

Liquidation of investment funds: More complex than it seems

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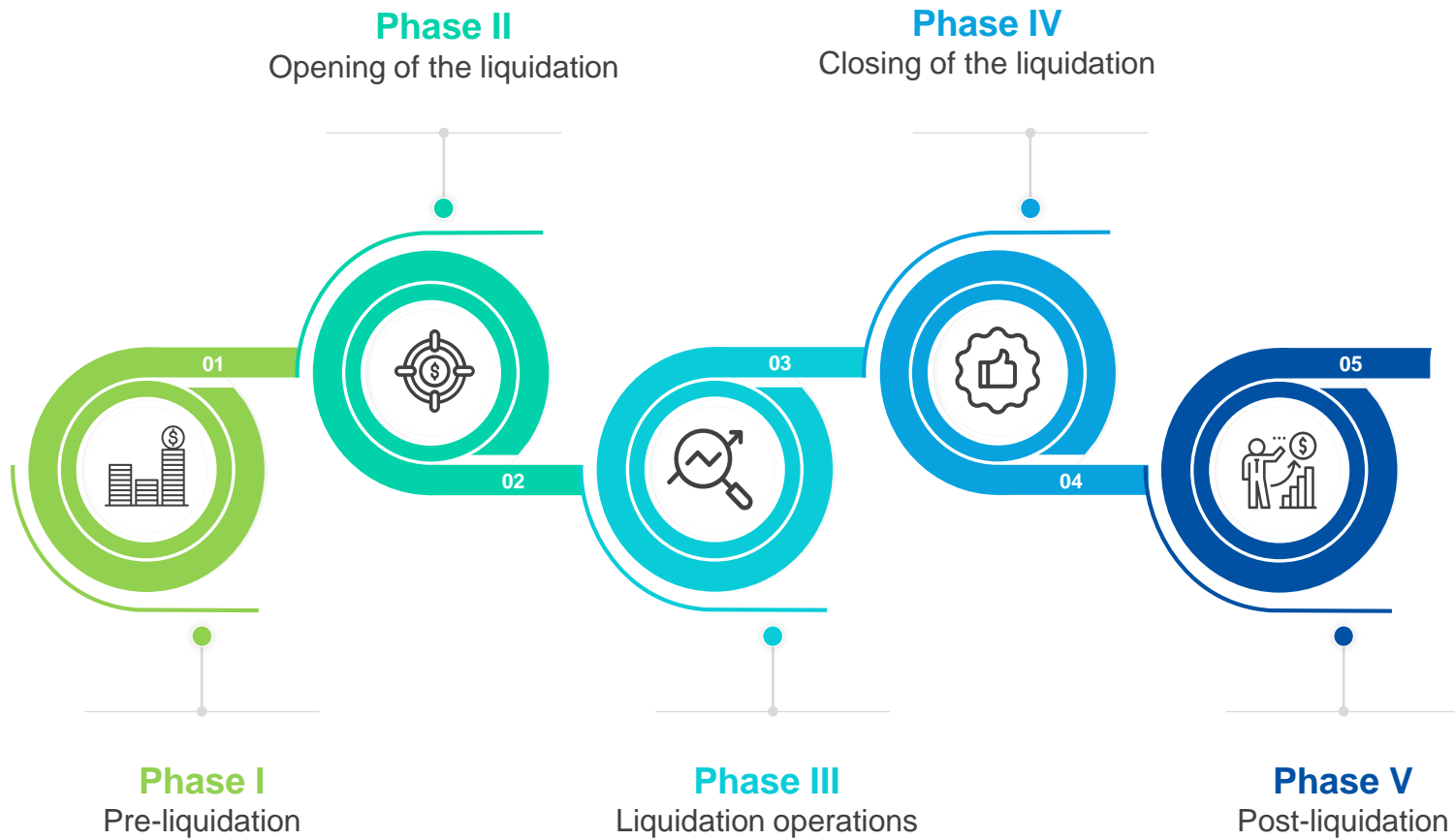
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Introduction

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Liquidation Process



When is it appropriate to put a fund / sub-fund into liquidation?

Reference to legal documents

Sub-fund liquidations:

- Decrease of net assets
- Change of economical situation
- Rationalisation

Fund liquidations: decision by general meeting / management company at its discretion

Quid

- Large redemption(s)
- Impossibility to value certain assets / side pockets

Preparation of the liquidation



Avoid having / remedy blocked investor accounts

Be up to date regarding at the CSSF requirements / requests



Check approval / deposit of last annual audited accounts

Monitoring of the off balance sheet items



Inventory of all the agreements in place

Frequently asked questions



**Freezing of redemption / subscription orders
Accrual of liquidation costs**

Can portfolio assets be sold prior to the opening of the liquidation ?



