

## DISSOLUTION OF CAYMAN ISLANDS COMPANIES

There are three principal ways of winding-up and dissolving a Cayman Islands company, namely: (i) strike off; (ii) voluntary liquidation; and (iii) involuntary or compulsory liquidation. The focus of this article however is strike off and voluntary liquidation.

Briefly speaking, involuntary or compulsory liquidation may be made by way of petition to the Grand Court of the Cayman Islands (the “**Court**”) by the company itself, a creditor (including a contingent or prospective creditor), a contributory, or the Cayman Islands Monetary Authority (“**CIMA**”) pursuant to the regulatory laws. The circumstances in which a company may be wound up by the Court are as follows:

- (i) where the company has passed a special resolution requiring the company to be wound up by the Court;
- (ii) where the company has suspended business or not commenced business for a whole year;
- (iii) where the date for winding up the company’s affairs in the articles of association has expired; or upon the occurrence of an event specified in the articles of association that the company is to be wound up;
- (iv) where the company is unable to pay its debts; and
- (v) where the Court is of the opinion that it is just and equitable that the company should be wound up.

### **Strike Off**

Where a company is not carrying on business or is not in operation and does not have any assets or liabilities, it may apply to the Registrar of Companies (the “**Registrar**”) to be struck off the register. A request for strike off by a company should only be submitted to the Registrar if the company does not have any assets or liabilities. Any property vested in or belonging to a company after it has been struck off the register will vest automatically in the Minister charged with Finance and shall be disposed of or retained for the benefit of the Cayman Islands.

Other potential issues with strike off are:

- (a) any aggrieved creditor or shareholder of the company may petition the Court to have the company reinstated. A reinstated company will be deemed by the Companies Act to have continued in existence as if it had not been struck off the register. An application for reinstatement can be made for up to a period not exceeding ten years following strike off; and
- (b) strike off does not affect the liability (if any) of any director, manager or shareholder of the company. Such liability continues and may be enforced as if the company had not been dissolved.

Whilst strike off is more cost effective than the voluntary liquidation procedure described below, the decision to effect dissolution by way strike off should not be taken without fully considering the ramifications.

## **Voluntary Liquidation**

Voluntary liquidation typically commences when the directors resolve to cease operations of a company and make recommendation to the shareholders to place the company into voluntary liquidation. Voluntary liquidation may also commence, upon expiration of the period or occurrence of an event specified in the company's constitutional documents. Special resolutions may be passed approving the winding up. These resolutions may also designate the voluntary liquidator (if the voluntary liquidator is not already designated in the company's articles of association).

A company must cease to carry on business from the date of commencement of its winding up, except so far as it may be beneficial for its winding up. All share transfers, except transfers made with the sanction of the voluntary liquidator, and any alteration in the status of the members of the company taking place after the commencement of such voluntary winding up is void.

Upon appointment, the voluntary liquidator is in control of the company and takes the requisite steps to terminate the company. The powers of the directors cease upon appointment of the voluntary liquidator, except, so far as the company in a general meeting, or the voluntary liquidator sanctions their continuance. There is presently no requirement under the laws of the Cayman Islands for a voluntary liquidator to hold any specific professional qualifications or to be resident in the Cayman Islands. It is recommended however, that professional liquidators be used as their experience and expertise would provide shareholders with the consolation that the dissolution will be dealt with objectively and transparently, and, in accordance with all statutory and contractual obligations.

There are a number of advantages in placing a company into voluntary liquidation as opposed to the strike off method alluded to above. These include the following:

- voluntary liquidation provides a degree of finality in that it minimizes the likelihood of any future claims being made against the company, its directors, or other service providers. Once dissolved, a company which has been voluntarily liquidated cannot be reinstated under Cayman Islands law as there is no statutory scheme in the Cayman Islands to set aside a company's voluntary liquidation. The Court however has jurisdiction to do so, for example, where the voluntary liquidation was procured by fraud;
- voluntary liquidation fulfills all statutory notice requirements to any potential creditors and the affairs of the company are dealt with in an orderly manner; and
- voluntary liquidation ensures the company's assets are realized and proceeds distributed to creditors and shareholders pursuant to contractual and statutory priorities.

