

Voluntary liquidation and striking off a Cayman Islands exempted company

This Guide outlines the procedure for a voluntary liquidation of a solvent Cayman Islands exempted company and the duties of its liquidator. It also sets out the process for striking an exempted company off the Register of Companies in the Cayman Islands.

Voluntary liquidation

A Cayman Islands exempted company can be wound up voluntarily:

- when the period, if any, fixed for the duration of the company by its memorandum or articles of association (the **M&A**), expires
- because a specific event has occurred, on the occurrence of which its M&A provide that the company shall be wound up
- by a special resolution passed by the shareholders of the company (majority of at least two thirds of the voting shareholders at a general meeting unless a greater majority is specified in the M&A, either generally or for particular matters), or, if authorised by the M&A, a written resolution signed by all voting shareholders
- by an ordinary resolution passed by a simple majority of the shareholders of the company if the company is unable to pay its debts as they fall due

Liquidator

A Cayman Islands exempted company can appoint one or more persons to act as the company's liquidator, including a director or officer of the company, the company's auditors or another appropriate third party. There are no qualification requirements for appointment as a voluntary liquidator.

Cayman legislation codifies various requirements of the voluntary liquidator regarding notices, meetings, reports and prescribed forms.

The liquidator has a legal duty to wind up the company's affairs in an orderly and timely manner and in accordance with all legislative requirements and must ensure that the company's assets are properly realised and distributed to creditors and investors.

Procedure

When a company which is otherwise unregulated under Cayman Islands law is to be wound up by passing a special resolution, subject to any specific provisions in its M&A, the procedure is generally:

- A meeting of the directors of the company is held to consider and, if thought fit, approve the appointment of the proposed liquidator, the giving of notice to the shareholder(s) that the company should be placed into voluntary liquidation and that an extraordinary general meeting of the shareholders of the company (**EGM**) should be called to consider passing a special resolution to place the company into voluntary liquidation or a written resolution can be signed by all of the shareholders
- An EGM is convened or written resolutions are circulated pursuant to which the shareholders are asked to pass a special resolution covering the following:
 - noting that the company has ceased to trade (or has not traded since incorporation)
 - resolving that the company be voluntarily wound up

- approving the appointment of a liquidator, its remuneration and the granting of an indemnity to the liquidator
- The liquidation commences from the date of the special resolution. At that time, the powers of the directors cease except to the extent required for beneficial winding up of the company's business and except to the extent the shareholders of the company may, by resolution, allow certain powers to continue. The voluntary liquidator assumes all powers in relation to the management of the company. Shares in the company can also only be transferred with the consent of the liquidator.
- Within 28 days of the commencement of a voluntary liquidation, the following notices must be filed with the Cayman Islands Registrar of Companies (the **Registrar**) together with the applicable filing fee (please contact us for details of current fees payable):
 - a winding up notice
 - the liquidator's consent to act
 - directors' declaration of solvency
- The directors' declaration is a declaration or affidavit in a prescribed form which confirms 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 at the prescribed rate, within a period not exceeding 12 months from the commencement of the winding up. The declaration must be signed by all the company's current directors. Any 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, if convicted, to a substantial fine and/or to imprisonment.
- If a directors' declaration of solvency is not filed within 28 days of the commencement of the voluntary liquidation, the liquidator must apply to the Grand Court of the Cayman Islands (the **Court**) to have the liquidation continue under the supervision of the Court.
- The liquidator must also publish a notice of the voluntary liquidation in the Cayman Islands Gazette (the **Gazette**) within 28 days of the commencement of the voluntary liquidation and if the company is carrying on a regulated business in the Cayman Islands it must file notice of the winding up with the Cayman Islands Monetary Authority (**CIMA**). The Gazette notice advises creditors of the proposed voluntary winding up of the company and calls for submissions and proofs of debt in relation to monies due to creditors. Creditors are usually provided with three weeks in which to file details of their claims to the liquidator.
- The liquidator must collect in all assets of the company, apply them in satisfaction of all liabilities of the company, and verify all creditors (if any), as well as all shareholders who are entitled to a distribution. There is no set time frame for this process, and it can be very quick, for example where there are no creditors, and only a few easily realisable assets. The process may take longer where there are numerous creditors and multiple assets.
- Assignments of assets in kind may be required in respect of final distributions by the liquidator. Any surplus assets may be assigned in a final distribution made by the liquidator, based on instructions from the shareholders and the provisions of the M&A.
- As soon as the affairs of the company are fully wound up and the company no longer has any assets or liabilities, the liquidator must make a report and account of the winding up, showing how it has been conducted and how the property has been disposed of. The liquidator must then publish a second notice in the Gazette, specifying the date, time, place and object of the final general meeting of the shareholders of the company (**FGM**).
- The liquidator convenes the FGM for a date at least 21 days after the notice of the FGM appears in the Gazette.
- At the FGM, the liquidator provides a general report on the liquidation process. The liquidator lays the final accounts of the company which the liquidator has prepared before the FGM showing the manner in which the winding up was conducted. At the FGM the liquidator will ask the shareholders to pass resolutions approving the liquidator's accounts, its remuneration and authorising the destruction of the company's books and records after a specified time, typically five years from the date of dissolution of the company.
- Within seven days of the FGM, the liquidator must file its report and a return with the Registrar confirming the date of the FGM and details of the resolutions passed. The liquidator also requests a certificate of dissolution to be issued by the Registrar and pays the applicable filing fee. Please contact us for details of current fees.
- The Registrar delivers the certificate of dissolution to the liquidator. Termination of the company is the date of the certificate of dissolution.

