

CHINA BUSINESS 商 LAW JOURNAL 法

June 2014 | Volume 5, Issue 6

2014年6月 | 第5辑第6期

基金困惑

律师们对 PE/VC 监管改革的疑问

Capital confusion

Lawyers question PE/VC reforms



www.cblj.com

俱乐部赢家：
律所联盟展示手中牌

Clubs are trumps: Law firm
associations show their hand

谁受保护? 环境保护法
修订的缺憾

Protecting who? Flaws in
Environmental Protection Law

商法词汇：
胜诉收费

Lexicon:
Contingency fees

从企业登记册中注销和恢复 Cyprus companies register strike-off, restoration procedures



Nick Tsilimidos
L. Papaphilippou & Co
律师事务所
律师
塞浦路斯
Advocate
L. Papaphilippou & Co
Cyprus

L PAPAPHILIPPOU & CO LLC

17 Ifigenias street
2007 Strovolos, P.O. Box 28541
2080 Nicosia, Cyprus

电话 Tel: +357 22 27 10 00
传真 Fax: +357 22 27 11 11

电子邮件 E-mail: nt@papaphilippou.eu

www.papaphilippou.eu

LEADING. EVOLVING. ACHIEVING. SINCE 1963

《公司法》第 327 条授权企业注册局将停业的公司从企业登记册中予以注销。如果有合理的理由认定一家公司没有进行任何业务或营运，企业注册局即可启动下述法定注销程序。持续不遵守法定申报义务，如年收入或年度维护费缴纳的申报，即可构成合理的注销理由。

自主吊销

公司可以自主选择从企业登记册中除名，条件是在提出自主吊销请求之时不存在未清偿之债务，并且所有法定义务均已结清。自主注销程序可以由现有的公司董事基于以下情形启动：(1) 公司没有存续的必要或处于休眠状态；(2) 公司董事打算退休，并且未任命接替者；(3) 公司组织章程大纲中规定的宗旨目标已经废弃；(4) 其他原因。

启动注销程序前，包括公司网站和银行账户在内的公司所有功能的终止，须由公司董事参与。注销的生效日期，以政府官方公报形式发布注销通知之日为准。被终止公司的所有剩余资产和权利于生效之日移交至塞浦路斯共和国。企业注册局在程序完成后颁发的注销证书中应注明注销生效日期。

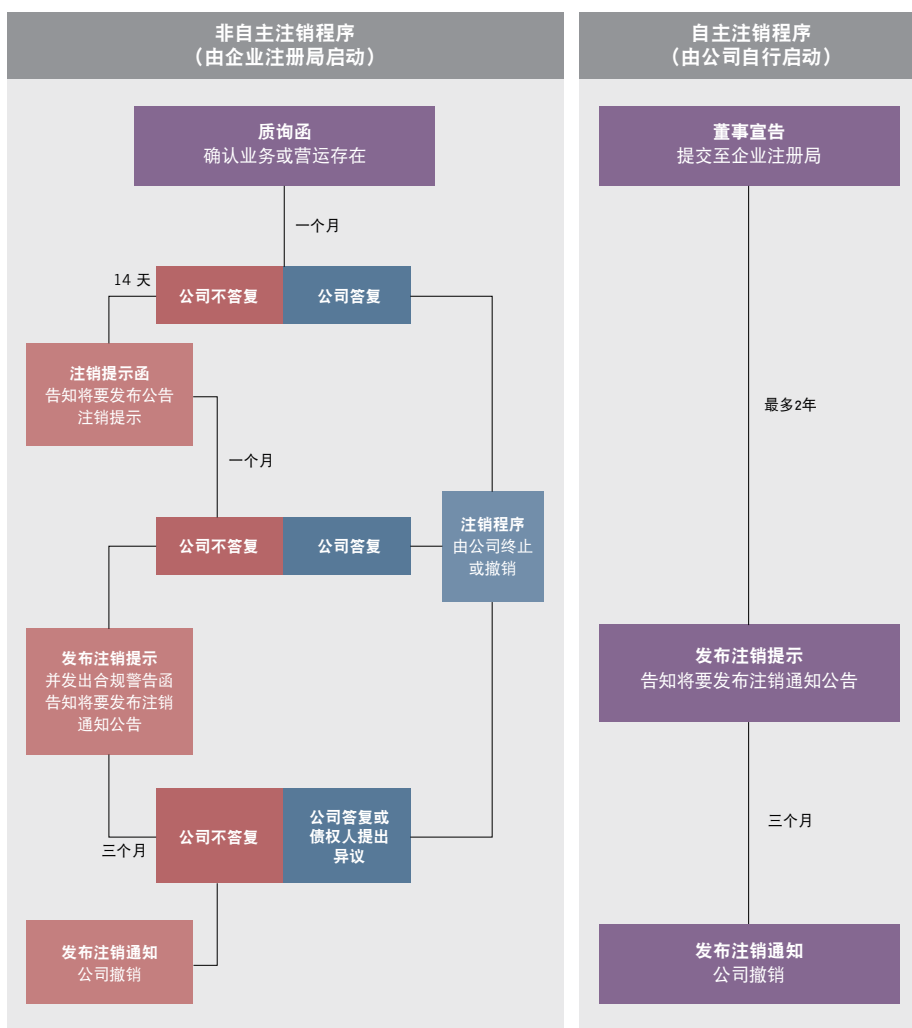
注销程序不能取代正式的破产程序。已注销的公司自公报发布注销通知起 20 年内的任何时候都可以恢复公司注册。恢复至企业登记册需要法院的命令。任何公司、董事会成员或债权人认为自己的权利受到已注销公司的侵害，均可向法院申请恢复

