Dissolution of legal entities

Non-judicial dissolution and liquidation of legal entities (article 19 t/m 24 book 2 of the Dutch Civil Code)

Dissolution

This concerns the dissolution of legal entities, without intervention from a judge or court. Legal entities in this context are: *besloten vennootschappen* (private limited company), *naamloze vennootschappen* (public limited company), *coöperaties* (cooperatives), *onderlinge waarborgmaatschappijen* (mutual insurance societies), *verenigingen* (associations), or *stichtingen* (foundations). Different rules apply to the legal entity EEIG (European Economic Interest Grouping). These are stated at the end of this section.

A legal entity can be dissolved in one of the following ways.

Firstly, by taking a resolution to dissolve *(ontbindingsbesluit)*:
A *naamloze vennootschap* or a *besloten vennootschap* can be dissolved by a decision of the general shareholders meeting; a *vereniging*, *coöperatie*, or *onderlinge waarborgmaatschappij* by a decision of the general members' meeting. The board of a stichting can decide to dissolve the stichting, unless the articles of association prohibit this.

It is customary that a special majority of votes is required to take a dissolution decision, as well as a certain quorum (that is to say that there must be a minimum number of voters present). Always check the articles of association.

Dissolution takes effect at the time the decision is made, or at some point in the future. It cannot enter into force retroactively. A decision to dissolve is irreversible. That means you cannot undo it. Under special conditions, with judicial intervention, a decision can be revoked.

Secondly: the law states that a *vereniging*, *coöperatie*, or *onderlinge waarborgmaatschappij* will be dissolved if there are no members left.

Thirdly: the articles of association may contain the provision that the legal entity must be dissolved if a particular situation arises.

Fourthly: the Netherlands Chamber of Commerce KVK can dissolve a legal entity if it fails to meet certain legal obligations.

KVK dissolves a legal entity if 2 or more of the following situations occur:

1. There have been no registered directors for a year or more / the registered directors are deceased or cannot be reached.
2. No annual financial statements have been filed for over a year (this does not apply to *verenigingen* and *stichtingen*).
3. No corporate tax return has been filed for over a year after the tax inspector has sent a reminder to do so (this does not apply to *verenigingen* and *stichtingen*).
4. The legal entity cannot be reached at the address register in the Business Register (*Handelsregister*), and there has been no report of a change of address.

The legislator assumes that if at least 2 of these conditions apply, the legal entity is 'void'. This means the legal entity no longer has any activities or assets. Such a legal entity must be dissolved, as it has no grounds to continue to exist. Dissolving a void legal entity can also prevent misuse by persons who cannot or do not want to set up a legal entity by legal means. Active legal entities need not worry. This law does not apply to them.

KVK will send a notification of the intended dissolution before dissolving the legal entity. KVK will dissolve the legal entity 8 weeks after that, unless the grounds for dissolution have ceased to exist in the meantime.

Are you involved in a legal entity that is no longer active, and does not intend to resume its activities? You can take action yourself to have this legal entity dissolved by a dissolution decision.

You must report the dissolution of a legal entity to the Business Register (*Handelsregister*). Use form 17a (Register the dissolution of a legal entity) for this declaration. If the decision to dissolve has been taken by the appropriate body (shareholders meeting, members assembly, or board decision), you must enclose documentation of this decision. The form states which other documentation you must enclose.

Liquidation

Continued existence after dissolution

Dissolution of a legal entity does not automatically mean the legal entity ceases to exist. The dissolved legal entity continues to exist if this is necessary for the liquidation of the assets. This is called *vereffening* in Dutch. During the liquidation, ongoing work is completed, receivables are collected, debts paid, and stock is sold. One or more liquidators take care of the liquidation. Usually, the directors are the liquidators; this is always the case if no special liquidators have been appointed in the articles of association. Other persons may be appointed as liquidators in the articles of association, or when the resolution to dissolve is made. Dissolution causes the directors to cease to hold office as directors at the time of dissolution. In all documents and announcements, *In liquidatie* (literally: 'in liquidation') must be added to the name of the legal entity.

A report must be made of the appointment of the liquidators, and, if applicable, the resigning of the directors and the termination of the company. A liquidator must report this.