Considerations to be taken into account prior to commencement of voluntary liquidation include, but are not limited to: (i) simplifying the issued share capital of the company by ensuring that at least one single voting share remain in issue so that the holder of such share can pass resolutions to place the company into voluntary liquidation; (ii) payment to creditors (secured creditors have priority); (iii) return of surplus assets to shareholders; (iv) ensuring that suitable arrangements are in place for any final filings to be made with the Cayman Islands Tax Information Authority, if applicable, and (v) where a company is registered with CIMA, ensure the prerequisites to effect de-registration are in place. The CIMA de-registration requirements are briefly noted below.

The voluntary liquidator, or in the absence of any liquidator, the directors, are required to file with the Registrar of Companies within twenty-eight (28) days of the commencement of winding up:

- (a) a notice of winding up;
- (b) a voluntary liquidator's consent to act; and
- (c) a declaration of solvency;

- The directors must confirm that a full enquiry has been made into the company's affairs and that, to the best of their knowledge and belief, the company will be able to pay its debts in full, with interest, within a period not exceeding twelve (12) months from the commencement of the winding up.
- A person who knowingly makes a declaration of solvency without having reasonable grounds that the company will be able to pay its debts in full, commits an offence and is liable on summary conviction to a fine of CI\$10,000 (US\$12,195.12) and to imprisonment for two (2) years.
- The voluntary liquidator would typically request the signed declaration of solvency prior to giving consent to act. If the declaration of solvency is not signed and filed within twenty-eight (28) days of the commencement of the voluntary liquidation, the voluntary liquidator must apply to the Court for an order that the liquidation continue under the supervision of the Court.

- (d) in the case of a company carrying on a regulated business, serve notice of winding up with CIMA; and
- (e) publish the notice of winding up in the Cayman Islands Gazette.

- Creditors of the company are invited to prove their debts by the prescribed date in the published notice of winding up.

A director or voluntary liquidator who fails to comply with (a) – (e) above commits an offence and is liable to a fine of CI\$10,000 (US\$12,195.12).

If the voluntary liquidator at any time during the liquidation forms the view that the company is or is likely to become insolvent, the voluntary liquidator is legally obliged to place the liquidation under the supervision of the Court.

As soon as the affairs of the company are fully wound up, the voluntary liquidator must make a report of the winding up, showing how it has been conducted, how the company's property has been disposed of, and call a general meeting of the company in order to lay the accounts and to give an explanation for it.

At least twenty-one (21) days before the meeting, the voluntary liquidator must send a notice specifying the time, place and object of the meeting to each contributory. The notice of final meeting must also be published in the Cayman Islands Gazette.

The voluntary liquidator must inform the Registrar of the general meeting. Within seven (7) days of the final general meeting, the voluntary liquidator is required to file a final return. A Certificate of Dissolution is usually requested from the Registrar. On the expiration of three (3) months from this final filing with the Registrar, the company is effectively deemed dissolved. A voluntary liquidator who fails to call a general meeting of the company or fails to make a return as required by the Companies Act, commits an offence and is liable on conviction to a fine of CI\$10,000 (US\$12,195.12).

## **De-registration with CIMA**

Where a company is regulated by the Mutual Funds Act, or registered pursuant to the Private Funds Act of the Cayman Islands, the company is also required to take a number of steps to effect de-registration with CIMA. The company must:

- (a) pay all outstanding annual fees and penalties (if any) to CIMA;
- (b) ensure its audited financial statements and Fund Annual Return are filed up to date with CIMA;
- (c) surrender its original certificate of registration (this is applicable to all mutual funds registered prior to 2014). Since then, certificates are issued electronically by CIMA;
- (d) pay a de-registration fee of US\$731.70;
- (e) provide a certified copy of the resolution approving the winding up of the company;
- (f) provide a stamped copy of the notice of voluntary winding up from the Registrar;
- (g) provide a stamped copy of the voluntary liquidator's consent to act from the Registrar;
- (h) provide an affidavit to the effect that the company has operated in accordance with its constitutive documents, investors have been fully and completely redeemed; and that the company is not being wound up in a manner prejudicial to investors or creditors; and
- (i) provide copies of the voluntary liquidator's final report and accounts.

Upon receipt of the initial core documents, CIMA will place the company's licence under termination, pending receipt of the final documentation from the voluntary liquidator or directors. If the necessary particulars to effect de-registration are not provided to CIMA prior to, or on 31 December, the company will be liable for payment of one-half the CIMA annual fees for the next year.

For more details on how our experienced and dedicated team can help you, please contact:

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