该公司。恢复程序由企业注册局实施。

如满足下列条件，法院将下令恢复至企业登记册：(1) 该公司在注销期间从事业务或营运；及(2) 出于其他因素，恢复至企业登记册有利于公平。一旦法院要求恢复注册的命令的正式文本被提交至企业注册局，该公司即应被认为持续存在着，视同从未注销和终止过。法院的恢复命令具有溯及既往的效力。

法院可通过命令的形式做出基于公平考虑的指示和规定。这些命令包括但不限于：

- (1) 使该公司及所有其他相关者处于如同该公司未曾注销时的地位；
- (2) 处理该公司有关的业务、财产、纳税申报和迟交的罚款；
- (3) 以另外的名称恢复该公司——如果公司的原名称与企业登记册名录中的其他公司名称相同或相近；
- (4) 其他出于公平和公正考虑的命令。



“公司可以自主选择从企业登记册中除名”

Section 327 of the Companies Law empowers the Registrar of Companies to strike off a defunct company from the companies register. The statutory strike-off procedure depicted below may be initiated by the Registrar of Companies when there are reasonable grounds to suggest that a company is not carrying on any business or operations. Persistent failure to adhere to statutory filing obligations, such as the filing of annual returns or the payment of the annual maintenance levy, may constitute reasonable grounds.

Voluntary strike-off

A company may voluntarily choose to be removed from the companies register, provided that at the date of filing of the voluntary strike-off request there are no pending liabilities and all statutory obligations have been settled. A voluntary strike-off may be initiated

by the existing company directors where: (a) the company is no longer needed or is dormant; (b) the company directors wish to retire and there is no prospect of replacements being appointed; (c) the pursuit of the objects contained in the memorandum of association for which the company was formed have been abandoned; and (d) any other reason.

The termination of all company functions, including the operation of company websites and bank accounts, should be attended to by the company directors before the strike-off procedure is initiated. The effective date of the strike-off will be the date of the publication of the strike-off notice in the government Gazette.

Any remaining assets and rights of the dissolved company will pass to the Republic of Cyprus on the effective date. The effective date will appear on the certificate of strike-off issued

“ A company may voluntarily choose to be removed from the companies register ”

by the Registrar of Companies upon completion of the process.

A strike-off is not an alternative to formal insolvency proceedings. A company that has been struck off may be restored to the companies register at any time before the expiry of 20 years from the publication of the strike-off notice in the Gazette. Restoration to the companies register requires a court order. Any company, member or creditor that feels aggrieved by the company having been struck off the register may apply to the court for the company to be restored. The application is served to the Registrar of Companies.

The court will order the restoration to the companies register, provided that it is satisfied that: (a) the company was at the time of the strike-off carrying on business, or in operation; and (b) that it is otherwise just for the company to be restored to the companies register. Upon an office copy of the court order being filed to the Registrar of Companies for registration, the company will be deemed to have continued in existence as if it had never been struck off and dissolved. The effect of the restoration court order is retroactive.

Court directions

The court may by the order give such directions and make such provisions as may seem just. These may include, *inter alia*: (a) placing the company and all other persons in the same position as if the company had not been struck off; (b) dealing with any business, property, filing of returns and late filing penalties of the company; (c) restoring the company with another name where the former company name is the same or similar to another name in the index of company names; and (d) any other just and equitable order. ■

Nick Tsilimidos 是塞浦路斯
L Papaphilippou & Co 律师事务所的律师
Nick Tsilimidos is an advocate at
L Papaphilippou & Co in Cyprus

