

Business & Contract Law



Week 2

PART 2: COMMERCIAL LAW

C/Entrepreneurial Aspects

9. The Cycle of Businesses

9 – The Cycle of Businesses

9-1/ The Cycle: the life of a company goes from birth to death through the following distinct phases:

1. Pre-registration
2. Registration
3. Post-registration operations
4. Growth/stabilization operations
5. Dissolution operations

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9-2/ Preregistration:

1. Deciding on the purpose of the firm (why) relative to one's personal motivation: a) either because of one's experience, or b) because there is a need in an industry
2. Identifying the market, sales and targeted revenue
3. Establishing products on offer
4. Establishing production processes and necessary resources
5. Establishing costs of production

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6. Establishing finance and capital investment
7. Establishing feasibility i.e. risks of failure
8. Deciding on the legal form

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9-3/ Registration

For moral persons:

1. Contacting notary
2. Establishing articles of incorporation and other documents
3. Deciding on legal name
4. Submitting name to the registry for approval
5. Detailing legal purpose of firm
6. Opening up bank account
7. Signing up documents with the notary

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8. Transferring initial capital to the notary
9. Notary transfers documents
10. Formal acknowledgement by the registry
11. Setting out first balance sheet

Registration for physical persons is simpler; registration with the Register of Commerce is voluntary

It is the effect of publication that determines the moment a business is registered

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Sources:

Switzerland: Office fédéral des registres:

http://zefix.admin.ch/zfx-cgi/hrform.cgi/hraPage?alle_eintr=on&pers_sort=original&pers_num=0&language=2&col_width=366&amt=007

France:

<http://www.infogreffe.fr/infogreffe/index.jsp>

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Canada:

<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs01134.html>

UK:

<http://www.rba.co.uk/sources/registers.htm>

US:

<http://www.companieshouse.gov.uk/links/usaLink.shtml>

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Guides

Switzerland

<http://www.vd.ch/fr/autorites/ordre-judiciaire/registre-du-commerce/>

http://www.friup.ch/sites/default/files/boite_a_outil/Registre_du_commerce.pdf

France:

<http://www.greffe-tc-paris.fr/rcs/rcs.htm>

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Online

Switzerland

<http://www.kmu.admin.ch/themen/00614/00692/index.html?lang=fr>

Canada:

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/bn-ne/bro-ide/menu-eng.html>

9-4/ Postregistration:

1. Manning the firm
2. Putting in place the policies and administration
3. Putting in place production operations
4. Putting in place marketing
5. Putting in place accounting
6. Managing finance

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7. Getting to know the assessment procedures for taxes
8. Managing social security
9. Managing insurance
10. Secure any intellectual rights

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9-5/ Growth/Stabilization Operations:

1. Administration, meetings and AGM
2. Agency issues and contracts
3. Sales of goods issues and contracts
4. Employment issues and contracts
5. Quality issues and consumer protection
6. Products and intellectual property
7. Tenancy issues and contracts
8. Work issues and contracts
9. Property rights

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9-6/ Dissolution Operations

- A Dissolution is a normal end for a company as decided by its owners.

- B In case a business accumulates debts, either the creditors or the business may apply to initiate *bankruptcy proceedings* in view of *liquidating* its assets (i.e. transform assets into cash so as to pay the debts).

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C Procedure (simplified):

1. The application is made together with a justification at the administration (Switzerland: Office des poursuites et faillites; e.g. in Geneva: <http://ge.ch/opf/>).
2. The administration transfers the file to a judge who must pronounce the liquidation of the business.
3. The administration takes the inventory of the assets.
4. The administration pays creditors (3 classes of priority).
5. The administration closes the procedure.

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- D A dissolved company is liquidated except in the case of a merger, or transfer of assets to a corporate entity under public law ([CO art 738](#); [CO art 821a](#))

- E The process of dissolution/liquidation is managed by a liquidator – not CEO - whose responsibility is to establish the assets and liabilities of the company – final balance sheet – and nothing else!