

## **MANDATORY DISSOLUTION AND BANKRUPTCY PROCEDURE**

### **IN BOLIVIA**

Bolivian law contemplates two procedures by which local companies with financial difficulties, are ultimately obliged to sell their assets in order to satisfy existing payment obligations, be it through a mandatory dissolution and liquidation or through a judicial bankruptcy procedure.

#### **I. Mandatory Dissolution**

According to Bolivian law, a corporation through an extraordinary shareholders meeting must undergo a mandatory reduction of capital when the losses are in excess of 50% of the capital, including free reserves. This situation must be communicated to the Commercial Regulator and published in accordance with applicable provisions. If the reduction of capital results in an inability of the company to conduct its business or fulfill its obligations, it must be dissolved and liquidated.

The decision or agreement to dissolve the company must be adopted through an extraordinary shareholders meeting, which must be registered and published for at least 30 days. The shareholders must nominate a liquidation committee (the "Committee") in charge of all liquidation proceedings that shall assume legal representation of the company.

The Committee shall prepare a complete inventory and draw up a special "liquidation" balance sheet. The Committee may not divert to any business other than that strictly related to the liquidation of the company and shall be liable to its shareholders for its actions.

The Committee shall be in charge of paying any outstanding monetary obligations assumed by the company. Once these obligations have been satisfied to the maximum extent possible, the Committee shall present: (1) a final report (2) an asset distribution plan, and (3) a final liquidation balance sheet, to be approved by the shareholders through an extraordinary meeting, signed by the company comptroller and subsequently registered and published in accordance with applicable law.

Shareholders are obliged to comply with any pending capital contributions for issued shares and may only recover their investment once all the obligations of the company are met or unless they have been satisfactorily guaranteed.

With no pending obligations to resolve, the Committee shall proceed to cancel the registration of the company before the Commerce Regulator and extinguish its legal existence.

## **II. Bankruptcy judicial process**

A creditor (“C”) who has a contractual right to claim pending monetary obligations may cause the debtor (“D”) to be judicially declared bankrupt by filing the respective civil and/or criminal claim before corresponding authorities.<sup>1</sup> D may nonetheless avoid the declaration of bankruptcy by calling a “concurso preventivo de acreedores”, within 10 days of having knowledge of its inability to comply with the payment obligations.

Unless the concurso de acreedores is called, the bankruptcy claim will proceed until the presiding judge issues a final Resolution by which D is declared bankrupt. The claim must be filed along with the necessary documentary evidence demonstrating D’s contractual non-compliance. D may contest the claim within three days of being served, to which effect a 15-day discovery period will be declared and upon conclusion of which, the Resolution declaring or rejecting the bankruptcy claim (the “Resolution”) will be issued.

The Resolution must contain:

- a) Appointment of a trustee.
- b) Express prohibition of the D’s ability to dispose of or manage its assets.
- c) Order to third parties demanding the delivery (to the trustee) of any of D’s assets they may be holding.
- d) Order to D demanding the delivery (to the trustee) of its accounting books and all other pertinent documentation.
- e) Order to the postal service demanding the delivery (to the trustee) of D’s correspondence.
- f) Prohibition to any of D’s debtors to make payments in cash or kind.
- g) Final date (no longer than 30 days as of the publication of the Resolution) by which other creditors may file petition for the recognition of debts and present the corresponding evidence.
- h) Calling of the creditors meeting to resolve any settlement offer and to review trustees’ report.

The Resolution must be published for three consecutive days in a nationwide newspaper within 24 hours of having been issued. The bankruptcy process will be

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<sup>1</sup> Debtor may also file for bankruptcy.

extinguished if D complies with its obligations within 5 days of being served with the Resolution.

Both parties may appeal the Resolution within 3 days of being served. Should the claim be ultimately revoked, C will be subject to the payment of corresponding damages.

Following the Resolution's publication, no other creditors may file a separate legal action against D. All ongoing proceedings shall bind with the bankruptcy proceedings save for expropriation, family and labor cases.

The Resolution shall cause the inapplicability of any termination clauses of contracts that were not judicially or unilaterally terminated before the date of the Resolution.

All pending debts are considered immediately payable and interest payments no longer apply against the bankrupt estate. This however, does not apply to secured creditors (pledges or mortgages) who may request the payment of interest to the fullest extent possible.

The judicial declaration of bankruptcy, or Resolution, creates a "State of Union" amongst the various creditors, who must hold ordinary and extraordinary meetings to resolve all pending issues. Resolutions are passed by a majority of votes representing the majority of the capital, unless the presiding judge requires a higher majority.

Acting as President, the presiding judge shall call the first meeting with the following order of the day:

1. Review of trustees' report.
2. Appointment amongst the members of interventionists and alternates.
3. Possibility of providing D and family of basic needs.
4. Liquidation of assets or continuation of the business.

Creditors must meet as many times as necessary until the above points are resolved.

D has the right to present a payment proposal to the creditors within 20 days of the last publication of the Resolution. Should the proposal be rejected and the possibility of continuing the business discarded, creditors must resolve to sell the bankrupt estate by presenting a plan to the presiding judge.

Save for the rights of first priority creditors, all secured creditors may request a separate and immediate sale of their secured assets to satisfy their debts. Should the proceeds fail to cover the debts, secured creditors shall join all other unsecured creditors.

Notwithstanding the above, should the creditors resolve to continue with the business, the secured assets may not be sold if the corresponding debts have not expired as of the date of the Resolution and the trustee duly complies with all other future obligations.

Real estate and concessions must be sold through a judicial auction process, unless the presiding judge deems it necessary to appoint the trustee to conduct a direct sale of the assets to any interested buyer.

Creditors who within five years do not retrieve or claim their portion of the sold bankrupt estate, will lose it to the State.

#### Debt Recognition

The trustee must prepare a report of all creditors who have requested recognition of their debts within the required time limit. In accordance with civil procedure, the list must rank each creditor by priority, nature of the obligation and amount, enclosing all pertinent documentation and an opinion as to the suggested order. Any creditor or the D may file an opposition to any of the debt recognition requests within 5 days of the first creditors meeting.

Within five days of the receipt of the trustees' report, the presiding judge shall issue a judgment, which shall determine the final number of recognized debts and their corresponding amounts, rank and priorities. Such judgment is subject to appeal within five days of issuance, but a security bond may be requested to avoid unnecessary delays.

Upon full payment of all pending debts or compliance of D's proposal, the presiding judge shall issue a final resolution declaring the non-existence of pending obligations.

Creditors not included in the debt recognition judgment or those whose debts remain unsatisfied after the proceeds from the sale of the bankrupt estate have been distributed, may continue on a personal basis to claim deficiency amounts against D and over any of his future assets.