Timing

A straightforward voluntary liquidation of an exempted company which does not have extensive creditors/shareholders can be expected to be completed within three months from the start of the process to the date of the liquidator's filing following the FGM. If a voluntary liquidation continues for more than one year, the liquidator must call a general meeting of the company at the end of the first year, with the liquidator laying before the meeting a report and account of its acts and dealings and the conduct of the winding up during the preceding year.

All the obligations of the company under the International Tax Co-operation (Economic Substance) Act must be discharged before commencing a voluntary winding up.

If the company is carrying on a regulated business, it will need to de-register from CIMA, following the procedure for the relevant category of registration, before commencing a voluntary winding up. Please contact your usual Harneys representative for further details of the procedure to follow.

Striking off

An alternative to liquidation is striking off. The strike off method is best suited to a company that is inactive with no assets, liabilities or creditors.

On the request of the company, the Registrar has the power to strike off a company from the Register of Companies where the Registrar has reasonable cause to believe that the company is not carrying on business or is not in operation. On striking off, the company is dissolved. The Registrar will require a resolution of the shareholders of the company requesting the striking off and an affidavit of a director confirming that the company has no assets or liabilities. Following the striking off, the Registrar will immediately publish a notice in the Gazette advertising that the company has been struck off, the date of strike off and the reasons for the strike off.

Although a striking off is a less expensive form of dissolution, it differs fundamentally from a liquidation or winding up. In particular, the following points should be noted:

- If any member or creditor of the company feels aggrieved at a striking off, they may make an application to the Court for the company to be reinstated. The time period allowed for an application to reinstate is generally two years, although it may be extended to a maximum of ten years if the Cabinet allows.
- In order to reinstate the company, it must be shown that the company was in operation at the time of the striking off, or the Court must deem it just that the company be reinstated.
- On reinstatement, the company must pay a reinstatement fee equivalent to the original incorporation or registration fee. The Court also has the discretion, either on reinstatement or subsequently, to award damages to any person, in order to place them in the position they would have been in if the company had never been struck off. The application to the Court can be made on paper and if there are no problems, will be granted by the clerk of the Court without the need for a Court hearing.
- The striking off does not affect the liability, if any, of any director, manager, officer or member of the company, and such liability continues and may be enforced as if the company had not been dissolved.
- Where the strike off method is used to dissolve a company, it is vital that all of the assets and liabilities of the company are discharged. If assets are not discharged following strike off they will cease to be the property of the company and will automatically vest with the Financial Secretary for the benefit of the Cayman Islands.
- It is also important to ensure that all the obligations of the company under the International Tax Co-operation (Economic Substance) Act are discharged.

Where a company has been conducting business on a regular basis or has assets and liabilities, unless its assets and liabilities have been discharged, it is inadvisable for the company to be dissolved by strike off. In those circumstances, liquidation is the preferred route for dissolving the company.



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