

Voluntary liquidation and strike off – Solvent Cayman Islands companies

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Broadly, the end of life options for a solvent Cayman Islands company are either a voluntary liquidation or a strike-off. The appropriateness of either method will depend on the business history of the company and its current financial position. The company should ideally have no assets or liabilities before the commencement of either option.

Preliminary steps

Before commencing the dissolution process, it may be necessary to take some preliminary steps, such as ensuring that:

- all relevant dividends have been paid to shareholders;
- the share capital of the company is simplified as much as possible (ideally with one voting share in issue held by a single shareholder);
- all creditors have been paid in full (with secured creditors receiving priority); and
- if the company is a fund regulated by the Cayman Islands Monetary Authority (CIMA):
 - the CIMA registration has been properly surrendered or cancelled; and
 - where the fund has ceased to carry on business or is a single investor fund, all investors have been properly redeemed and paid out in accordance with the terms of their investment.

Voluntary liquidation

A solvent company commences voluntary liquidation:

- when the period, if any, fixed for the duration of the company in its constitutional documents expires; or
- an event occurs which a company's constitutional documents stipulate commences voluntary liquidation; or
- by the passing of a shareholder special resolution that the company commence voluntary liquidation.

It is most common for voluntary liquidation to commence upon the passing of a shareholder special resolution, which will also name the liquidator. While Cayman Islands law does not specify any professional requirements for a liquidator, it is recommended that a professional liquidator (such as Mourant Liquidations (Cayman) Limited) is appointed, to ensure efficiency and avoid directors of the company having to perform an unfamiliar role, which attracts personal fiduciary obligations. A liquidator is an agent of the company and the directors' powers will cease and vest with the liquidator upon appointment.

Procedure

The Cayman Islands Companies Act (as amended, the **Companies Act**), sets out the procedural requirements for a valid and effective voluntary liquidation. An overview of the process is set out below:

1. The board of directors of the company consider, and subject to shareholder consent, approve the appointment of a proposed liquidator;
2. All of the directors provide a declaration of solvency (see below for details);

3. The shareholder(s) of the company pass a special resolution appointing the liquidator, and the liquidator consents to act as such;
4. Notice of the voluntary liquidation is filed with the Cayman Islands Registrar of Companies (the **Registrar**);
5. The following statutory notices are published in the Cayman Islands Gazette:
 - (a) notice of appointment of the liquidator (creditors of the company are given at least 21 days to provide the liquidator with details of any claims against the company); and
 - (b) notice of the final shareholder(s) general meeting of the company;
6. At the final shareholder(s) general meeting, the shareholder(s) vote on the liquidator's accounts and report;
7. Within 7 days of the final shareholder(s) general meeting, the liquidator files its final return with the Registrar, and a certificate of dissolution is issued by the Registrar; and
8. Three months after submission of the liquidator's final report, the company is deemed dissolved.

Declaration of solvency

The directors must confirm in the declaration of solvency that a full enquiry into the company's affairs has been made and that, to the best of the directors' knowledge and belief, the company will be able to pay its debts in full, together with interest, within a period not exceeding 12 months from the commencement of the liquidation.

A person who knowingly makes a declaration of solvency without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified commits an offence and is liable on summary conviction to a fine of US\$12,195 and to imprisonment for two years.

A prospective liquidator will ask for the declaration before giving consent to act. If the declaration is not signed and filed within 28 days of the commencement of the liquidation, the liquidator must apply for the liquidation to continue under the supervision of the Court.

Timing of the process

With respect to timing, assuming the company had no assets or liabilities prior to commencing the voluntary liquidation, the process would usually take 4 to 8 weeks from the appointment of the liquidator, to the final meeting of the shareholder(s) and the submission of the liquidator's final return to the Registrar.

A voluntary liquidation should be commenced by early December at the very latest, in order to avoid incurring fees with the Registrar in the following year (with the final general meeting held and all of the requisite documents filed by the end of January).

Strike-off

Strike off is the procedure of removing a company from the Register of Companies (the **Register**) following which the company will cease to exist. The Registrar, upon request from the company, may strike the company from the Register where it has reasonable cause to believe the company is not carrying on business or is not in operation.

