

THE END IS NEAR: TRANSLATION OF TERMS RELATED TO COMPANY DISSOLUTION

Naomi Sutcliffe de Moraes

Just Right Communications Ltda.

Abstract: Company dissolution and liquidation are difficult topics to translate without some understanding of the underlying legal principles and processes. This article will describe the processes for dissolution, liquidation, bankruptcy, and reorganization, plus translations of relevant terms between English and several European languages. The many situations that lead to dissolution will also be discussed.

1. INTRODUCTION

A few years ago, before I started law school, I translated the Brazilian Portuguese term "dissolução" into English as "dissolution" when translating an incorporation document. I did not just pick the obvious cognate—this was the only translation given in one of the best-known Brazilian bilingual legal dictionaries (Ref. 1, p. 305). The client, an attorney, said "no, that is a false cognate, it should XXX" and I duly noted the translation in my glossary. I later noticed that dissolution, liquidation, termination, winding up and extinction were all used in the same context, and I could not see much of a difference between them. I decided to investigate further, and the answer is contained in this article. There is no easy answer.

2. THE THREE STAGES OF WINDING UP

Terminology differs in different English-speaking jurisdictions. I will use generic names (suggested in Ref. 2, p. 6-92) to make my description of the underlying law as clear as possible.

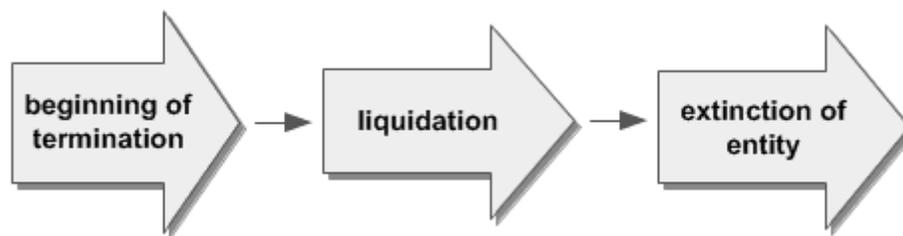


Figure 1 – Three stages of winding up – generic names

The first step is for someone, whether the courts or the shareholders, to decide that the company should be wound up. This is the **beginning of termination**.

The second step is **liquidation**, during which the company's assets are sold, its debts are paid, any claims are settled, and any contractual obligations are performed. Needless to say, if the

© Naomi J. Sutcliffe de Moraes

Cite as: MORAES, N. J. Sutcliffe de. *The End is Near: Translation of Terms Related to Company Dissolution*. In "ATA 52nd Annual Conference Proceedings," American Translators Association, Alexandria, VA: 2011.

company is insolvent, all of its obligations might not be settled satisfactorily in the eyes of the persons to whom the obligations are owed.

The third step is the **extinction of the legal entity**, usually by having its record struck off the country's company registry. In a few jurisdictions, the legal entity actually ceases to exist officially before liquidation begins, so the model above will not apply. In France, after a dissolution resolution has been adopted (step 1), the corporation still has legal personality, but the corporate name must be followed by *société en liquidation* (Ref. 3, p. 76).

2.1 Reasons for Termination

Companies can be terminated for many different reasons. Involuntary termination is usually due to insolvency (UK)/bankruptcy (US). In this case, termination begins with a court decree. In some civil law countries, a company must or may have an automatic termination date when it is created. Often, the company officially ceases to exist due to this clause in the articles of incorporation without the current company officers realizing until after the fact. They must then scramble to undo the automatic termination. A company may also automatically terminate when the purpose for which the company was formed is achieved or becomes impossible. Automatic termination is rare in common law legal systems. Some other event, like nationalization, may also result in termination, as may a merger or consolidation of two companies. Voluntary termination usually comes about when shareholders vote to terminate the company at a shareholders' meeting.

3. TERMINOLOGY FOR THE THREE STAGES IN DIFFERENT JURISDICTIONS

The terminology for the three states is different in different jurisdictions, even those that have the same official language.

