

METHOD OF PREPARING THE BALANCE SHEET FOR THE REORGANIZATION OF THE ENTITY BY SEPARATION

Associate professor PhD Rodica CUȘMĂUNSĂ
Academy of Economic Studies of Moldova
cusmaunsa.rodica.gheorghe@ase.md
Associate professor PhD Natalia CURAGĂU
Academy of Economic Studies of Moldova
curagau.natalia.zaharia@ase.md

Abstract

The reorganization of the entity can be caused by different factors. This is a complicated and time-consuming procedure. This article focuses on the legal, accounting and fiscal aspects of the reorganization of the entity (Limited Liability company) by separation and on the technique of drawing up a distribution balance sheet.

Keywords: *reorganization; separation of entities; distribution balance sheet; deed of transmission*

JEL Classification: *M 41*

I. INTRODUCTION

The reorganization of the entity is a difficult and long-lasting procedure, which requires the settlement of multiple organizational, legal, accounting and fiscal problems. The Civil law of the Republic of Moldova distinguishes several forms of reorganization of a legal entity which are presented in the figure below (see Figure 1):

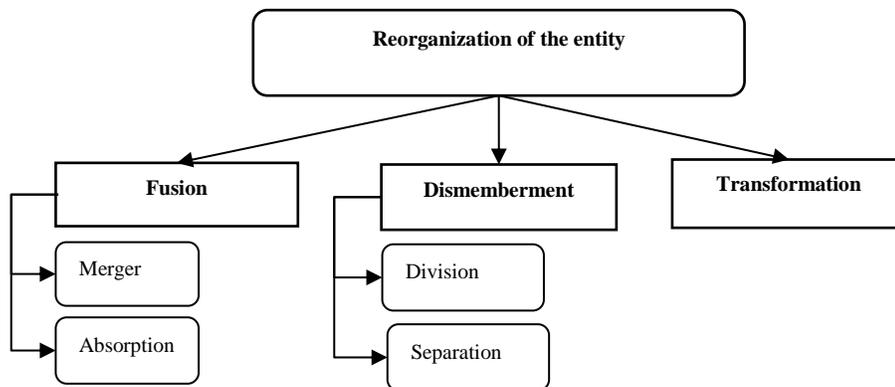


Figure 1 – Forms of reorganization of a legal entity

Source: developed by the author based on Civil code of the Republic of Moldova

According to Art. 204 of the Civil Code, the decision to reorganize the entity is taken by each legal entity under the conditions established for amending the articles of incorporation, and in cases provided by law, the reorganization of the legal entity by division or separation is based on a court decision.

II. THE METHODS APPLIED

In order to carry out this study, there have been used various research methods. A series of scientific papers have been studied to make the theoretical basis of this article, the research was conducted by examining the literature in the economic and financial field. The research method results from the analysis of the theoretical material regarding the reorganization of the entity by separation. There have been presented the study of literature and the synthesis of its results. The informational support comes from the specialized literature. Analysis, synthesis, deduction, the inductive method are at the basis of the theoretical substantiation, as well as the graphical methods, used for a clear and representative interpretation.

III. THE RESULTS OBTAINED AND THE DISCUSSIONS

According to Art. 214 of the Civil Code, the dismemberment of the legal person is done through two forms: division or separation.

Devision of the legal person has the effect of ceasing its existence and transferring its rights and obligations to two or more legal persons, which are being created. *Separation* has the effect of detaching a part of the patrimony of the legal person, which does not cease to exist, and transmitting it to one or more existing or coming into existence legal persons.

Schematically these two forms of dismemberment of the legal peron is given in the figure below as follows (see Figure 2):

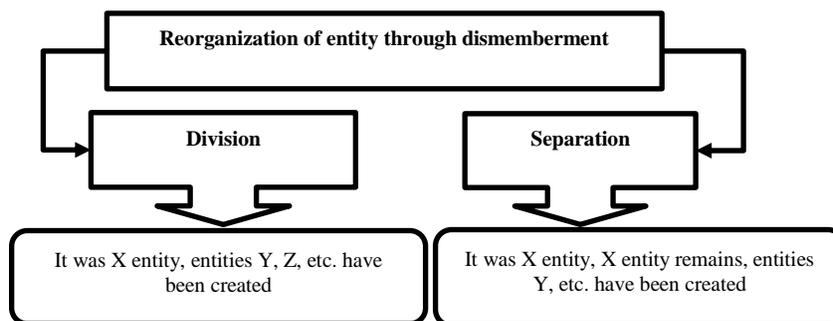


Figure 2 – Forms of reorganizing a legal entity

Source: developed by the author based on Civil code of the Republic of Moldova

It should be noted that the separation can take place in two ways:

- when one or more newly constituted legal persons, to which a part of the patrimony passes, are separated from the legal person;
- when parts of its patrimony are separated from the legal person, but no new legal persons are constituted and they are attached to other existing legal persons.

