HARNEYS

Considerations for terminating registration of your Cayman Islands entity before next year's fees and filings are due

Cayman Islands entities receive their annual invoices for the following year's registration fees in the last quarter of a current year. If you are considering terminating your entity's registration with the Cayman Islands Monetary Authority (***CIMA***) and dissolving it or transferring to another jurisdiction, it is essential to act quickly to avoid or reduce next year's registration fees and filing requirements.

This legal guide first addresses the process for terminating a registration with CIMA, followed by the process for dissolving a Cayman Islands entity. If the sections on CIMA de-registration are not relevant for your circumstances, you may disregard them.

De-registration – investment funds

A registered fund may apply to terminate its registration with CIMA for various reasons, including:

- If the fund has ceased or intends to cease carrying on business as a regulated fund
- If the fund no longer qualifies as 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
- If the fund has never carried on business as a fund (ie never accepted subscriptions from investors)
- If the fund wants to transfer to another jurisdiction

Process

Several core requirements must be met to de-register a fund with CIMA. Funds must file the initial de-registration paperwork within 21 days of either a decision being made that the fund has ceased to trade or the appointment of a liquidator.

The term "ceased to carry on business", refers to the point when there is no further investing with a view to receive profits or gains from the acquisition, holding, management or disposal of investments. This does not include the disposal of assets for purpose of redeeming investors from a fund. For de-registration purposes, this is when the operator(s) decide to acknowledge that the decision has been made to terminate the fund's investment activities.

The core filing requirements are:

- The fund must be in good standing with CIMA, having paid all fees due and submitted all historic and current audit and other required filings (including all FAR fees) or having obtained an audit waiver
- The original registration certificate for the fund must be submitted (if one was issued)
- The termination fee must be paid
- A certified copy of a resolution (including any determination, consent or any other constitutional document) signed by the operator(s) (directors for corporate funds, for example) and/or the investor(s), as applicable, confirming the date the fund ceased or will cease 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 specific details of the documents required for different types of de-registration.

Does a fund still need a fund administrator or anti-money laundering (***AML***) officers while it is in the de-registration process?

Funds remain subject to all of the normal requirements of the investment funds regulatory regime in the Cayman Islands until the de-registration process is complete. This includes informing CIMA of any material changes to filed information that was submitted at registration or subsequently to CIMA within 21 days of those changes.

The fund must retain its service providers and AML officers until CIMA has approved the de-registration. For example, if the fund has not yet paid investors in full, the administrator will, typically, be responsible for the fund's compliance with AML requirements relating to ongoing investor due diligence and investor payments. This role is difficult for a fund or its manager to fulfil compliantly.

It is advisable that funds and their operator(s) should therefore discuss the wind down process with their fund administrator and other outsourced service providers at an early stage to agree terms and fees for the de-registration process.

Failure to properly notify CIMA of any changes to a fund's service providers at any time have a detrimental effect on the fund's ability to complete its de-registration in an efficient manner and on time.

Does a fund need to conduct a final audit or can a waiver be obtained?

Unless a fund qualifies for an audit waiver, which are very hard to obtain, the fund must be up to date with all audit requirements up to the point at which it ceases to trade or ceases to be a qualifying fund. This means that all audited financial statements up to the last financial year end must have been filed and it must file audited financial statements from that date up to the cease to trade date or equivalent, as part of the de-registration process. We generally advise clients to budget for a partial-year audit for the period from their last balance sheet date to their cease to trade date. In some limited circumstances, CIMA may grant an audit waiver. Please contact us for more details on CIMA's policy on audit waivers.

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

A registered fund will remain in "active" status until the de-registration process is complete and CIMA have issued the formal de-registration approval letter. As a result, the fund will continue to be liable for the full annual CIMA registration fees until de-registration is approved by CIMA.

If the fund continues to exist after it has been de-registered by CIMA but is no longer required to be registered with CIMA (eg exempt), it will remain liable for all Cayman Islands registry fees for its structure and any FATCA and CRS reporting obligations (see below) until dissolved.

De-registration – Securities Investment Business Act – Registered Persons

When can an entity that is registered under the Securities Investment Business Act as a "Registered Person" voluntarily de-register with CIMA?

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 require licensing or registration, it must de-register with CIMA.

What is the process for voluntary de-registration of a "Registered Person"?

Similarly, to a fund, there are several core requirements which must be fulfilled to de-register a Registered Person:

- The entity must be in good standing with CIMA, having paid all due fees, submitted all past and current filings, and resolved any outstanding queries with CIMA
- A written request for de-registration must be submitted
- A fee must be paid
- A certified copy of a resolution from the directors or senior officers confirming the date the entity ceased to carry on securities investment business must be provided

- An affidavit from a director or senior officer certifying compliance with certain prescribed requirements must be submitted

If a Registered Person is entering voluntary winding up, the documents that must be filed with CIMA include the notice of the winding up, the voluntary liquidator's consent to act, and a declaration of solvency.

For a Registered Person that never commenced business, an affidavit of a director/senior officer confirming this must be filed with CIMA.

A typical timeline for approval is 8-10 weeks from submission of a complete application for an entity that is in good standing at the application date.