3.1 Terminology in England and Wales

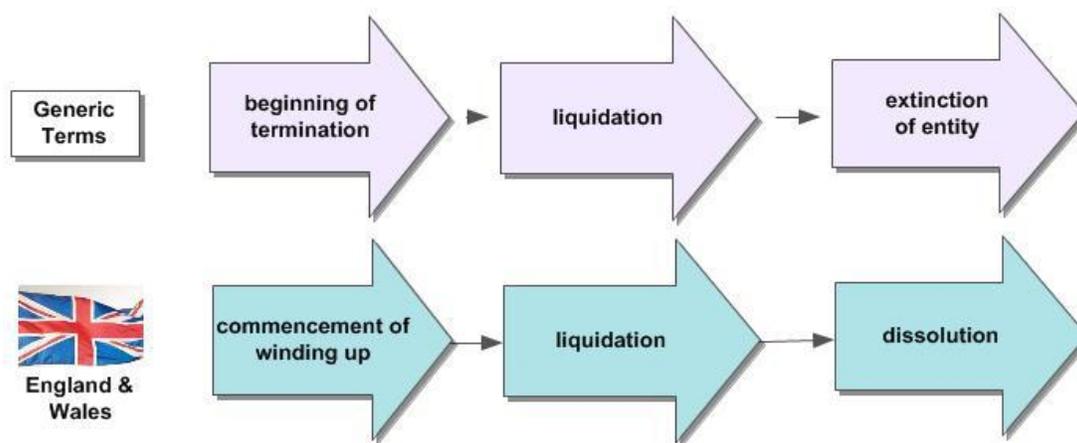


Figure 2 – Three stages of winding up – England and Wales

The terms used for the three stages of winding up in England and Wales are shown in Figure 2 (Ref. 4). I am mentioning them first because they are uniform in their jurisdiction (no regional differences) and because the American Bar Association Model Business Corporation Act (Ref. 5, p. 14-6) uses the same terms.

3.2 The Terminological Mess in the United States

Company law in the United States is handled at the state level, so terminology differs by state.

Country	Beginning of Termination	Liquidation	Extinction of Entity
England / ABA Model Business Corporation Act	commencement of winding up	Liquidation	Dissolution
US - 1		Liquidation	Dissolution
US - 2	Dissolution	Liquidation	Termination
US - 3 (NY, DE)	Dissolution	Liquidation	Winding up

Figure 3 – Three stages of winding up in different English-speaking jurisdictions

Despite attempts to harmonize laws across states, different states have different terminology. The three principal terminological possibilities in the United States (Ref. 2) are shown in Figure 3. If you translate out of English, it is important to know that these differences exist, so you can determine from the context (or by looking up the law in that state) which step the term dissolution refers to. If you translate into US English, ask your client which terms she wants, or use the ABA Model Act terms.

Another problem is that the terms dissolution, winding up, termination and even liquidation are often used as general terms for the three-step process. Even knowing the jurisdiction of the source text, care must be taken to take context into account and determine if the particular step or the entire process is being referred to.

3.3 Terminology in Other Jurisdictions

Conard (Ref 2) also provides translations for the different steps in various foreign-language jurisdictions. Note how dissolution is a false cognate for some English-speaking jurisdictions, but not others. No term for the third step in Spanish was mentioned in Reference 2.

Country	Beginning of Termination	Liquidation	Extinction of Entity
England	commencement of winding up	Liquidation	Dissolution
France	Dissolution	Liquidation	Clôture de la liquidation
Germany	Auflösung	Abwicklung	Schluss der Abwicklung
Chile, Mexico, Venezuela	Disolución	Liquidación	-

Italy	Scioglimento	Liquidazione	Chiusura della liquidazione
Brazil	Dissolução	Liquidação	Extinção

Figure 4 – Three stages of winding up in foreign-language jurisdictions

4. PROCEDURES IN ENGLAND AND WALES

The procedures for winding up a company depend on whether termination is voluntary or involuntary.

4.1 Voluntary Procedures in England and Wales

In England and Wales, a company may initiate voluntary procedures to either save or terminate a company (Ref. 4). In **voluntary liquidation**, the company liquidates its assets and dissolves. All employees are laid off. In a **voluntary arrangement**, the company makes a deal with its creditors to pay off its debts, either by obtaining more time to pay, or through **composition** (paying a percentage of outstanding debts, which are then discharged). In the case of a **merger** or **acquisition**, the company that disappears is dissolved without liquidation. The assets are transferred to the surviving company.

4.2 Insolvency in England and Wales

When a company becomes insolvent in England or Wales, the Insolvency Act 1986 applies (Ref. 4). There are many different procedures that may be followed, depending on whether the company will be actively managed in an attempt to return to health, or whether it will be liquidated and dissolved. Note that, of these five procedures, the purpose of all but liquidation is to keep the company alive and return it to health.

