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Unlike natural persons, legal persons can be resurrected

When a legal entity is struck off the commercial register, either through bankruptcy or voluntary liquidation, it no longer has a legal existence. In some cases, however, shareholders or third parties may have an interest in a legal entity rising from the ashes and being registered again. The legislator has thought of this possibility and set up a re-registration procedure.

1. Under which circumstances can a company be re-registered?

The re-registration of a company is based on Art. 935 para. 1 OR, which provides that a person who can demonstrate an interest worthy of protection may request the re-registration of a deleted legal entity in the Commercial Register.

Paragraph 2 of the same provision describes the cases in which such an interest exists, namely when

1. after the liquidation of the deregistered legal entity, there are still assets which have not been realised or distributed;
2. the deregistered legal entity is a party to legal proceedings;
3. re-registration is necessary for the adaptation of a public register, or
4. re-registration is necessary so that the liquidation of the bankruptcy of the deregistered legal entity can be completed.

However, this list is not exhaustive.

It follows from the above that a shareholder of a deregistered company who rediscovers an asset of the company cannot simply take it over, but must go through a re-registration and formally liquidate the discovered asset.

2. How to proceed to re-register a company ?

A judicial procedure is necessary to obtain the registration of the company.

The application must be made to the court of the last registered office of the company (Art. 40 para. 2 CPC). The applicant must demonstrate (1) the existence of the deleted legal entity, (2) the likelihood of an interest worthy of protection (see above), (3) the necessity of the re-registration for the applicant.

It will be necessary to ensure that the legal entity is provided with organs, e.g. a liquidator who will be responsible for the liquidation of the company. Otherwise, the court will take measures ex officio (Art. 935 para. 3 OR).

3. Effects of re-registration

Once the court proceedings on the re-registration have been completed, the legal entity will be re-registered in the state it was in at the time of its deregistration. The legal entity will be wound up for its own purposes, the assets and liabilities discovered are reallocated to the company's assets.

The re-registration as such does not allow the resumption of operational activity. Once the purpose for which the company has been re-registered has been achieved, the liquidator may apply for a new de-registration.

The need to initiate court proceedings for the re-registration of the company entails additional costs for the applicant. However, it has the advantage that the reason for re-registration is subject to judicial review. Third parties are also informed of the re-registration of the company by its publication in the Commercial Register.

Source : <https://www.wg-avocats.ch/en/actualites/company-law/unlike-natural-persons-legal-persons-can-be-resurrected/>