

Article 376 of the TCC

Article 376 of the TCC establishes the following provisions:

(1) If the most recent annual balance sheet reveals that half of the total paid-in capital and statutory reserves have been depleted due to accumulated losses, the Board of Directors must immediately convene the general assembly and propose corrective measures.

(2) If the most recent annual balance sheet shows that two-thirds of the total capital and statutory reserves have been lost due to accumulated losses, the Board of Directors must immediately call a general assembly meeting. Unless the general assembly meets promptly and decides to restore the capital as a whole or agrees to retain one-third of the capital, the company will be deemed dissolved.

(3) In cases of uncertainties about the company's ability to continue as a going concern, as its liabilities exceed its assets, the Board of Directors must prepare an interim balance sheet based on going concern principles and the liquidation method. Suppose it becomes clear that the company's assets are insufficient to cover the creditors' claims. In that case, the Board of Directors must notify the commercial court at the company's headquarters and request the company's bankruptcy. Before a bankruptcy decision, creditors whose claims can cover the company's deficit and eliminate the imbalance between liabilities and assets must agree in writing to be ranked after all other creditors. Court-appointed experts must verify this declaration's legitimacy, authenticity, and validity. If this is not done, the application for an expert inspection will be treated as a bankruptcy notification. Once management explains the uncertainty's impact on financial statements and disclosures, the accountant will assess the reasonableness of the information provided.

Legal consequences

If the technical insolvency issue is not addressed, there are three primary legal consequences. These consequences are not to be taken lightly, as they can significantly disrupt the company's operations and even lead to the personal liability of board members.

- 1.If the Ministry of Commerce and Industry investigates, its officers may petition the court and the trade registry to declare the company dissolved and abolished.
- 2.If the company's creditors cannot recover their outstanding debts, they may petition the court to hold the board members personally liable for these debts due to their failure to comply with the law. They may also seek a criminal sentence for the company's management if they fail to file for bankruptcy. As a result, board members could be held personally responsible if they do not convene the general assembly and propose remedies.
- 3.Companies are prohibited from increasing their share capital until they resolve their technical insolvency. Trade registry offices require that a company's initial capital be fully paid and that it is not technically insolvent before any capital increase. Companies in a state of technical insolvency must fully restore their capital before proceeding with a capital increase. If they fail to do so, the trade registry will not register or announce the capital increase.

As outlined in the articles above, if a company has fully or partially lost its capital and/or is in a negative equity position, the management must promptly notify the board of directors. The shareholders, as the ultimate decision-makers, play a crucial role in proposing remedies to address the losses. Their involvement is pivotal, as it shapes the company's future. If shareholders do not propose any remedies, the Board of Directors is required to file for the company's bankruptcy with the relevant courts.

Legal Remedies

According to the legal regulations, if the most recent annual balance sheet reveals that two-thirds of the total capital and legal reserves remain unrecovered due to losses, the general assembly may decide on the following actions upon the Board of Directors' call:

- Reduction of capital
- Simultaneous capital increase after transferring the losses out of the company
- Capital restoration

Suppose the general assembly does not select one of these corrective measures. In that case, an application for the company's bankruptcy will be made to the court, and the company will enter the liquidation process. Therefore, it is essential to implement remedial measures by selecting the right solution to avoid technical bankruptcy.

Conclusion

Ensuring a company's financial stability is of utmost importance, and the legislator aims to guarantee this through specific measures. In the event of capital loss, the general assembly must adopt the measures prescribed by law. However, companies experiencing technical insolvency must file for bankruptcy with the relevant court.