In the case when for-profit legal entities participate in the dismemberment, the members of the legal person subject to dismemberment shall be allocated shares in the legal person to which part of the assets of the legal person subject to dismemberment passes and, if it has been provided, it shall be paid a fee, which does not have to exceed 10% of the nominal value or, in the absence of a nominal value, of the book value of the share so distributed.

Therefore, the payment of the fee to the participants in entity "X" and consequently in entity "Y" is not mandatory, if this procedure is not provided for in the dismemberment project.

Art. 216 of the Civil Code stipulates that the dismemberment project is approved by the general assembly of members with 2/3 of the total number of votes represented at the assembly, if the law or the Act of constitution does

not provide for a larger majority. The procedure for submitting the application and registering the dismemberment is regulated by Art. 217-218 of the Civil Code.

The main effect of the dismemberment consists in the universal succession of a part of the rights and obligations of the reorganized legal entity to each of the legal entities participating in the reorganization (existing or in the course of being founded), who receive a part of the patrimony. The rights and obligations that pass from the dismembered person to the others are carried out in accordance with the distribution balance, that is approved by the general assembly of the members of the legal person or by the body of the legal person empowered with such responsibilities by law or deed of incorporation, who have decided on the reorganization of the legal person, and is presented together with the incorporation documents of the created legal entities for their state registration or for the introduction of amendments in the incorporation documents of the existing legal entities. The act of transmission and the balance sheet must contain provisions regarding the succession of the entire patrimony of the reorganized legal person with respect to all rights and obligations towards all its debtors and creditors, including the obligations contested by the parties.

Art. 215 of the Civil Code makes a distinction between the distribution balance and the financial statements of the participating legal entities, which were used to establish the conditions of dismemberment.

In the case of a separate reorganization, the annual financial statements (if the procedure is initiated close to the balance sheet date) or the interim financial statements (quarterly, semi-annual) are used to determine the terms of the reorganization. The act of transmitting and the distribution balance shall be drawn up in accordance with the decision of the authorized body of the legal person. As a rule, the act of transmission or the balance sheet is prepared at the end of the reporting period (year) or at the date of preparation of the interim financial statements, which form the basis for describing and valuing the assets and liabilities of the entity under reorganization.

Situations may arise when the division takes place during a reporting period (for example, in August) and the latest interim financial statements (for example, for the second quarter) are no longer current. Given the fact, that the Civil Law does not contain clear rules in this regard, it is considered, that the distribution balance sheet provides much more accurate information about the financial position of the reorganized entity than the information presented at the date of the interim financial statements, it may be prepared at a different date, the nearest (for example, August 31). In this context, the natural question arises – when should the entity's assets start being divided?

The distribution balance, naturally, must be drawn up after carrying out the following steps shown below in Figure 3:

