The Right to Dividends-Can Shareholders Still Receive Dividends in Case of Legal Dissolution?

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Abstract

If the subject of dividend distribution is limited to what the dividends actually represent, there should be no room for uncertainty in the conversation. However, dividends, which are defined as a portion of a company's profit that belongs to each shareholder at the end of each financial year, in relation to the shares held by him, can raise new questions in many different respects. Not only can they raise questions about when they can be requested or who they belong to in the case of the transfer of shares (aspects to which the doctrine has already given an answer), but they can also raise questions about their situation in the event that the company is dissolved. As a result, the topic that is being discussed in this investigation is whether or not shareholders will have the opportunity to exercise their entitlement to dividends in the event that the corporation is dissolved by a court of law.

Keywords: *Dividends*, *Dissolution*, *General Assembly*, *Fiscal Year.*

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A. INTRODUCTION

If the subject of dividend distribution is limited to what the dividends actually represent, there should be no room for uncertainty in the conversation. However, dividends, which are defined as a portion of a company's profit that belongs to each shareholder at the end of each financial year, in relation to the shares held by him, can raise new questions in many different respects. Not only can they raise questions about when they can be requested or who they belong to in the case of the transfer of shares (aspects to which the doctrine has already given an answer), but they can also raise questions about their situation in the event that the company is dissolved.

In order to understand the situation of the dissolution and its relationship with dividends, it is also important to emphasize the impossibility of returning the company's share capital to shareholders in the form of dividends. The only situation in which the aforementioned hypothesis is admitted is when the liquidation procedure takes place and the debts of the company have already been paid to the creditors. Furthermore, in the legal literature it has been highlighted that if the company's capital was also used to carry out the current business and therefore reduced, there should be an obligation to complete it earlier, and only subsequently could the shareholders share the profit.

As it implies judicial dissolution, it may intervene in some particular cases expressly indicated by the law, respectively: if the company no longer has statutory bodies or they can no longer meet; if the partners or partners have disappeared or do

not have their known domicile or known residence; if the conditions relating to the registered office are no longer valid, also due to the expiry of the deed certifying the right to use the space with registered office or the transfer of the right of use or ownership of the space with registered office; if the activity of the company has ceased or the activity has not been resumed after the period of temporary inactivity, communicated to the tax authorities and registered in the register of companies, as the period cannot exceed 3 years from the date of registration in the register of companies; if the company has not completed the share capital, in accordance with the law; if the company has not presented the annual financial statements and, if applicable, the annual consolidated financial statements, as well as the accounting reports to the territorial units of the Ministry of Public Finance, within the deadline set by law, if the delay period exceeds 60 days working; or if the company has not submitted to the territorial units of the Ministry of Public Finance, within the legal deadline, the declaration that it has not carried out activities since its establishment, if the delay period exceeds 60 working days. 8 Any of these cases may determine the dissolution of the company, issuing a decision of dissolution by the court. In reality, the dissolution of the company by court decision occurs even when it cannot operate with a decision of the general meeting of shareholders, being able to pronounce the dissolution of the company for "usual reasons".

Therefore, a key point that emerges is about the shareholders' ability to exercise their right to dividends in the event that the company is judicially dissolved. This is because the right to dividends is a shareholder benefit.

B. METHOD

The type of study that was carried out by the author is known as descriptive qualitative research. This type of research seeks to describe what exactly is there on a variable that is present in the field. The study of the state of natural objects is an application of qualitative research, which is founded on the philosophical theory of post-positivism. The methods used in qualitative research are more open to interpretation and are conducted in more natural settings. When conducting qualitative research, the researcher themselves are the most important tool. Therefore, researchers need to have broad theoretical provisions as well as in-depth provisions in order for them to be able to ask questions, analyze, and create the subject of their study so that it is clearer.

C. RESULT AND DISCUSSION

As mentioned, the profits of the companies can be distributed to shareholders, in proportion to the number of shares held. The portion of profit distributed to shareholders is called dividends. 1 Dividends are of two types respectively dividends paid in cash, which are dividends that come into the possession of shareholders and dividends paid in shares, which are not actual dividends, but can be seen as such, as the company's profit is passed on to shareholders in the form of shares.

In reality, according to the main type of dividends, it can be said that the main reason for holding shares issued by a company is the economic one, that is, the harbinger of participation in the distribution of a part of the company's profit to shareholders in the form of dividends. Dividends are distributed to shareholders in proportion to the share of capital paid, optionally on a quarterly basis on the basis of the half-yearly and annual report, subject to regularization through the annual financial statements, unless otherwise provided by the articles of association. May be paid optionally quarterly within the term established by the shareholders' meeting or, depending on the case, with special laws, the regularization of the differences resulting from the distribution of dividends during the year to be carried out through annual financial statements.

Therefore, the general meeting of the company decides which part of the profit is distributed as a dividend, dividing this amount by the total number of shares, obtaining the dividend per share. Subsequently, each shareholder calculates the dividends to be received by multiplying the dividend per share by the number of shares held.

As we have seen, the right to a dividend does not automatically arise for the benefit of shareholders, but in order to distribute a dividend the condition that the company has recorded a profit at the end of the year must be satisfied. Being dependent on profit, and being the profit determined on the basis of the company's annual financial statements, it appears that the right to the dividend arises only once for each year. Consequently, dividends cannot be approved and distributed before the end of the year for which the distribution of dividends is approved.

