COLLAS CRILL

Procedure for voluntary liquidation or dissolution in BVI

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This memorandum addresses the usual manner in which a solvent voluntary liquidation or dissolution of a British Virgin Islands company proceeds. The discussion is subject to the particular provisions of the Memorandum and Articles of Association of any company seeking a voluntary liquidation.

Where a company is not a regulated entity and has no liabilities and is able to pay its debts as they come due, a voluntary winding up and dissolution may be commenced by a resolution of directors.

Where it is proposed to appoint a voluntary liquidator, the directors of the company shall

- make a declaration of solvency in the approved form stating that, in their opinion;
  - the company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and
  - the value of the company's assets equals or exceeds its liabilities.

The declaration of solvency must be accompanied by a statement of the assets and liabilities of the company as at the latest practical date before the making of the declaration of solvency but in no event more than 4 weeks from the date of the resolution appointing the liquidator.

- approve a liquidation plan ("Plan") specifying
  - the reasons for the liquidation of the company;
  - their estimate of the time required to liquidate the company;
  - whether the liquidator is authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company;
  - the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator; and
  - whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

Following approval by the directors, the Plan must be authorised by a resolution of members. The Plan must be sent to all members (regardless of voting rights) whether such resolution is to be passed at general meeting or in writing.

Where a voluntary liquidator is appointed under the above, the liquidator shall,

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- within 14 days of the commencement of the liquidation, file the following documents:
  - a notice of his appointment in the approved form,
  - the declaration of solvency made by the directors, and
  - a copy of the liquidation plan; and

- within 30 days of commencement of the liquidation, advertise notice of appointment in the manner prescribed.

A liquidation commences when the notice to appoint the voluntary liquidator is filed with the Registrar of Corporate Affairs ("Registrar") in the British Virgin Islands. The advertisements notifying of the appointment must be placed in a newspaper in the BVI as well as in a newspaper in the jurisdiction outside the BVI where the company has its principal place of business.

The liquidator needs to be an individual, need not be resident in the British Virgin Islands and should not be connected with the company. Certain individuals are disqualified from acting as a voluntary liquidator and these include, among others, an individual who has acted as a director or acted in a senior management role or has so acted in the 2 previous years.

Once the Plan is authorised by members, and the liquidator appointed, the liquidated undertakes its duties which include:

- take possession of, protect and realise the assets of the company;
- identify all creditors of and claimants against the company;
- pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- distribute the surplus assets of the company to the members in accordance with the memorandum and articles;
- prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- send a copy of the statement of account to all members if so required.

A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation has been completed and upon receiving the statement, the Registrar shall

- strike the company off the Register of Companies; and
- issue a certificate of dissolution in the approved form certifying that the company has been dissolved.

Where the Registrar issues a certificate of dissolution, the dissolution of the company is effective from the date of the issue of the certificate. Immediately following the issue by the Registrar of a certificate of dissolution, the person who, immediately prior to the dissolution, was the voluntary liquidator of the company

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shall cause to be published in the *Gazette*, a notice that the company has been struck off the Register of Companies and dissolved.

Where the company to be liquidated is a regulated entity under BVI law, the prior approval of the Financial Services Commission must be obtained. Other than in the case of a regulated fund, the voluntary liquidator of a regulated entity must be a licensed insolvency practitioner.

Where a company has been dissolved an application can be made to the British Virgin Islands court within 10 years of the dissolution to declare the dissolution void and restore the company to the Register. In such cases, the BVI court has indicated that the restoration will only be granted where matters that should have been dealt with as part of the liquidation have been overlooked (assets remaining) or have subsequently arisen unexpectedly. An application to restore a company that wishes to resume trading or commence a new business is unlikely. When a company, which was dissolved, is restored, it is restored to liquidation.

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