What are the next steps after the legal entity has been dissolved in one of these ways? That depends on whether or not there are any assets at the time of dissolution. If there are assets, are they sufficient to pay the debts (surplus balance)? Or are there insufficient assets to pay the debts (no surplus balance)?

A. There are no assets
If a legal entity does not have any assets at the time of dissolution (no business, for example), the legal entity ceases to exist at the time of dissolution. Even if the legal entity still has debts at that time. No liquidation needs to take place. A director of the legal entity must then report the dissolution and the end of the legal entity to the Business Register. If a company is still registered, although it was dissolved earlier, the director must still declare this dissolution.

In addition, you must inform the Business Register who the keeper of accounts and records of the legal entity is. This custodian is the person who keeps the records of the legal entity for 7 years after the dissolution of the legal entity. You make all these declarations in form 17a. The file at KVK will then be closed.

On 15 November 2023, the *Tijdelijke wet transparantie turboliquidatie* (in Dutch, Expedited Liquidation Transparency (Interim Measures) Act) came into force. Find out more about fast-track liquidation at KVK.

What does the *Tijdelijke wet transparantie turboliquidatie* mean for you?
The *Tijdelijke wet transparantie turboliquidatie* relates to fast-track liquidation, also known as turbo liquidation. It requires legal entities to provide more transparency to creditors when carrying out a fast-track liquidation. It means that within 14 days after the dissolution, the (former) board of the legal entity must file a balance sheet and a statement of income and expenditure with KVK, relating to the financial year in which the dissolution took place (and possibly the previous financial year). This should include a description of:
1. The cause of the lack of assets at the time of dissolution;
2. If applicable, how the assets of the legal entity have been monetised and the proceeds distributed; and
3. If applicable, the reasons why a creditor or creditors remained unpaid in whole or in part.

KVK has prepared a form to help comply with the obligations arising from this law. You are not obliged to use this form. However, the (former) board is still responsible for sending the correct and complete information to KVK..

As soon as possible after the relevant documents have been filed, the (former) board should **notify creditors in writing**. This allows creditors and other relevant parties to verify that there has been no misuse.

Please note!
Financial statements for previous financial years that have not yet been filed, including an **audit certificate** where applicable, should also still be filed at KVK before submitting form 17a.

If the legal entity has no assets but has debts, make arrangements for the settlement of the debts before taking the resolution to dissolve. Taking a resolution to dissolve while the legal entity has no assets but does have debts may lead to the liability of the directors of the legal entity.

Note: a receivable from a debtor or any tax refund can also be regarded as an asset.
See the information under B.2.

B. There are assets

B.1 Sufficient assets (credit balance)

If there are sufficient assets to pay the debts of the legal entity at the time of dissolution, the dissolved legal entity must continue to exist until these assets have been liquidated. Read on to find out how this liquidation must be arranged.

Liquidator's statement, plan for distribution, advertisement

The purpose of liquidation is to wind up the assets of the legal entity. The liquidator must verify that all debts are known. The liquidator has to collect all claims the legal entity still has at the time of dissolution. Of the liquidation, the liquidator must draw up a 'statement of income and expenditure'. If, after all the debts have been paid, the dissolved legal entity still has assets left (surplus), the liquidator must pay out this surplus to the members or shareholders, unless the articles of association state otherwise. To do so, the liquidator draws up a liquidator's statement, which specifies the size and composition of the surplus. If 2 or more parties are entitled to this surplus, they must also draw up a plan of distribution, specifying the grounds for division between the entitled parties. The liquidator files the liquidator's statement and the plan of distribution at the Business Register and the offices of the dissolved legal entity, if these still exist. If the legal entity no longer has any office, these documents must be filed elsewhere in the court district of the legal entity's registered office.

If there is only one party entitled to the surplus, the liquidator only needs to file the statement of income and expenditure at the 2 places mentioned above.

In all situations, the liquidator must also place an advertisement in a newspaper to announce where and until when the documents may be viewed.

A template for such an advertisement:

<statutaire naam> in liquidatie.
Bovengenoemde rechtspersoon is ontbonden door <reden ontbinding> d.d. <.....> per <.....>.
De rekening en verantwoording (en het plan van verdeling) liggen ter inzage voor eenieder tot <datum> ten kantore van het Handelsregister van KVK en ten kantore van <de rechtspersoon + adresvermelding, óf naam + adresvermelding van andere plaats>.

