



Amendments to the General Law of Commercial Companies regarding the dissolution and winding-up of companies in Mexico

Background

Last January 24, 2018, a Decree was published in the Federal Official Gazette, by means of which several provisions of the General Law of Commercial Companies applicable to the procedure for the dissolution and winding-up of companies, were amended and restated.

In accordance with the Sole Transitory Provisions of the Decree, these reforms will become effective on July 25, 2018, that is 6 months after its publication.

Amendments

01. Court rulings by a competent court, either judicial or administrative, in accordance with the provisions contained in the applicable laws, were incorporated to the grounds for the dissolution of companies.
02. From now on, disregarding the cause that led to the dissolution, the immediate registration thereof is mandatory in the Public Registry of Commerce, as otherwise any interested

party may request the registration to the judicial authority. Likewise, the judicial authority may: (i) appoint the liquidators; and (ii) revoke the appointment thereof at the request of any partner or shareholder of the company by justifying the existence of serious cause for its removal.

03. From the date these amendments become effective, the liquidator will have the alternative to keep the corporate records and information of the company

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through electronic, optical or any technological means, so long as it is done in compliance with the applicable Official Mexican Standard (Norma Oficial Mexicana) on digitalization and safekeeping of data messages issued to that effect by the Ministry of Economy.

04. Also, all commercial companies have to publish the company's final approved balance sheet in the Electronic Publication System of Commercial Companies.

New Procedure for Dissolution and Winding-up

A new procedure is established to carry out the dissolution and winding-up of companies that have not conducted any transactions over the two years prior to the date the corporate resolutions approving the dissolution and winding-up are adopted.

The following are some of the main requirements to qualify for this procedure:

- i. The partners or shareholders of the company must be individuals;
- ii. The notice of registration, including the current capital stock structure, has to be published with at least 15 business days prior to the date of the meeting in which the dissolution will be approved;

The company should have not carried out any commercial transactions during the past two years, nor issued any electronic invoices during the same period of time;

iii. The company must be in compliance with all its tax, labor and social security obligations;

iv. The company should not have any pending monetary obligations with third parties; and

v. The company must not be an entity part of the financial system in terms of the applicable financial regulation.

Procedure

The new procedure for dissolution and winding-up will allow, amongst other things, the following:

- A. If the corporate resolutions approving the dissolution and appointment of the liquidators are approved by all of its partners or shareholders, these resolutions will be published and no further formalization in a public deed nor any other formality will be required;
- B. The partners or shareholders will deliver to the liquidator all the assets,

corporate books and documents of the company, and the latter may choose to keep the records and documents of the company through electronic, optical or any other technological means for a term of 5 years and not 10, as otherwise established;

- C. Once the company has been wound-up, the liquidator has to publish the final balance sheet of the company in the Electronic Publication System of Commercial Companies within a term of 60 business days following the date of the meeting that approved the dissolution and winding-up of the company; and
- D. The Ministry of Economy will register the cancellation of the commercial number of the company in the Public Registry of Commerce and will notify the corresponding tax authority.

It is worth mentioning that in case the partners or shareholders falsely state any fact during this new process, either by misrepresentation or alteration, they will be jointly and severally liable towards third parties, without prejudice of any other criminal liability in which they may have incurred.

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