

Dissolution of legal entities

Non-judicial dissolution and liquidation of legal entities (articles 19 – 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 limiteds), *naamloze vennootschappen* (public limiteds), *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.

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

Firstly: dissolution by decision

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, and that there must be a minimum number of voters present. Always check the articles of association first.

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, unless there are special circumstances and the court decides to reverse the dissolution.

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 two 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 two 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 actually 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 17 (Dissolution of a registration) for this report. 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 liquidator in the articles of association, or when the dissolution decision is made. KVK is sometimes liquidator in cases where KVK dissolves the legal entity. The directors usually cease to hold office at the moment of dissolution.

In all documents and announcements, 'in the process of 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 on a form 17A. What are the next steps after the legal entity has been dissolved in one of these ways? It depends whether or not there are still assets at the time of dissolution. And if there are assets, is there enough to pay the debts (credit balance), or are the assets insufficient to pay off the debts (no credit balance)?

A. There are no assets

If a legal entity has no assets whatsoever at the time of dissolution (so, for example, no enterprise), it ceases to exist at the time of dissolution. A director of the legal entity must report to the *Handelsregister* that the legal entity is dissolved and terminated. If there is a registration of an enterprise still in the *Handelsregister*, even though it had been terminated earlier, the director has to report this termination with retroactive effect. If the legal entity has ceased to exist, the director must report the keeper of the books and records to the *Handelsregister*. This is the person who retains the business records of the legal entity for the required 7 years after termination of the legal entity. You can file all these details using form 17A. After submitting the form, KVK will close the file.

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

If, after all the debts have been paid, the dissolved legal entity still has assets left (surplus), the liquidators must pay out this surplus to the members or shareholders, unless the articles of association stipulate otherwise. To do so, the liquidators draw up a liquidator's statement, which specifies the size and composition of the surplus. If two or more parties are entitled to this surplus, they must also draw up a distribution plan, specifying the grounds for division between the entitled parties. One of the liquidators files the liquidator's statement and the distribution plan at the Business Register and the offices of the dissolved legal entity, if these still exist. If the legal entities 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 need to file the presentation of accounts at the two places mentioned. In all cases, the liquidators must also place an advertisement in a newspaper to announce where and until when the documents may be viewed.

Template for such an advertisement

<.....name as given in the articles> in liquidatie.

Bovengenoemde statutaire naam 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 de Kamer van Koophandel, en ten kantore van <..... de rechtspersoon + adresvermelding, óf naam + adresvermelding van andere plaats>.

De vereffenaar(s)

Translation of the advertisement:

.....(name pursuant to the articles of the legal entity) in liquidation.

The above-named legal entity has been dissolved by(basis for the dissolution) dated per.....

The liquidator's statement and the plan for 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 in and at the offices of(the legal entity + address, or name + address of other location).

The liquidator(s).

Objection

Any creditor or party entitled to the surplus may, within two months after the filing and the publication of the advertisement, object to the liquidator's statement and/or the plan for distribution. Such a party must object by submitting a petition to the district court. The liquidators must give notice of any objections in the same manner in which they gave notice of the filing of the liquidator's statement and the plan for distribution (by filing the objection in two places and placing an advertisement). Once the court has made a final decision on the objection filed, or if an objection has been withdrawn, the liquidators must give notice of this fact (again by filing in two places and placing an advertisement).

Distribution

If the condition and extent of the dissolved legal entity's assets so permit, the liquidators 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 two-month objection period has expired without any objections having been filed, the liquidators must proceed to distribute the assets in accordance with the plan.

If the liquidators do not know the parties entitled to distributions (in the case of bearer shares), 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 six 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 liquidators. That signifies 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 books and records for seven 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 books and records. One of the liquidators must report the date from which the enterprise (if there (still) was any such) was discontinued and the date on which the legal entity ceased to exist. They do so by filing form 17B.

The keeper of books and records must report his name and address to the Business Register within eight days after his custodial duties started, using 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 liquidators must provide the court with a liquidator's statement regarding their management one month after the completion of the liquidation process.

B.2 Insufficient assets (no credit balance)

The liquidators 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 A. (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 any *bv* or *nv* on the website; KVK.nl. This announcement by the Business Register does not replace the advertisement in the newspaper that the liquidators must place.

EEIG, European Economic Interest Grouping

Special rules apply to 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. As article 3, clause 2 of the Implementing Law states amongst other things that clause 4 of article 19, Book 2 of the Dutch Civil Code does not equally apply, 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 turbo 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 conclusion, special obligations to publish the dissolution and termination in the Official Journal of the European Communities apply to the EEIG.