

Considerations for terminating registration of your Cayman Islands entity before 2024 fees and filings are due

Cayman Islands entities will be receiving their annual invoices for 2024 registration fees in the last quarter of 2023. If you are considering terminating your entity or terminating registration with the Cayman Islands Monetary Authority (**CIMA**) you will need to act promptly in order to avoid or reduce the 2024 registration fees and filings.

Overview

Outside of any insolvency procedure which may require the winding up and dissolution of an entity, an entity may be terminated and dissolved by either voluntary winding up or strike off. Where an entity has been conducting business on a regular basis or has assets and liabilities, a voluntary winding up is the preferred route for terminating and dissolving the entity as it provides the means for finalising the entity's affairs. An alternative to winding up an entity is to request the Registrar to strike it off the Register. The strike off method is best suited to an entity that is inactive with no assets, liabilities or creditors due to the limitations set out below.

Voluntarily winding up an entity

When can a company be voluntarily wound up?

A Cayman Islands company can be wound up voluntarily:

- On the expiration of the period fixed for the duration of the entity by its constitutional documents
- Because a specific event has occurred and its constitutional documents provide that it shall be wound up as a result
- By a special resolution passed by the members of the company (in the case of a company registered under the Companies Act) or affirmative vote of the required majority of members (in the case of a limited liability company registered under the Limited Liability Companies Act)
- In the case of a company registered under the Companies Act, by an ordinary resolution passed by a simple majority of the members of the company if the company is unable to pay its debts as they fall due

When can an exempted limited partnership be voluntarily wound up?

A Cayman Islands exempted limited partnership can be wound up voluntarily:

- On the expiration of the period fixed for the duration of the entity by its partnership agreement
- Because a specific event has occurred and its partnership agreement provides that it shall be wound up
- By a resolution passed by the required number of partners

It is important to note that the relevant legislation also provides for situations where a company or partnership may enter into a termination process as a result of a specific event. For example, for an LLC that would happen at any time when it has no members or for an exempted limited partnership, if it ceased to have a qualifying general partner. These statutory processes

are outside the scope of this guide which is focused on voluntary actions that may be taken by the operators or owners of the relevant entity.

What is the voluntary winding up procedure?

A number of procedural steps must be undertaken to place the entity into voluntary winding up, appoint a voluntary liquidator and give the requisite notices. Please see our [guide](#) for further details.

Once an entity completes voluntary winding up, the entity is deemed to be dissolved three months from registration of the final return.

Who can be appointed as the voluntary liquidator?

For a solvent termination, the entity can appoint one or more persons to act as the voluntary liquidator, including a director, officer, manager, general partner of the entity, the entity's auditors or another appropriate third party. There are no qualification requirements for appointment as a voluntary liquidator.

What powers do the directors/managers/general partners and voluntary liquidator have?

At the start of the winding up, the powers of the directors/managers/general partners cease except to the extent required for beneficial winding up of the entity's business and except to the extent the members/partners of the entity may, by resolution, allow certain powers to continue. The voluntary liquidator assumes all powers in relation to the management of the entity from that point.

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

How long does it take to voluntarily wind up an entity?

A straightforward voluntary winding up of an entity which does not have a large number of creditors/members/partners can be expected to be completed within 3 months from the start of the process to the date of the relevant final statutory filing required.

If the entity is registered with CIMA as (i) an investment fund under the Mutual Funds Act or Private Funds Act or (ii) a "Registered Person" under the Securities Investment Business Act, additional steps will be required (set out below) and until the entity is de-registered with CIMA it will be unable to complete the winding up.

If the entity is licensed by CIMA, a significant number of additional steps will be required to terminate and surrender its license. This is outside the scope of this note. Please contact your usual Harneys representative for further details of the procedure to follow.

When must the entity complete the voluntary winding up so that it does not incur 2024 Registry fees?

All required notices must have been filed with the Registrar by 31 January 2024 in order for the entity not to incur 2024 Registry fees. As noted above, the deemed dissolution date will be after the filings have been made, but an entity does not need to be dissolved by this date to avoid these fees.

If the entity is registered with CIMA it will need to have completed de-registration with CIMA prior to completing the winding up process and so time is very much of the essence in these situations given the additional regulatory considerations that apply.

Striking an entity off the Register

What is the process to strike off an entity from the Register?

On the request of the entity, the Registrar has the power to strike it off the Register. A resolution of the members/partners of the entity requesting the striking off and an affidavit of a director/manager confirming that the entity has no assets or liabilities must be filed with the Registrar. A nominal filing fee is also payable.

When is the entity dissolved in a striking off?

The Registrar strikes entities from the Register at the end of each calendar quarter, at which time the entity is dissolved. A list of the entities being struck off is published in the Cayman Islands Gazette.

