

# Liquidator held liable for omitting claims arising from ongoing litigation

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## Facts

### Decision

On 20 November 2018 the Luxembourg District Court ruled on the liability of a liquidator and a liquidation auditor in the event of a voluntary liquidation.

### Facts

On 30 May 2013 a company's extraordinary general shareholders' meeting agreed to put the company into voluntary liquidation by appointing a liquidator and a liquidation auditor. The liquidation closed on 20 October 2014.

During this period, on 11 July 2013, the liquidated company was summoned to appear before the Court of Spezia in Italy. On 23 October 2015 the Court of Spezia ordered the company to pay the plaintiffs €718,852.71. As the company had already been liquidated, the plaintiffs were unable to recover the amounts that were due to them. The plaintiffs then requested the Luxembourg District Court to order the liquidator and the liquidation auditor to pay the damages and interest equal to the amounts due.

The plaintiffs considered that they had suffered damages as a result of the early closure of the liquidation while legal proceedings were still ongoing. They also criticised the liquidator for failing to take precautionary measures – in particular, failing to cover the debt that might have arisen as a result of the ongoing legal proceedings. According to the plaintiffs, the liquidation auditor had contributed to this situation by authorising the closure of the liquidation despite knowing of the dispute and the company's potential debt.

The liquidation auditor argued that he had not been informed of any ongoing legal proceedings. In addition, the liquidation accounts had been established by the liquidator and it did not fall within his duties as liquidation auditor to investigate the company's accounts and act on the liquidator's behalf.

On the other hand, the liquidator claimed that he had not erred in closing the liquidation, as the company in liquidation had not possessed any assets since 2010 (ie, prior to the initiation of the legal proceedings). Therefore, it could not have paid the amounts claimed by the plaintiffs. The liquidator stated that no social creditor had been repaid following the liquidation.

### Decision

The Luxembourg District Court recalled that as soon as a liquidator is appointed, they become a member of the company's management bodies and the main liquidation agent, including in relationships with third parties. Liquidators are therefore held liable for any misconduct committed in the performance of their duties towards the company itself, but also towards third parties.

The Luxembourg District Court also recalled that as a principle, a liquidator is liable in the event that they fail to include in the liquidation accounts claims of which they were aware. It also stated that liquidators may divide assets only after any liabilities have been fully discharged.

The Luxembourg District Court held the liquidator liable. Since the liquidator had personally received the document instituting the proceedings, the court considered that he should not have ignored any claims that might have arisen from the ongoing dispute.

The court went even further by also holding the liquidation auditor liable. The latter had not complied with his obligations regarding the control and audit of the liquidation accounts and had therefore committed a mistake of such a nature as to render him liable.

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