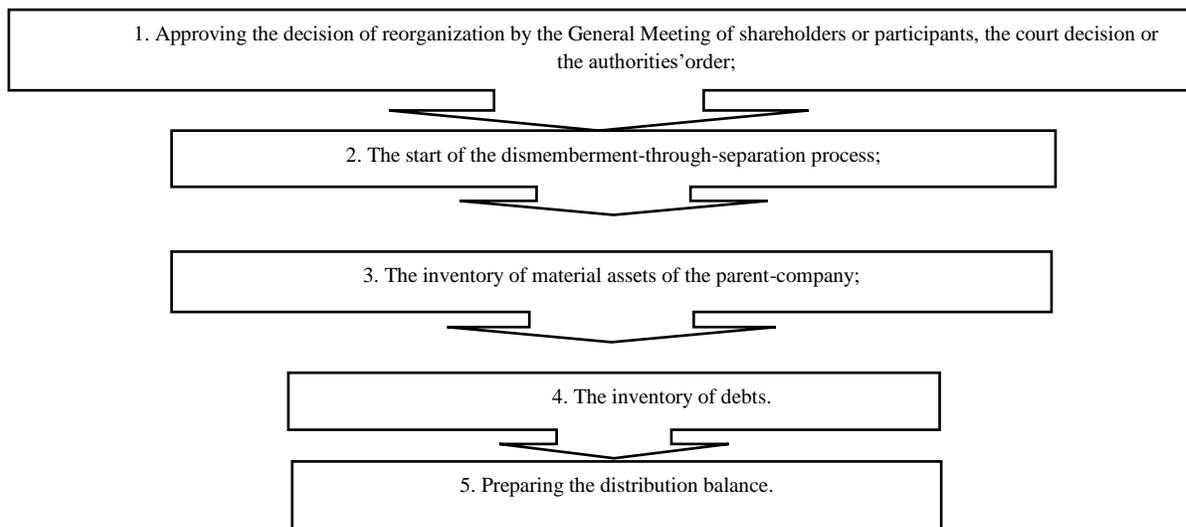


Figure 3 – The period of drawing up the distribution balance sheet

Source: developed by the author based on National Accounting Standard

The founders have the right to choose independently the time period for drawing up the distribution balance. The legislation in force does not regulate the manner and the form of this document - this is the internal matter of the entity under reorganization. The only mandatory regulatory requirement is a "succession provision". Thus, comparative data on the value of the assets and liabilities of the "old" and the "new" (new ones) entities must be presented. It is important to mention that it is the founders who decide how the assets should be valued: at their fair value or at the book value.

It is convenient to use in dependence of the category of the entity the standard balance sheet format (according to the provisions of Art. 4 of the Law on Accounting and Financial Reporting no. 287/2017), which provides appropriate columns for the reorganized entity and for all its successors. The amount shown in the first column of the predecessor's balance sheet should correspond to the sum of all other columns. For example, if an entity is reorganized by separation, the balance sheet must include three columns: for the original entity, for the remaining part and for the separate part. All amounts presented in the table must be deciphered in the annexes to the balance sheet: the value of assets and liabilities.

By mutual agreement the founders must make the decision as to transferring or keeping the assets, the cash and the liabilities to creditors.

There are generally accepted rules under which the balance sheet assets and liabilities are often distributed, unless the parties have decided otherwise (Tostogan, 2011, 2019):

- tangible assets (tangible assets, stocks, etc.) are divided according to the "who needs them most" principle;
- the debts are distributed proportionally to the assets, i.e. the one who has taken more assets assumes more debts;
- cash - the amounts from various accounts and the cash balance from the cashier are divided according to the agreement of the participants.

Let's look at some aspects of documenting the transfer of property and debt among/between separate subjects.

Transmission of fixed and material assets. The transfer of fixed assets is made by drawing up a deed of receipt-delivery and the fiscal invoice without VAT.

The documents confirming the ownership of real estate, copies (originals) of sales contracts, copies of invoices or tax invoices confirming the purchase of fixed assets can be submitted as annexes to the deed of receipt-delivery of fixed assets.

The transfer of assets must be carried out in the terms indicated in the minutes of the general meeting of the members or associates.

The legislation in force does not contain provisions that would specify whether the accumulated depreciation of the respective fixed assets must be transferred at the time of separation, if the transfer is made at their book value. In our opinion, the decision of the founders of the reorganized entity may provide for the transfer to the separate company of both the accumulated depreciation and the impairment losses previously recognized. In this case, the items of property, plant and equipment will be transferred at their initial (adjusted) cost, as will all items that are "related" to it (accumulated depreciation, impairment losses, revaluation results recognized in the equity accounts).

Transmission of receivables and payables. The transfer of receivables and payables involves the transfer of initial commercial contracts with the entities, with which the newly entities will continue to cooperate.

In each case, an act of receipt-delivery of the documents must be drawn up, specifying whether originals or copies of the documents have been transmitted and the reason why they are transmitted.

Cash transmission. The funds must be transferred to the accounts of the newly created entities within the time limits indicated in the minutes of the general meeting of the participants or associates. In the payment order it is necessary to indicate in the destination of the payment: "The transfer of funds based on the distribution balance from"

CONCLUSIONS

The preparation of the distribution balance is based on the principles and rules unanimously accepted and presented in the NAS "Presentation of financial statements". In order to draw up the distribution balance, it is necessary to carry out all the works prior to drawing up a balance sheet. The distribution balance sheet provides appropriate columns for the reorganized entity and for all successors. The amount shown in the first column of the predecessor's balance sheet should correspond to the sum of all other columns. In the annexes to the balance sheet there should be deciphered all the amounts presented in the table: the value of assets and liabilities.

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