What are the key differences between a striking off and voluntary winding up?

Although a striking off is a less expensive form of dissolution, it differs fundamentally from a voluntary winding up and, in particular, the following points should be noted:

- The striking off does not affect the liability, if any, of any director, manager, officer or member (if a company) or general partner or limited partner (if a partnership), and such liability continues and may be enforced as if the entity had not been struck off
- If any member, partner or creditor of the entity feels aggrieved at a striking off, they may make an application to the Court for the entity to be reinstated. In order to reinstate the entity, it must be shown that the entity was in operation at the time of the striking off, or the Court must deem it just that the entity be reinstated
- On reinstatement, the entity must pay a reinstatement fee equivalent to the original incorporation or registration fee
- On reinstatement 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 entity had never been struck off
- Where the strike off method is used to dissolve an entity, it is vital that all of the assets and liabilities of the entity are discharged prior to strike off. If assets are not discharged then, following strike off, they will cease to be the property of the entity and will automatically vest with the Financial Secretary for the benefit of the Cayman Islands

De-registration with CIMA

In what circumstances can a fund commence the process to de-register with CIMA?

A regulated fund may de-register for various reasons, including where the fund:

- Is in voluntary winding up
- No longer meets the definition of a mutual fund or private fund under the Mutual Funds Act or Private Funds Act, respectively, such as where it has become a single investor fund
- Has never carried on business or has ceased or intends to cease carrying on business as a regulated fund

What is the process for de-registration of a fund with CIMA?

There are various core requirements which must be met to de-register a fund with CIMA. Funds must file the initial deregistration paperwork within 21 days of either a decision being made that the fund has ceased to trade¹ or the appointment of a liquidator.

¹ The term “ceased to trade”, also known as ceased to carry on business, denotes there is no ongoing investing with a view to receive profits or gains from the acquisition, holding, management or disposal of investments, but does not include the disposal of assets for purpose of redeeming investors from a fund. For deregistration purposes, this will effectively be when the operator(s) decide to acknowledge that the fund never launched or when the decision is made to terminate the fund’s investment activities.

For a mutual fund registered under the Mutual Funds Act and/or a private fund registered under the Private Funds Act, the core requirements are:

- The fund must be in good standing with CIMA, having paid all fees due and submitted all filings required (including all FAR fees)
- The original registration certificate for the fund must be submitted (if one was issued)
- A fee of US\$730 must be paid
- A certified copy of a resolution² signed by the operator(s) (directors for corporate funds, for example) and/or the investor(s), as applicable, confirming the date the fund will cease or has ceased to carry on business as a fund in or from the Cayman Islands must be submitted

Further documents must then be filed with CIMA depending on the reason for de-registering. Please contact us for details of the documents required for different types of de-registration.

Does a fund still need a fund administrator while it is in the deregistration process?

In almost all cases, the fund will still need to have a fund administrator appointed until CIMA has approved the deregistration. This is particularly the case for mutual funds in order to be compliant with the requirements of the Mutual Funds Act. In addition, if there are still investors and they have not been paid out in full, the administrator will, typically, be responsible for the fund's compliance with anti-money laundering requirements relating to investor screening and payments. This is a function that is hard for a fund or its manager to replicate in a compliant fashion. Funds should therefore discuss the wind down process with their fund administrator at an early stage to agree terms for the deregistration process.

Does a fund need to conduct a final audit or can we get a waiver?

Unless a fund qualifies for an audit waiver, it will have to be up to date with all audit requirements up to the prior financial year end. It will also have to provide audited accounts from the last financial year end for which audited statements have been filed up to the cease to trade date or equivalent, as part of the de-registration process. We recommend that most clients budget for a partial year audit, although CIMA may grant an audit waiver on an application by a fund which is being voluntarily wound up where a third party liquidator³ has been appointed on terms which require a review of the period since the last financial year end, and in other limited circumstances. Please contact us for more details on CIMA's policy on audit waivers.

What 2024 CIMA fees will be payable for funds being wound up?

A fund registered under the Mutual Funds Act or the Private Funds Act will remain in fully 'active' status until the deregistration process has been completed, which means that a fund will remain liable for annual registration fees in full until its deregistration has been approved by CIMA. The annual fees are currently US\$4,268 for a mutual fund or private fund and US\$3,048 for a regulated master fund.

If the fund is continuing to operate but is no longer required to be registered with CIMA under the Mutual Funds Act or the Private Funds Act, or has not voluntarily wound up or been struck off within the applicable time, it will remain liable for the ongoing fees of its service providers and for annual Cayman Islands registry fees for its structure and any FATCA and CRS reporting requirements (see below).

In what circumstances can a "Registered Person" voluntarily de-register with CIMA?