As for the moment in which the right to collect the dividend arises, it can also be determined by the general meeting of shareholders. However, the shareholders' meeting cannot envisage a period exceeding 6 months from the date of approval of the financial statements for the year ended. If the company does not pay the dividends within the established deadline, it is obliged to compensate the shareholders in the amount of the legal interest relating to the period for which it was delayed in payment, and if by a deed of incorporation or by a decision of the shareholders' meeting it has established another level of interest, which will be applied to determine the compensation due for the late payment of dividends. However, dividends due after the date of transfer of the shares belong to the transferee, unless otherwise agreed between the parties.

Problems arise, however, in the situation of the judicial dissolution of the company. The dissolution of the company represents the set of activities necessary to bring about the termination of the existence of the company and to ensure the conditions for the liquidation of the corporate assets. In other words, the dissolution of a company puts an end to its normal activity, while retaining its legal personality until the end of the liquidation. The dissolution of the company can be of three types, respectively it can operate by law, it can be judicial (by court decision) or voluntary (by decision of the shareholders).

In order to understand the situation of the dissolution and its relationship with dividends, it is also important to emphasize the impossibility of returning the company's share capital to shareholders in the form of dividends. The only situation in which the aforementioned hypothesis is admitted is when the liquidation procedure takes place and the debts of the company have already been paid to the creditors. Furthermore, in the legal literature it has been highlighted that if the company's capital was also used to carry out the current business and therefore reduced, there should be an obligation to complete it earlier, and only subsequently could the shareholders share the profit.

As it implies judicial dissolution, it may intervene in some particular cases expressly indicated by the law, respectively: if the company no longer has statutory bodies or they can no longer meet; if the partners or partners have disappeared or do not have their known domicile or known residence; if the conditions relating to the registered office are no longer valid, also due to the expiry of the deed certifying the right to use the space with registered office or the transfer of the right of use or ownership of the space with registered office; if the activity of the company has ceased or the activity has not been resumed after the period of temporary inactivity, communicated to the tax authorities and registered in the register of companies, as the period cannot exceed 3 years from the date of registration in the register of companies; if the company has not completed the share capital, in accordance with the law; if the company has not presented the annual financial statements and, if applicable, the annual consolidated financial statements, as well as the accounting reports to the territorial units of the Ministry of Public Finance, within the deadline set by law, if the delay period exceeds 60 days working; or if the company has not submitted to the territorial units of the Ministry of Public Finance, within the legal deadline, the declaration that it has not carried out activities since its establishment, if the delay period exceeds 60 working days. 8 Any of these cases may determine the dissolution of the company, issuing a decision of dissolution by the court. In reality, the dissolution of the company by court decision occurs even when it cannot operate with a decision of the general meeting of shareholders, being able to pronounce the dissolution of the company for "usual reasons".

Failure to comply with the legal requirements regarding the establishment of the company determines its nullity. Therefore, on the date on which the court decision declaring the nullity becomes irrevocable, the company ceases without retroactive effect and enters into liquidation, making a cessation of the company's existence equivalent to the dissolution of the company. Even the nullity of the company, and therefore the dissolution, must mainly be pronounced with a court decision, unlike the expiration of the term of existence, which is the only situation in which the dissolution takes place by law, or de jure, as it is also called.

Pursuant to article 237 paragraph 5 of Law no. 31/1990 on companies, any interested person can appeal against the dissolution decision, within 30 days from the date of publication of the decision in the Official Observatory of Romania. This term of 30 days from the date of publication of the dissolution order is intended to allow

any creditors of the company to oppose in writing the dissolution of the company, in order to recover their claims. remains final, the legal entity goes into liquidation.

Therefore, the dissolution decision can remain definitive in two situations, or after the expiry of the 30-day deadline from the date of its publication in the Official Observatory of Romania, only if no one has filed an opposition within this deadline, or even if it has been filed. opposition, the company has resolved the situation that generated the opposition or the appeal lodged by a creditor. The shareholder who, in the fraud of creditors, abuses the limited liability of him and the different legal personality of the company, is liable without limitation for the unpaid obligations of the dissolved or liquidated company.

Therefore, if the company has no unpaid creditors, during the 30 days from the date of publication in the Official Observatory of Romania of the dissolution decision, dividends can be granted to shareholders. If, on the other hand, during the dissolution, dividends are granted to the shareholders, which leads to a reduction in the financial resources of the company, thus causing damage to the creditors, then the responsibility for not honoring the creditors lies with the shareholders, who will be unlimitedly liable internally. of the share capital. however, if after 30 days, as a rule, the company goes into liquidation, the period in which the liquidation operations take place, there are no activities such as the granting of dividends**.**

D. CONCLUSION

In conclusion, when a corporation is going through the process of liquidation, it is not required to pay any dividends to the members or shareholders of the firm. The reason for this reason also lies in the fact that at the end of the liquidation operation, if there is a liquidation profit, which is defined as a profit reflected in the credit balance of the account, for the part exceeding the share capital, the company has the obligation to withhold and transfer to the state budget, on behalf of the associates, the tax on the capital gain of the liquidation of a company. This tax is referred to as the tax on the capital gain of the liquidation of a company The excess of distributions in cash or in kind over to the share capital of the beneficiary natural person is what constitutes the taxable income created by the liquidation of a legal person. This income is subject to taxation. It is important to take into account the income earned from the liquidation of a legal person, both from a financial and a legal perspective, as well as the income earned in the event of a reduction in the share capital, in accordance with the law, excluding the income received as a result of the reimbursement of the share of contributions. The difference between distributions given in cash and payments made in kind, based on the tax value of the securities, is taxable income.

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