



> [home](#)

[Printer friendly newsletter](#)

Liquidation en un seul acte: trucs et astuces depuis la loi du 25 avril 2014

Dans le but de renforcer la protection des créanciers, la loi du 25 avril 2014 a modifié les conditions pour liquider une société en un seul acte. Le législateur a prévu l'obligation pour la société de s'acquitter de l'ensemble de ses dettes ou de consigner les sommes nécessaires à leur paiement à la Caisse des dépôts et consignation. Cette nouvelle condition implique que plusieurs étapes pratiques doivent être accomplies avant de poursuivre la procédure de liquidation.

Vereffening in één enkele handeling: tips en kneepjes sinds de wet van 25 april 2014

Met het oog op de bescherming van de schuldeisers, heeft de wet van 25 april 2014 de voorwaarden voor de vereffening van een onderneming in één enkele handeling gewijzigd. De wetgever verplicht de onderneming nu om al haar schulden te voldoen of de voorziene bedragen te kantonneren bij de deposito- en consignatiekas. Bij deze nieuwe vereiste horen een aantal praktische stappen die aan de vereffeningprocedure voorafgaan.

Liquidation in one single act: tips and tricks since the law of 25 April 2014

In order to reinforce creditors' protection, the law of 25 April 2014 has amended the requirements for liquidating a company in one single deed. The legislator has inserted an obligation on the company to settle all its debts or to consign the anticipated amounts at the "Caisse des dépôts et consignation". This new requirement involves practical steps which need to be accomplished before going through with the liquidation process.

Liquidation in one single act: tips and tricks since the law of April 25th 2014

The liquidation in one single act is allowed in Belgium since 2012. The following formalities are strictly required:

- no liquidator was appointed;
- no liabilities had to remain;
- all shareholders are present or represented at the general meeting and decide by unanimous vote; and
- assets are taken back by the shareholders themselves.

The requirement imposing that no liabilities should remain in the balance sheet of the company led to controversial interpretations in legal literature. The main goal of this requirement was to avoid fraudulent liquidations which would be organized to prevent creditors from receiving their payments. Legal literature was expecting a clarification of what was expected under this condition.

In 2014, the legislator has modified this condition into the obligation for the company to settle all debts towards third parties before the liquidation or consign the amounts necessary for payments at the "Caisse des dépôts et consignation". The various professionals intervening in the process of a liquidation in one single act have to make sure that this condition has been satisfied prior to liquidate. It is a question of liability:

- Statutory auditor, auditor or the independent accountant has to certify in his final report on the balance sheet established no more than three months before the liquidation that all debts have been paid or that the expected sums have been fully consigned. Therefore, they must obtain an update of the debts remaining after the realization of the balance sheet, but , also calculate any debt which would arise after the liquidation (ex : corporate tax; final account of social security,VAT of the last quarter , debt not yet due, etc..)
- Notary has to verify that this condition has been met before the act. If not, the notary may refuse to sign the act and thus to liquidate the company; and
- Lawyers have to draw the attention of their clients on that important fact: the company will have to pay all the existing debts to be able to write them off the balance sheet. For the debts which are not born yet, the accountant will have to anticipate the amount which will be asked; the amount necessary to pay existing debts or future debts has to be consigned

Author(s)



Fanny Storms

- > [View résumé](#)
- > [Send an e-mail](#)

with the Caisse de Dépôts, if the shareholders want to liquidate the company in one single act.

Generally, the remaining debts will be arising from tax administrations and from the liquidation process itself (mainly fees). All the VAT, corporate tax, ONSS and INASTI taxes which are due will have to be paid and certifications of payments will have to be asked to these administrations. Indeed, the corporate tax for the year of liquidation is not yet calculated nor due so it would be impossible for the company to pay this amount prior to liquidation, it is thus mandatory to consign the future amount in this case. Administrations generally take a while to issue those payment certificates. It would thus be advisable to ask them sufficiently in advance. Regarding debts arising from the liquidation process, the various professionals intervening for the liquidation (notary, lawyer, statutory auditor...) will be prudent enough to ask for payment of their fees prior to the liquidation.

To sum-up, the liquidation in one single act still remains quick and avoids troublesome formalities. Nonetheless, the above mentioned steps have to be complied with and included in the timing of the liquidation.

www.cms-db.com

Chaussée de La Hulpe | Terhulpesteenweg 178 | 1170 Brussels | Belgium | T + 32 2 743 69 00 | F + 32 743 69 01

Uitbreidingstraat 2 | 2600 Antwerpen | Belgium | T + 32 3 206 01 40 | F + 32 3 206 01 50

Route d'Esch 70 | 1470 Luxembourg | Luxembourg | T + 352 26 27 53-1 | F + 352 26 27 53-53