² The term "resolution" refers to any resolution, determination, consent or any other constitutional document that indicates the date of cessation, or the date on which a fund intends to cease carrying on business.

³ For the purpose of this procedure, a third party liquidator means individuals, serving as liquidators in a voluntary liquidation of a fund, who are not the operators or currently engaged service providers (excluding an auditor of the fund).

If an entity currently registered as a “Registered Person” under the Security Investment Business Act ceases to conduct all types of securities investment business that requires licensing or registration, it must de-register with CIMA.

What is the process for a “Registered Person” voluntary de-registration with CIMA?

Similarly, to a fund, there are various core requirements which must be met to de-register a Registered Person with CIMA:

- The entity must be in good standing with CIMA, having paid all fees due, submitted all filings required and no outstanding queries from CIMA
- A written request to de-register must be submitted
- A fee of US\$610 must be paid
- A certified copy of the resolution of its directors/senior officers confirming the date the entity ceased to carry on securities investment business must be submitted
- An affidavit of a director/senior officer certifying certain prescribed requirements

Where a Registered Person is going into voluntary winding up the documents that must be filed with CIMA are the notice of the winding up, voluntary liquidator’s consent to act and declaration of solvency.

Where a Registered Person never commenced business an affidavit of a director/senior officer certifying as such must be filed with CIMA.

FATCA/CRS considerations

At what stage in the termination process must the entity be, so that it does not have to make FATCA/CRS filings in respect of 2024?

For an entity that is required to file FATCA/CRS reports it must be *dissolved* by 31 December 2023 so that it does not have to file FATCA/CRS reports for the 2024 period. It will still be required to file all FATCA/CRS reports for the 2023 period. If an entity is in voluntary winding up in 2023 but only dissolved in 2024, it will be required to file FATCA/CRS reports for the 2024 period (as well as for the 2023 period) before it can surrender its registration. In both instances this includes the CRS Compliance Form.

During any period of winding up, if an entity is registered for FATCA and CRS purposes with the Cayman Islands Tax Information Authority, it is still obliged to make necessary filings until the dissolution is complete.

Once the dissolution is complete and all FATCA and CRS reports have been filed you must surrender your GIIN registration with the US Internal Revenue Service and submit a de-registration filing with the Tax Information Authority. The Tax Information Authority filing must be accompanied by the Certificate of Dissolution.

When is the entity dissolved in a voluntary winding up?

As noted above an entity in voluntary winding up is deemed to be dissolved 3 months after filing of the final return to the Registrar.

When is the entity dissolved in a striking off?

As noted above, the Registrar strikes entities from the Register at the end of each calendar quarter. In order to meet the 31 December 2023 strike off and dissolution date the entity must have completed the striking off and have notified the Registrar by November 2023.

Does a fund that has de-registered from CIMA still need to make FATCA/CRS filings?

A fund that has de-registered from CIMA, but is not yet dissolved, will still be required to make FATCA/CRS filings for at least five years from the date of deregistration.

Director de-registration

When can the directors of a de-registered investment fund or Registered Person de-register with CIMA under the Directors Registration and Licensing Act?

Where a director has registered with CIMA under the Directors Registration and Licensing Act by virtue of being a director of an entity which was previously registered as a mutual fund under the Mutual Funds Act or a Registered Person under the Securities Investment Business Act, such director may terminate their registration with CIMA following the de-registration of such entity (assuming that such director is not also a director of any other 'covered entity').

The director must take positive steps to deregister and pay a cancellation fee of US\$731.71. A failure to do so would mean that the registration and the corresponding liability to pay the annual fees (and any corresponding late payment penalties) would continue to accrue.

When must the director complete the de-registration so that they do not incur 2024 CIMA fees?

The director must complete the de-registration and pay the cancellation fee (together with any arrears) on or before 31 December 2023 in order to avoid the annual fees for 2024.

Economic substance considerations

Does an entity in voluntary winding up need to make economic substance filings in 2023 or 2024?

All economic substance requirements continue to apply to all entities until the date of their deemed dissolution.

In line with the FATCA and CRS requirements, an entity must be up to date with its economic substance notifications for its current financial year before it can complete the dissolution process.

An entity that has conducted a relevant activity will have to complete its economic substance return(s) for any prior years as part of the termination process. In addition, for entities that submit their final statutory dissolution filings in 2023, if the deemed dissolution date is in 2024, an economic substance notification must be submitted to the Registrar for the partial period in 2024 when the entity technically remained on the Register. As this period is after the final statutory filing, it will be straightforward but must be completed to obtain the certificate of dissolution.

For further information on economic substance please see our [client guide](#).

Harneys assistance

Harneys experienced team can assist with all aspects of the termination of your Cayman Islands entity including provision of a voluntary liquidator.



For more information and key contacts please visit [harneys.com](https://www.harneys.com)

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