Administration

If the company enters into **administration** (also known as corporate rehabilitation), the directors' powers and creditors' rights are suspended. An **administrator** is appointed by the court and has extensive management powers. Employees are not laid off, and if the administrator is successful the company is not wound up. In some cases, the administrator's objective may just be to wind up the company more profitably so creditors can be paid.

Administrative receivership

If a secured creditor has not been paid, a company may enter into **administrative receivership**. An **administrative receiver** will be appointed by the secured creditor (out of court) and will manage the property, and may even run any business. This situation is common when the asset used as security is property that is leased. The administrative receiver will collect the rent from the tenants, rather than the debtor. Note that if a company goes into administration, a secured creditor can object and insist on an administrative receivership.

Liquidation

In **liquidation**, the **liquidator** has no managerial powers, but he may allow the company to continue operating for a limited purpose, such as completing manufacturing of products in a factory (beneficial winding up). The liquidator is appointed by the shareholders in a general meeting, or appointed by creditors if the company is insolvent. After liquidation, the company is dissolved.

Voluntary arrangement

If a company decides to pursue a **voluntary arrangement**, a **nominee** helps the company draw up a plan to pay its debts. If the plan is approved, the nominee becomes a **supervisor** and supervises the implementation of the plan. After debts are discharged, the company continues to exist and is not wound up.

Receivership

In a **receivership**, the **receiver** does not manage the property or business.

5. BANKRUPTCY IN THE UNITED STATES

There are three main procedures for companies in difficulty in the United States under the Federal Bankruptcy Reform Act 1978 (Ref. 6). Unlike company dissolution, bankruptcy is federal law and therefore does not change (much) from state to state. Note that chapter numbers are very often used instead of the names of the procedures. A random example: "In early April, a hearing scheduled in North Carolina's federal bankruptcy court could move Company A one step closer to emerging from its year-long Chapter 11 court protection."

5.1 Corporate Arrangement (Chapter 11)

Arrangement only affects unsecured debts. As with voluntary arrangement in England, a company may try to obtain an extension on payment deadlines or composition. The debtor continues to control and manage a company unless a **receiver** is chosen.

5.2 Corporate Reorganization (Chapter 11)

Reorganization applies to both secured and unsecured debts. It is also the procedure followed for mergers, consolidations, split-ups, split-offs, etc. Reorganization is also known as **recapitalization** or **reclassification of shares**. In reorganization, the debtor also normally continues to control and manage the company, but a **trustee** is chosen if any party requests one. If a trustee is not chosen, but the debts are large, the courts may appoint an **examiner**.

5.2 (Liquidation) Bankruptcy (Chapter 17)

Liquidation Bankruptcy or simply **bankruptcy** is when a company goes through the three steps rather than attempting to turn things around. The company is liquidated and becomes extinct. A **trustee-in-bankruptcy** is elected by the creditors to carry out the liquidation process.

5.3 Actors

It is somewhat amusing that the actors in these different procedures in the United States and England have such a range of names, with **receiver** the only name in common, but used for fundamentally different procedures (**receivership** in England and **arrangement** in the United States).

6. CONCLUSIONS

My goal in this article was to make translators aware of the many different terms for winding up stages, court procedures and actors in different English-speaking jurisdictions. I hope this information helps make sense of the complicated terminology and procedures in this area for better comparison with the laws in your source or target jurisdictions. An article I wrote in 2007 on translating Articles of Incorporation and similar documents to and from Brazilian Portuguese is available on my website at <http://www.justrightcommunications.com/research/publications>.

7. REFERENCES

1. Mello, Maria Chaves de, Dicionário jurídico: português-inglês / inglês-português, Rio de Janeiro: Elfos, 1998.
2. Conard, A. Fundamental Changes in Marketable Share Companies. *In Business and Private Organizations*, Vol. XIII/2. International Encyclopedia of Comparative Law Tubington, Germany: Mohr, Siebeck, 2007.
3. Lefebvre, Francis; Francis Lefebvre's France: Legal and Tax Guide, Deventer, Netherlands: Klewer, 1992.
4. Keenan, D. & Riches, S. Business Law, 6th ed. Harlow (UK): Longman 2002.
5. American Bar Association, Model Business Corporation Act, 2008.
6. Henn , H.G. & Alexander, J.R. Laws of Corporations and Other Business Enterprises. 3rd ed., St. Paul, MN: West Group, 1983.