Diversification rules contained in the prospectus

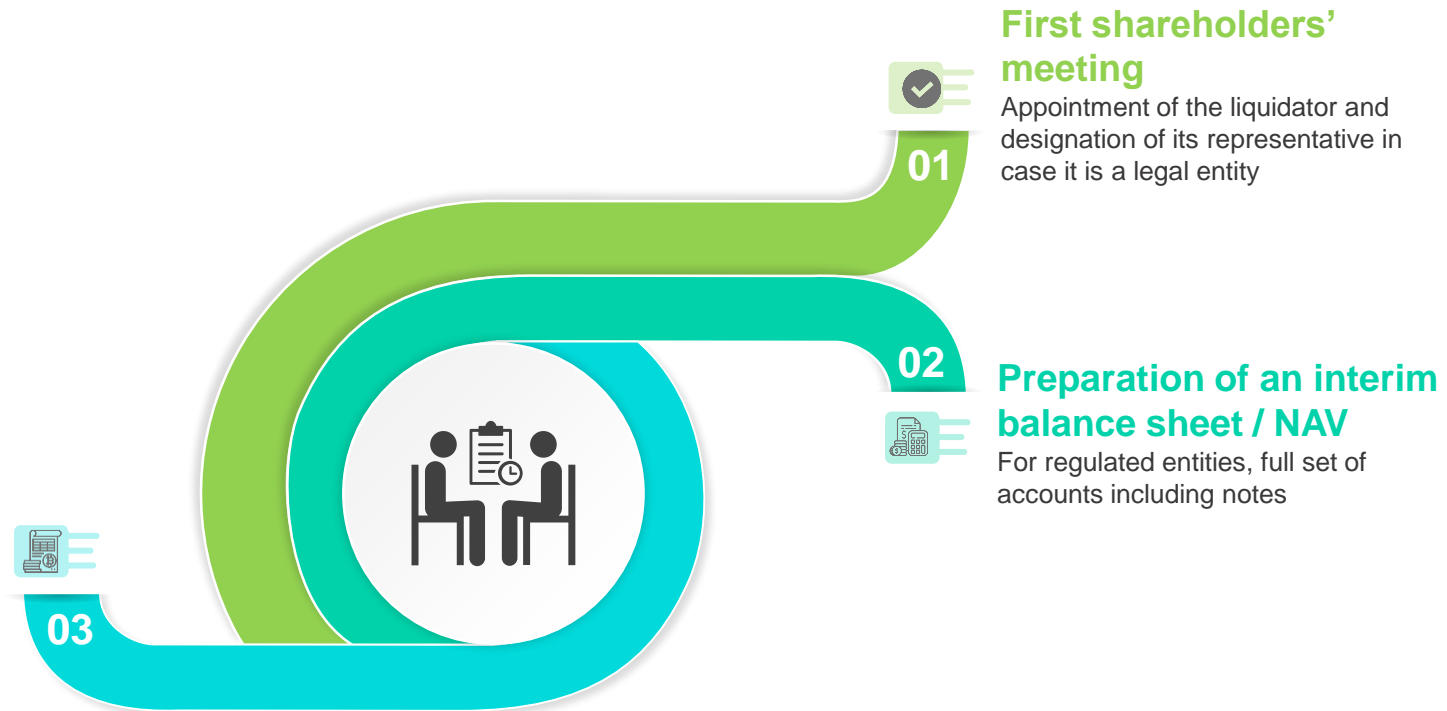
Suspension of the stock exchange listing



Liquidation of the last sub-fund



First steps



Legal and regulatory status

Even in liquidation, the investment fund must comply with all legal / regulatory requirements, in addition to specific requirements for entites in liquidation

- ✓ Deregistration as regulated investment fund but CSSF supervision continues
- ✓ CSSF annual fees still due
- ✓ Subscription tax still due
- ✓ Communication with CSSF at least twice a year through “Periodical report of the liquidator” questionnaire :

