**Transferring the right to collect debt repayments before dissolution: A practical solution**

*The number of businesses forced to liquidate has recently increased. The repayment and collecting of debt before liquidation is a topic of great interest to both local businesses and foreign establishments with subsidiaries in Vietnam. Aside from utilising ordinary procedures and initiating bankruptcy procedures to recover debts, there exists the option for the creditor to transfer debt collection rights to a third party which creates a wider breadth of options for debt recovery before concluding liquidation proceedings for a business.*

Within the current tumultuous global economic background, businesses operating in Vietnam have been severely impacted. Recently, the number of businesses that have been forced to liquidate has increased significantly compared to the previous year. According to the statistics collected by the Business Registration Department *(*[*https://dangkykinhdoanh.gov.vn*](https://dangkykinhdoanh.gov.vn)*),* in September of this year, 5,273 enterprises in the whole country were awaiting liquidation, which is a 25.9% increase compared to the same quarter in 2022. This number in October was 4,988 companies, which is an increase of 16.6% compared to the same quarter in 2022. In November, there were 6,598 companies awaiting liquidation, which is an increase of 29.5% compared to the same quarter in 2022, and 1443 companies were dissolved, which is an increase of 1.5% compared to the same quarter in 2022.

Currently, there are many foreign parent companies that are concerned about the liquidation process of their subsidiaries in Vietnam as well as many speculators who are curious about the recovery of outstanding debts before the dissolution in accordance with the laws of Vietnam.

**Settling obligations before initiating the liquidation process**

The Law on Enterprises stipulates that an enterprise can only be dissolved when it ensures payment of all debts and other property obligations and is not in the process of resolving disputes in court or arbitration[[1]](#footnote-1). The company’s debts to its employees, partners, the state and other entities (if any) need to be completely paid off before dissolution, including (i) debts for salaries and severance allowances, social insurance, health insurance, unemployment insurance according to the provisions of law and other employee benefits according to the collective labor agreement and signed labor contract, (ii) any unpaid taxes, (iii) other debts.

Dissolving the company is a unilateral decision of its own, so the decision to dissolve the enterprise must contain content about the time limit, procedures for liquidating the contract and payment of the company’s debts. In case an enterprise has unpaid financial obligations, it must submit to the Enterprise Management Agency a dissolution decision and debt settlement plan that must include the name and address of the creditor; debt amount, term, location, method of payment of that debt, and method and duration for resolving creditors' complaints.

Thus, the enterprise must settle its debts before it can be legally considered to have terminated its operations/withdrawn from the market.

**Do enterprises have to collect outstanding debts before dissolution?**

Whilst the law provides that the company must settle its debts before dissolution, it is silent on whether the company must fully collect debts owed to it before dissolution. Is there a solution to collect debts before dissolution in this situation then?

In reality, many enterprises are negatively affected by customers using their goods and services without completing their payment obligations or appropriating funds over a long period of time which causes the enterprises to enter dissolution before they are able to collect debts from their customers. These enterprises are therefore mostly concerned with the solutions to recover debts from their clients before they are dissolved.

Usually, enterprises tackle the collection of debts for goods and services through negotiation, failing which they will initiate a lawsuit against the customer and obtain a legally binding judgement from the court. However, if the enterprise is in the process of resolving disputes in court or arbitration, then it does not meet the requirements to initiate the liquidation procedure. In reality litigation is time-consuming and can take many months or years to resolve. Faced with the difficult decision, some enterprises have foregone their rights to collect debt repayment to initiate the liquidation process. Enterprises can find a solution to protect their legal rights by and solve the issue of debt collection by applying the legal right of transferring their right to collect debt repayments as stipulated under the Civil Code 2015.

**Transferring the right of collecting debt repayments**

The Civil Code 2015[[2]](#footnote-2) allows the obligor to transfer that right to a third party via an agreement (except in limited cases such as the right to request alimony, claim compensation for damages due to infringement on life, health, honor, dignity, reputation; or where the obligee and the obligor have an agreement, or the law stipulates that the right not be transferred). When the obligor transfers the right to the third party, the third party becomes the obligor. The transfer of the right does not require the consent of the obligor.

With permission from the law, an enterprise with the right to request (an enterprise that wants to be dissolved) can consider establishing a three-party agreement between the enterprise with the right to request, the third party and the obligor, in which the parties agree on the issue of transfer of requested rights.

For example, Company C owes Company A a debt that has not been paid. Before dissolution, Company A wants to transfer the right to request repayment of this debt to Company B to offset another debt that Company A owes to Company B. Accordingly, the three companies A, B, C may jointly sign a tripartite agreement to offset the debt. Of course, the parties should note that in addition to the purpose of transferring rights, the parties must not violate the prohibitions of law or social ethics. The parties need to meet the conditions of the contracting subject having the right competency and voluntarily enter the agreement between the parties to avoid possible disputes.

If there is consensus from the debtor as in the example above, it is truly advantageous for both parties. However, in cases where the debtor does not cooperate, according to the regulations on transfer of claim rights, the enterprise still has the right to transfer claim rights to the third party according to the agreement. However, to ensure that when the enterprise has dissolved, the third party party can still exercise the right to request the obligor to pay for previously transferred goods/service fees, the enterprise transfers the rights and the third party should note that although the transfer of the right to request does not require the consent of the obligor, the party transferring the right to request must notify the obligee in writing of the transfer of the right request. This notification is very important because the law allows the obligor to refuse to perform its obligations to the third party if the following cases occur[[3]](#footnote-3): (i) In case the obligor is not notified of the transfer of the claim right and the assignee cannot prove the authenticity of the transfer of the claim right, then the obligor has the right to refuse to perform any obligations to the third party, or (ii) In case the obligor has not been notified of the transfer of the claim right but has performed the obligation to the party transferring the right to demand, the third party is not entitled to require the obligor to perform its obligations to it.

In general, once an enterprise decides to dissolve, in addition to having to fulfill its debt settlement obligations to creditors, the enterprise also wishes to terminate its operations in the market whilst ensuring that their legitimate rights and interests are still protected by law because then a third party can exercise the right to request settlement of outstanding debts between the parties according to the provisions of law.

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 Clause 1 Article 207 Law on Enterprises 2020. [↑](#footnote-ref-1)
2. Article 365 Civil Code 2015. [↑](#footnote-ref-2)
3. Article 369 Civil Code 2015. [↑](#footnote-ref-3)