Potential drawbacks

A strike-off is appropriate where a company has never traded, or has ceased trading, and there is absolute certainty that the company has no assets or liabilities. It is important to note the following potential issues of the strike off procedure:

- any property vested in or belonging to the company when it is struck from the Register will vest in the Cayman Islands Government;
- any shareholder or creditor of the company who feels aggrieved by the company having been struck off may petition the Grand Court of the Cayman Islands to have the company reinstated in order that a formal liquidation or collateral action may commence;
- the striking off shall not affect the liability (if any) of any director, manager, officer or shareholder of the company, and such liability shall continue and may be enforced as if the company had not been dissolved; and

- a director who signs a false confirmation, whether negligently or fraudulently, for the purpose of having the company struck off may become liable to the shareholders and/or creditors of the company should any of these persons suffer any loss or damage as a result of the company being struck off.

Procedure

The Companies Act sets out the simple procedure to strike a company from the Register. The directors sign a declaration confirming the company has no assets or liabilities and request the Registrar to strike the company from the Register. The company's economic substance notification for the current year must be filed with the Registrar prior to making the application.

After relevant confirmations are submitted to the Registrar, a certificate of strike-off is issued with a strike-off date, which in turn is published in the Cayman Islands Gazette, so as to advertise the strike-off of the Company. Typically, the Registrar will dissolve the company after some three to six months.

Timing of the process

A strike off is less expensive than a voluntary liquidation, and the legal steps can be effected within a couple of weeks in some instances. All relevant documents should be filed before 31 December to avoid incurring fees with the Registrar in the following year.

Voluntary liquidation or strike off?

While a strike off is less expensive and generally faster to effect than a voluntary liquidation, there are some important limitations to a strike-off (as detailed above in [Potential drawbacks](#)). No decision to opt for a strike-off, instead of a voluntary liquidation, should be taken without fully considering the implications.

In particular, the time period for an application to reinstate a struck off company is two years from the date the company was struck-off; however, this may be extended up to 10 years in certain circumstances.. In the majority of cases, a voluntary liquidation will therefore be the preferred method.

Considerations for funds

Where the company is a Cayman Islands regulated mutual fund under the Mutual Funds Act, or registered private fund under the Private Funds Act, it will need to deregister with CIMA following the cessation of operations. It is advisable to complete the CIMA deregistration before commencing the formal winding up process.

It is also essential that the company be up-to-date in filing its audited accounts with CIMA and its economic substance notification with the Registrar, and that all participating shares be redeemed and proceeds distributed to shareholders prior to commencing the deregistration process. Otherwise, the deregistration may become protracted and, therefore, costly.

Deregistration procedure

Initial core documents to be filed

The initial core documents to be filed with CIMA, together with the prescribed fee of US\$732, consist of:

- for mutual funds registered prior to 2014, the original Certificate of Registration; and
- for all funds, a certified copy of a resolution of the fund's operators or participating shareholders:
 - indicating the date on which the fund will cease, or has ceased, to carry on business as a fund;
 - resolving that the fund be deregistered with CIMA and that the company be liquidated or struck off; and
 - confirming the redemption of all participating shares and payment of all redemption proceeds.
- for all funds that never carried on business, a letter verifying this fact and confirming that any subscriptions have been returned

Additional steps where a liquidator appointed

Where a voluntary liquidator has been appointed, CIMA will require the following additional documents,:

- notice of the winding up of the fund stamped by the Registrar;
- the voluntary liquidator's consent to act stamped by the Registrar;

- a copy of the voluntary liquidator's final report;
- an affidavit from the voluntary liquidator;
- where the last set of audited accounts have been filed, a supporting affidavit from the operators; and
- where the fund has been granted an audit exemption, a supporting affidavit from the voluntary liquidator.

Additional steps where no liquidator appointed

Where a voluntary liquidator has not been appointed, CIMA will require an affidavit from or on behalf of the operator(s) of the fund, together with audited accounts, to complete the application.

Additional steps where the fund has not traded

For funds that never carried on business, a letter verifying this fact and confirming that any subscriptions have been returned must be provided by the fund's manager, operator, administrator or auditor.

Deadline for deregistration

The *Rule on Cancellation of Licences or Certificates of Registration for Regulated Mutual Funds and Registered Private Funds*¹ provides that a fund must notify CIMA within 21 days of when it intends to cease carrying on, or has ceased to carry on, business as a fund. Failure to do so will result in a fixed fine of US\$6,098. CIMA also has discretion to impose one or more continuing fines of US\$6,098 each, up to a cumulative cap of US\$24,390.

Contacts

A full list of contacts specialising in the company terminations and investment funds can be found [here](#).

¹ The Rule and related Regulatory Policies for mutual and private funds can be accessed [here](#).

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