Period 01.01 to 30.06 : due by 30.09

Period 01.07 to 31.12 : due by 31.03

« Periodical report of the liquidator »
CSSF questionnaire

- ✓ Last available NAV to investors
- ✓ Distribution to investors
- ✓ Reporting consideration (opening, interim, closing accounts)
- ✓ Realisation of assets
- ✓ Identification and settlement of liabilities, contingencies and commitments
- ✓ Solvency status of the fund
- ✓ AML / CFT considerations
- ✓ Tax considerations, termination plan and prospective closure of the liquidation

Accounting Status

Accounts shall be prepared on a liquidative basis

Assets should be valued at fair market value

- LUXGAAP / IFRS
- Valuation rules

Valuation exercise should be repeated in case of long liquidation

Liquidation costs should be provisioned until contemplated closing of the liquidation

Duties of the liquidator (1)

Liquidator : representative body of the investment fund

Beware of any required agreements having been terminated by mistake



Duties of the liquidator (2)

AML / CFT

- Ensure that AML / CFT procedures and controls are in place to meet AML / CFT obligations
In case of delegated functions, an AML / CFT oversight shall be performed
- Investors' files shall be updated

Realisation of assets

- At fair market value – for illiquid assets, obtain valuation report (broker, practitioner, etc.)
- Identify illiquid positions and explore potential realisation
- Identify and follow-up on EMIR and SFTR requirements

Payments / Distribution

- Payment of all creditors
- Distribution of liquidation proceeds but no distributions to blocked accounts
- Deposit to the *Caisse de Consignation* of any amount which could not be paid directly to creditors / investors

Potential litigation

- List all litigations in which the investment fund / its underlying assets is involved
- Supervise such litigations
- Finalise litigation / settlement

Duties of the liquidator (3)

Taxes

- Tax return and payments shall be performed on a timely manner even during liquidation (including FATCA / CRS)

Interim result of the liquidation

- Each year, submission of the results of the liquidation (including an NAV) to the shareholders' meeting, together with a statement as to the reasons which have prevented completion of the liquidation
- Draft interim liquidator's report
- Filing of balance sheet with RCS

Annual accounts / closing of the liquidation accounts

- Accounts to be established on a liquidative basis
- For interim accounts, obtain valuation for any illiquid asset (broker, practitioner, etc.)
- Liaise with creditors to assess liabilities booked in the accounts
- Draft final liquidator's report for closing of the liquidation accounts
- Liaise with auditors

Complex issues encountered



Voluntary liquidation is the result of a massive fraud



Several assets are illiquid (with strong impairment and/or maturity date several years after the opening of the liquidation)



