

## Change of holder Manual - Registrar

This manual is produced as a support for Registrars for the top-level domains .se and .nu. The manual is intended to be used as a guide in the change of holder of domain names in the event of special events such as bankruptcy, merger, liquidation or death.

Please note that The Swedish Internet Foundation, according to section 6.1.5 of the Registration Terms, also has the right to deactivate/deregister domain names where the holder is a legal entity who has been dissolved after the bankruptcy has ended.

### **The right to change the holder of a domain name:**

The holder of a domain name is the person who has the right to change their domain to a new holder. It is also the party entitled to request correction of the contact details. The organization number or personal identity number on which the domain is registered indicates as a starting point who has the right to dispose of the domain name. There can only be one registered holder per domain name.

In some situations, there may be obstacles for the registered holder to change the holder of the domain name or request correction of the information. For example, in the case of bankruptcy where the holder ceases to exist, or in the event of a merger, death, et cetera.

It may also occur in cases where the registered holder's information was incorrect from the beginning or is fictitious.

The following clarifies how a holder may proceed in various situations where the main principle - that only the holder may transfer the domain name or correct the information - cannot be applied:

### **Bankruptcy Limited Liability Company:**

The district court decides to initiate bankruptcy, e.g. at the request of the shareholders or of the company's creditors. When the district court has made a decision to initiate a bankruptcy, a bankruptcy trustee is appointed. The bankruptcy trustee takes over the company's signatory rights and is the one who takes care of and also sells property on behalf of the company. During that time period, the former representatives of the company do not have the right to change the holder of the domain name.

The trustee in bankruptcy is authorized to represent the company and carry out the change of holder of a domain name. The bankruptcy trustee must submit documentation proving that they are a trustee in bankruptcy (usually a decision from a district court).

### Bankruptcy completed Limited Liability Company:

When changing the holder of a domain name after the bankruptcy has ended, the trustee must reopen the bankruptcy in order for the domain name to be changed to another holder. If it is the previous representative of the company who is the receiving party, it may be sufficient for the bankruptcy trustee to submit a written certificate stating that they have no interest in the domain name.

In exceptional cases where the bankruptcy trustee no longer wishes to reopen the bankruptcy or is no longer reachable, there is no representative for the company or the domain. In such cases, the registrar may need to make a comprehensive assessment to determine who is currently the holder of the domain and thereby the registrar's contractual party. See the section 'Exceptional Cases' further down in this document.

### **Bankruptcy Trading Company:**

Just as for a Limited Liability Company, it is the district court that decides to initiate bankruptcy. The bankruptcy trustee takes over the company's signatory rights and is the one who takes care of and also sells property on behalf of the company. A trading type of company has one or more partners. During the bankruptcy proceedings, the partners do not have the right to change the holder of a domain name. Instead, it is the bankruptcy trustee who is authorized to represent the company and carry out the change of holder of a domain name. The bankruptcy trustee must submit documentation proving that they are a trustee in bankruptcy (usually a decision from a district court).

In cases where the bankruptcy trustee cannot assist in a change of holder, the transferrer must provide a certificate from the other partners that they approve the change of holder. The certificates must be signed by all former partners of the trading company.

### Bankruptcy completed Trading Company:

In the event of a finished bankruptcy, and when the trustee does not want to reopen the bankruptcy, the former partners, as private individuals, may agree on who will own the domain name and the others may certify that they waive the right in favor of a person. If they cannot agree, the question of the right to the domain name may need to be decided in court.

In exceptional cases where the partners are no longer reachable, there is no representative for the company or the domain. In such cases, the registrar may need to make a comprehensive assessment to determine who is currently the holder of the domain and thus the registrar's contractual party. See the section 'Exceptional Cases' further down in this document.

### **Bankruptcy Limited Partnership:**

For a limited partnership type of companies during ongoing bankruptcy, it is the bankruptcy trustee who can sign a change of holder of a domain name. The name of the bankruptcy trustee is stated in the Swedish Companies Registration Office's register or in a decision from the district court. In cases where the trustee in bankruptcy is unable to assist in a change of holder, the transferor must submit a certificate from the other partners that they approve the change of holder. The certificates must be signed by all partners.

### **Bankruptcy completed:**

When changing the holder of a domain name after the end of bankruptcy in a limited partnership, it is required that the trustee reopens the bankruptcy so that the domain name can be changed to another holder.

A limited partnership company often has several owning partners and also one or more general partner(s). If the trustee in bankruptcy does not want to reopen bankruptcy, all owning partners and general partners need to approve the change of holder, either by all signing a certificate that they renounce the right to the domain or by signing a change of holder form that the domain must be changed to a new holder.

In exceptional cases where the limited partners and general partners are no longer reachable, there is no representative for the company or the domain. In such cases, the registrar may need to make a comprehensive assessment to determine who is currently the holder of the domain and thereby the registrar's contractual party. See the section 'Exceptional Cases' further down in this document.

### **Merger:**

In the event of a merger, all of a company's assets and liabilities are transferred to the acquiring company. The acquiring company needs to be registered as a new owner. The basis for this change of holder of domain names consists of a register extract from the Swedish Companies Registration Office, which states that a merger has been executed. No change of holder form is necessary in the event of a merger.