FATCA/CRS Termination

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 the following year?

For an entity that must file FATCA/CRS reports it must have obtained a certificate of dissolution before 31 December of a given year, to avoid filing FATCA/CRS reports for the subsequent calendar year. If an entity is in voluntary winding up in a given year but only dissolved in the subsequent year, it must file FATCA/CRS reports for the next calendar year period (as well as for the current calendar year) before it can surrender its registrations with the Cayman Islands and United States tax authorities. In both instances this includes completing its filing of the CRS Compliance Form with the Cayman Islands Department of International Tax Cooperation (***DITC***).

During any period of winding up, if an entity is registered for FATCA and CRS purposes with the DITC, it must continue to make all FATCA and CRS filings until the dissolution is complete.

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

Access to the entity's account on the IRS and DITC portals is crucial for this to be completed.

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, is still considered a 'financial institution' under both regimes and must continue to make FATCA/CRS filings for at least five years from the date of de-registration.

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?

A director who has registered with CIMA under the Directors Registration and Licensing Act, in order to be a director of an entity registered as a mutual fund under the Mutual Funds Act or as a Registered Person under the Securities Investment Business Act, may de-register with CIMA once that entity itself has been de-registered provided that they are not a director of any other mutual fund or Registered Person.

The process is a simple online process to be completed on the CIMA director gateway portal – https://gateway.cimaconnect.com//

If a director fails to terminate their registration, the registration remains fully active, meaning that annual fees (along with all late payment penalties) will continue to accrue until their registration is terminated.

When must the director complete the de-registration so that they do not incur next year's CIMA fees?

The director must complete the de-registration and pay the cancellation fee (together with any arrears) on or before 31 December of a given year to avoid incurring the following year's CIMA fees.

Dissolution Options

Outside of any insolvency procedures that may require the winding up and dissolution of an entity, an entity can be terminated either through a ***voluntary winding up*** or by being ***struck off*** the Register of Companies or Partnerships. Both procedures result in the dissolution of the entity, but there are pros and cons to each.

If a Cayman Islands entity has been actively conducting business or holds assets and liabilities, voluntary winding up is the preferred method for terminating and dissolving the entity. This approach allows for a comprehensive process to settle the entity's affairs and is final.

Alternatively, a company may apply to the Registrar for a strike-off from the relevant Register. This method is best suited for inactive entities with no assets, liabilities, or creditors, as it has certain limitations. An entity which has been struck off may be restored to the Register within 10 years of its original dissolution date.

Another option is transferring the entity's registration to a different jurisdiction that permits such a transfer under its legal regime. For further information, please refer to our guide on transfers out.

Voluntarily winding up an entity

When can a Cayman Islands company or partnership be voluntarily wound up?

Before making any decision regarding the termination and dissolution of your entity, it is essential to review its constitutional documents. The team at Harneys can assist with this as part of our service offering. Subject to this review, a Cayman Islands company or partnership can typically be voluntarily wound up under the following circumstances:

- By a resolution passed by the entity's members or partners (which may include the general partner in a limited partnership) who hold voting control
- If a specific termination event outlined in the constitutional documents has occurred
- If the entity was established for a fixed period that has since expired

It's also important to be aware that relevant legislation sets out circumstances in which a company or partnership may enter into a termination process due to specific events. For example, in the case of an LLC, this could occur when it no longer has any members, or for an exempted limited partnership, if it no longer has a qualifying general partner.

These statutory procedures fall outside the scope of this guide, which focuses on voluntary actions that can 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 issue the necessary notices. We offer additional guides specifically addressing these processes for companies and partnerships.

Who can be appointed as the voluntary liquidator?

For a solvent termination, the entity may appoint one or more individuals to serve as the voluntary liquidator. The liquidator can be a director, officer, manager, general partner, the entity's auditors, or another suitable third party. There are no specific qualifications required for someone to be appointed as a voluntary liquidator. This differs from situations involving insolvent entities, which are outside the scope of this guide.

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

Once the winding up process begins, the powers of the directors, managers, or general partners cease, except to the extent necessary for the beneficial winding up of the entity's business or as otherwise allowed by a resolution passed by the entity's members or partners, which may permit certain powers to continue. From this point forward, the voluntary liquidator takes over all powers related to the management of the entity.

The voluntary liquidator has a legal obligation to wind up the entity's affairs in an orderly and timely manner, complying with all legislative requirements. This includes ensuring 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?

For a straightforward voluntary winding up involving an entity with a relatively small number of creditors, members, or partners, the process can generally be completed within three months, from initiation to the date of the final statutory filing.

However, if the entity is registered with the CIMA as either (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 (outlined below). The winding up process cannot be completed until the entity has been de-registered with CIMA.

For entities licensed by CIMA (eg banks or insurance companies), a more extensive process, including the termination and surrender of its license, will be necessary. This falls outside the scope of this note. Please contact your usual Harneys representative for further details on the specific steps required in this scenario.

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 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/general partner representative 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 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. 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 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

Economic substance considerations

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

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 and current years as part of the termination process.

For further information on economic substance please see our legal 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**