substantially in doubt, even if the company is in fact insolvent. This term "creditor" does not include a person whose creditor status is being challenged. It also does not include a person who has a certain claim for damages, but which are not cleared.

It has been decided that applying for a liquidation of a company is not an appropriate method of settling a controversial debt. If there is any reasonable basis for doubting the existence of the debt, not just its amount, no such request should be made.

The court has distinguished the concept of "dissolution" of a company from that of the term "liquidation", since the two concepts are not identical, and their difference is significant. The process of winding up a company, as it says, follows the liquidation, as a procedure for the appointment of a receiver for clearing purposes begins with the issuance of a winding-up order.

After completing the winding-up proceedings, and assuming that the company's cases have been fully liquidated, at the request of the applicant, the Court may, and only then, issue an order for the winding-up of the company.

Failure of a company to pay a debt due to a bona fide dispute does not amount to negligence in complying with the law.

The simple refusal to pay an unquestionable debt is always good evidence that the debtor is unable to pay. However, if the court comes to the conclusion that a company puts forward a substantive defence in good faith and does not merely seek to avoid the consequences of its debt, then it will certainly not approve the winding-up request.

The purpose of this brief legal guide is to provide a general guideline on the subject and not to be considered, in any way, as legal advice. It is advisable to seek professional and legal advice on this subject before proceeding with any general information provided to you. For further clarifications and/or advice please contact your usual contact at E&G Economides LLC or at legal@economideslegal.com