English translation of the advertisement:

(name according to the legal entity's articles of association) in liquidation.
The above-named legal entity has been dissolved by ……..(basis for the dissolution) dated ……. per…….
The liquidator's statement and the plan of distribution have been filed for public inspection and shall be available for such until …..(date) at the office of the Business Register of the Netherlands Chamber of Commerce KVK in ….. and at the offices of ……(the legal entity + address, or name + address of other location). The liquidator(s).

Objections

Within 2 months of the issue and placement of an advertisement in a newspaper, any creditor or person entitled to the surplus can object to the liquidator's statement and expenditure and/or plan of distribution. To do so, the person must file an objection via a petition to the court. The liquidator must give notice of an objection in the same way as notice of the filing of the liquidator's statement (and the plan of distribution) was made. If the court has given a final decision on the objection, or if an objection is withdrawn, the liquidator must give notice in the same way in which notice of the objection was given (by means of an advertisement).

Distribution
If the condition and extent of the dissolved legal entity's assets permit, the liquidator may make preliminary distributions to those entitled to receive them. If the objection period has begun (that is, after the documents have been filed and the advertisement has been placed), they may do so only with court authorisation. If the 2-month objection period has expired without any objections having been filed, the liquidator must proceed to distribute the assets in accordance with the plan.

If the liquidator does not know the parties entitled to distributions, the best way for them to proceed is to announce the intended distributions by means of an advertisement. If the entitled parties have not all reported 6 months after that, the remaining balance will be subject to consignment by the liquidators. That is to say, turned over to the State to be maintained in the manner prescribed by law for the benefit of the parties entitled to these funds.

Completion of the liquidation process
The liquidation process is completed when there are no more assets present that are known to the liquidator. That means the end of the legal entity. This also has to be reported to the Business Register. The books and records of the dissolved legal entity must be kept by a keeper of accounts and records for 7 years after the end of the legal entity. The identity of this keeper may be given in the articles of the legal entity. The general meeting (or the foundation board of directors) may also designate a keeper of accounts and records. One of the liquidators must report the date from which the legal entity ceased to exist. They do so by submitting form 17b. KVK then closes the file.

The liquidator's statement to the court
If a court has been involved in the liquidation (due to the filing of an objection, for example), the liquidator must provide the court with a liquidator's statement, regarding their management, 1 month after the completion of the liquidation process.

B.2 Insufficient assets (no credit balance)
The liquidator may discover that the debts of the dissolved legal entity probably exceed its assets. They must then file a petition for bankruptcy. They are not, however, obliged to do so if all the known creditors, when asked, agree that the liquidation should proceed without bankruptcy proceedings, as described under 'B.1 Sufficient assets'. If the legal entity is declared bankrupt, the bankruptcy rules will apply, and the curator will be responsible for winding up the bankrupt estate.

Publication on KVK.nl
KVK must publish an announcement of all registrations and filings with the Business Register, regarding a *naamloze vennootschap* or *besloten vennootschap*, on its website: KVK.nl. This announcement by the Business Register does not replace the advertisement in the newspaper that the liquidators must place.

Dissolution of a European Economic Interest Grouping (EEIG)

Special rules apply to the dissolution of the legal entity EEIG (European Economic Interest Grouping) with its registered office in the Netherlands. Reference is made to EU Regulation no. 2137/85 and its Implementing Law. Dissolution is treated in article 31 of the Regulation. Clause 1 states: the collaboration may be dissolved by a decision of its members, pronouncing the dissolution. Unless otherwise stated in the articles of association, this decision must be carried unanimously. After the dissolution, liquidation will take place. One or more liquidators must be appointed. The Implementing Law states, amongst other things, that clause 4 of article 19, Book 2 of the Dutch Civil Code does not equally apply. This means that it is not permitted to dissolve and terminate the legal entity at the same time if there are no assets at the time of dissolution (so-called fast-track liquidation). Liquidation must be carried out in all cases.
A liquidator's statement and, if applicable, a plan for distribution must be filed in all cases. In addition, special obligations to publish the dissolution and termination in the Official Journal of the European Communities apply to the EEIG.

Other information

For more information, see the articles Ending your company per legal structure (Business.gov.nl) and Dissolving a legal entity (KVK).