### **Deregistered company due to cessation of business (voluntary, not bankruptcy):**

Legally, the company does not exist after deregistration and no representatives exist anymore. In practice, previous shareholders and partners should be allowed to carry out a change of holder by signing a change of holder document. All shareholders and partners must agree and sign the document.

In exceptional cases where shareholders and partners are no longer reachable, there is no representative for the company or the domain. In such cases, the registrar may need to make a comprehensive assessment to determine who is currently the holder of the domain and thus the registrar's contractual party. See the section 'Exceptional Cases' further down in this document.

### **Estate:**

On the same day that a person dies, their possessions, contracts, and debts are transferred to an estate. It is therefore the estate owner(s) who has the right to sign a possible change of holder of a domain name. The person who has the right to subscribe for the estate is stated in the estate register, which is available from the Swedish Tax Agency. The registrar can also ask the estate owner(s) to submit documentation on the estate register.

In exceptional cases where the estate representatives are no longer reachable, there is no one authorized to sign a potential transfer of the domain. In such cases, the registrar may need to make a comprehensive assessment to determine who is currently the holder of the domain and thereby the registrar's contractual party. See the section 'Exceptional Cases' further down in this document.

### **Liquidation:**

#### Ongoing liquidation:

Liquidation means that a company is dissolved by the assets in the company being transformed into money, for example to pay the company debts. Liquidation can take place voluntarily following a decision by the Annual Shareholder Meeting. Liquidation can also take place compulsorily following a decision by the Swedish Companies Registration Office or a court, so-called compulsory liquidation.

For an Limited Liability Company, it is the liquidator who signs a change of holder of a domain name. In the event of voluntary liquidation, the company's general shareholder meeting may submit a proposal for a liquidator. The Swedish Companies Registration Office then tests whether the proposed liquidator can be appointed. If the Limited Liability Company does not submit a proposal, the Swedish Companies Registration Office appoints a lawyer as liquidator. In the event of compulsory liquidation, the Swedish Companies Registration Office or the court appoints a liquidator for the limited company. To ensure who is the liquidator, documentation is therefore obtained from the Swedish Companies Registration Office or a court.

For a trading type of company in liquidation, a change of holder of a domain name is jointly signed by the partners unless otherwise agreed between them. If the partners do not agree, the district court can appoint a liquidator who may sign alone.

#### Completed liquidation:

For Limited Liability Company, a completed liquidation means that the company has been dissolved. However, a decision can be made to resume liquidation, even after the company has been dissolved, e.g. if new assets are found in the company. If the liquidator decides to resume liquidation, the liquidator enters with the same obligations and rights as before. This means that the liquidator, after completion of liquidation, has the opportunity to change the holder of domain names that are registered with the company.

For a trading type of company, a completed liquidation means that the company is no longer a legal entity, the company has thus been dissolved. However, the company may retain ownership of certain assets and liability over certain liabilities, even after a liquidation has been completed. When a liquidation has been completed in a trading company, the starting point is therefore that the owners can represent the company. This means that all partners must approve the change of holder of the domain name.

In exceptional cases where the partners and/or the liquidator are no longer reachable, there is no representative for the company or the domain. In such cases, the registrar may need to make a comprehensive assessment to determine who is currently the holder of the domain and thus the registrar's contractual party. See the section 'Exceptional Cases' further down in this document.

#### **Fictitious organization numbers:**

It happens that domain names are registered on a fictitious organization number, i.e. that the company's actual organization number is not registered on the domain. In several of these situations, other information in the register may be correct, such as the company's name and postal address, while the organization number is clearly incorrect. When a domain name is registered on a fictitious organization number, the registrar must ensure that there is evidence that proves who is the actual holder of the domain name. If there is sufficient evidence to identify the actual holder, it is up to the registrar to correct the holder information, and ensure that the basis for the correction is documented. See the section 'Exceptional Cases' further down in this document for examples of supporting material that may help identify the holder.

### **Organization number or personal identity number incorrect since registration:**

Sometimes there may be an existing (non-fictitious) personal identity number/organization number as the holder in the registry, but an organization with a different organization number claims to be the actual holder of the domain. This may be the case, for example, if an individual in their capacity as an employee has used their own personal identity number to register a domain name or that the company used a representative/IT consultant to register the domain from the beginning. In these cases, a certificate from the individual or organization is required stating that no claim is made on the domain, or that a change of holder takes place according to routine.

It may also be the case that incorrect information was provided from the beginning, due to an unknown personal or organizational identity number being entered. In such cases, the registrar may need to make a comprehensive assessment to determine who is currently the holder of the domain. See the section “Exceptional Cases” further down in this document.

### **Exceptional Cases**

To determine the domain holder in the absence of an authorized person with the right to transfer a domain name or request correction of information, the registrar may need to make a comprehensive assessment.

Examples of what may serve as a basis for identifying the holder when the registered information is incorrect or the current holder no longer exists include:

- Who has paid for and used the domain over time?
- What do the other contact details indicate?
- Is there a history that supports ownership?
- Are there invoices, purchase agreements, or other documentation that suggests ownership?

If the registrar finds that there is sufficient evidence to identify the actual holder and contractual party, the registrar may correct the information in the register.

If this is not possible, the registrar may refer the parties to court to resolve the question of who has the better right to the domain.