Litigations initiated in several countries



Majority investor/minority investors



Liaising with brokers/practitioners for the valuation of the assets



Ensuring CSSF information for all material events during the liquidation



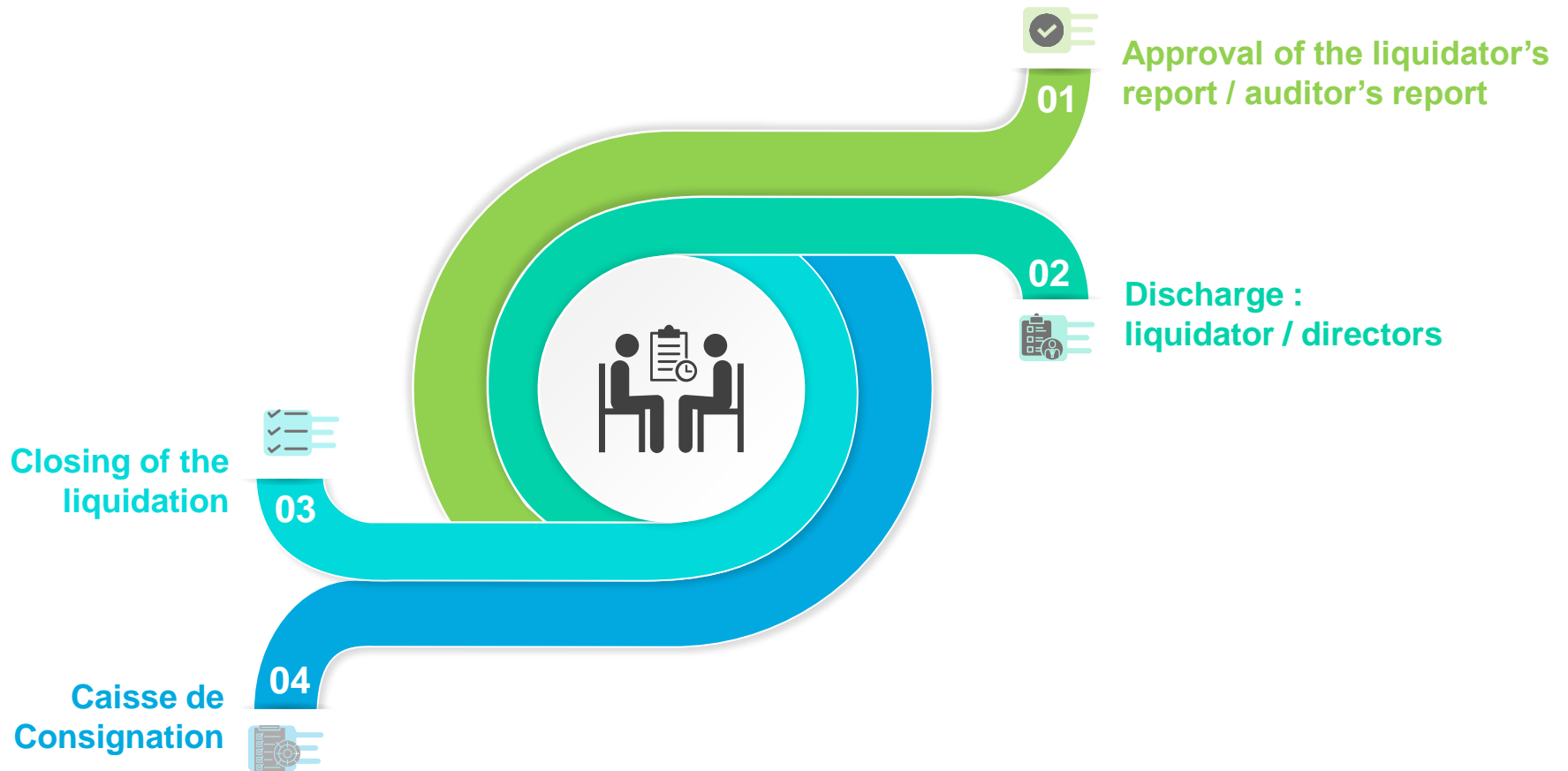
Relationship with auditors



Cash availability



EGM for the closing of the liquidation





Tasks to be completed following the close of the liquidation

CSSF communication

Closing of bank accounts and payment of the liquidation proceeds

Liabilities appearing after the close of the liquidation

Assets / monies appearing after the close of the liquidation

- Tax reclaims
- Proceeds received further to litigation
- Any other unexpected asset



How we can help

Arendt Expertise on Liquidation



Standard and simplified liquidation

- General advice/expert opinion on liquidation
- Drafting of corporate documentation
- Acting as a liquidator
- Valuation of assets
- Preparing financial statements in Lux GAAP, IFRS, US GAAP and cash flow projection
- Liquidation of operational / holding companies
- Litigation with investors / third parties
- Liquidation of assets (liquid / illiquid)
- Interim management
- Tax advice / preparing tax returns
- Project management, including liaising with other relevant parties (public authorities, notaries, auditors, etc.) and help with filings and publication

Liquidation of regulated entities

- Liaising with the competent supervisory authority for liquidator's approval
- Specialised Arendt entity approved on numerous occasions as a liquidator by supervisory authorities
- Ongoing reporting to supervisory authorities
- Marketing deregistration of liquidated investment funds

Liquidation of sub-funds

- General advice / expert opinion on sub-funds' liquidation
- Liaising with the CSSF (where applicable)
- Drafting of corporate documentation

One Arendt



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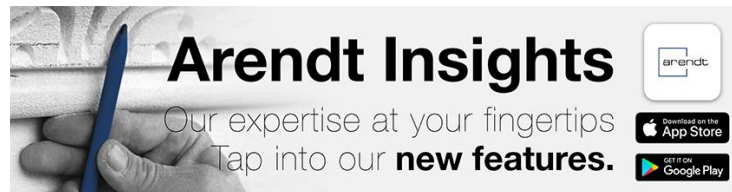
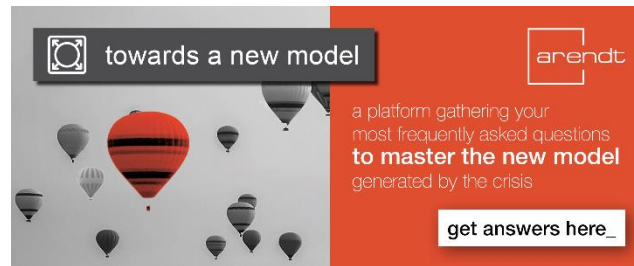
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