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Collas Crill explains... Dissolving a solvent company in Cayman

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Dissolution of a solvent Cayman company

A solvent Cayman Islands company may be dissolved in one of two ways:

- a strike off; or
- a voluntary liquidation.

Under the Companies Act (as revised) (Companies Act), a Cayman company is deemed to be solvent if it can pay its debts as they fall due in the ordinary course of business. This is especially important in relation to voluntary liquidations. If it comes to light subsequent to a voluntary liquidation that the relevant company was not solvent, the directors may face harsh sanctions, including fines and imprisonment.

Strike-off

In appropriate circumstances, the directors of a company may simply apply to the Registrar of Companies (Registrar) to have the company struck off the Cayman Islands Company Register.

This procedure is only appropriate where the company:

- is not conducting any business; and
- has no (or only nominal) assets and liabilities and ideally has not operated.

The Registrar may strike the company off where it has reasonable cause to believe that the company is not carrying on business or is not in operation.

Although the procedure to strike off a company is more straight forward and less expensive than a voluntary liquidation, a struck-off company may face potential issues in the future.

A summary of possible issues is set out below:

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1. The Companies Act allows any aggrieved creditor or shareholder to apply to court to have a struck-off company reinstated within two years of its strike-off (or up to 10 years if the Cabinet – the Cayman Islands' government - allows). Thus a strike-off does not guarantee the end of the company's life.
2. In order to reinstate the company, it will need to pay a fee equal to the original incorporation fee.
3. In the case of a reinstatement the court has the power to award damages to any person in order to return them to the position they would have been in, had the company never been struck-off.
4. Any director, manager or shareholder of the company will remain liable for any claim as if the company had not been struck off.
5. Any property belonging to a struck-off company will immediately become vested in the Financial Secretary for the benefit of the Cayman Islands. It is crucial therefore that all assets are discharged prior to strike-off.

The Registrar strikes on a quarterly basis. Once the company has applied to be struck off, and the next quarterly strike date has passed, the Registrar will list the company as 'struck'.

Voluntary liquidation (solvent)

The Companies Act provides that a solvent Cayman company may be wound up voluntarily in the following circumstances:

1. The fixed duration of the company as set out in its memorandum and articles of association (M&A) has expired;
2. A specific event has occurred, which under the company's M&A obliges it to voluntarily liquidate; or
3. The shareholders resolve by special resolution to voluntarily liquidate the company.

Once such shareholders' resolution has been passed, the directors need to determine whether the company is solvent (and will continue to be solvent for up to 12 months following the commencement of winding up) or insolvent (or ‘doubtfully solvent’).

If the directors determine that the company will be solvent, a voluntary liquidation (solvent) will be appropriate.

If the directors determine that the company is not or will not be solvent or is ‘doubtfully solvent’ the company will need to liquidate via court supervision.

Voluntary liquidation (solvent) - procedure

If the directors of a company decide to propose the voluntary liquidation of the company by way of a shareholders' special resolution then, generally, the following procedure applies:

Step 1

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The directors call a meeting to consider and, if thought fit, resolve to voluntarily liquidate the company, to appoint the voluntary liquidator and to call an extraordinary general meeting (EGM) of the shareholders to consider passing a resolution to commence the voluntary liquidation.

Step 2

The company will need to appoint a liquidator – this can be an outside person whose business is carrying out liquidations/winding up/administering insolvencies or it can be a director or officer of the company if such person is capable of carrying out the related tasks. The liquidator has a duty to wind up the company's affairs in an orderly and timely manner. We are not an insolvency practice, but we are happy to provide the drafting and filing services that assist the process.

Step 3

The EGM is convened and the shareholders pass a special resolution noting that the company has ceased trading, resolving that the company be voluntarily wound up and that the voluntary liquidator be appointed. A written resolution signed by all of the voting shareholders will suffice in place of a resolution passed at an EGM. The date of the special resolution is the commencement date of the voluntary liquidation.

Step 4

The voluntary liquidator assumes all powers of the company from the commencement date, save for any directors' powers which are deemed necessary to continue in order to progress the liquidation.

Step 5

Within 28 days of the commencement date, the following documents will need to be filed with the Registrar:

- a winding up notice (which must also be published in the Cayman Islands Gazette);
- the voluntary liquidator's consent to act; and
- the directors' declaration of solvency.

The declaration of solvency states that the directors have made full enquiry into the affairs of the company and that the company is solvent and will continue to be solvent during the liquidation. The directors should examine the company’s affairs closely with an accountant/insolvency practitioner to determine if the company will be solvent for 12 months after the commencement of the winding up. Potential harsh sanctions, including fines and imprisonment, could be imposed on the directors if it later transpires that the company was not solvent and that a director knowingly made the declaration of solvency without having reasonable grounds to do so.

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Step 6

The liquidator must gather all remaining assets of the company in order to discharge all of the company's outstanding liabilities. There is no set time frame by which this step must be completed.

Step 7

Once the affairs of the company are fully wound up, with no assets or liabilities remaining, the liquidator is required to prepare a liquidator's report and call a final general meeting of the company. Notice of this final meeting will need to be published in the Cayman Islands Gazette at least 21 days before the meeting.

Step 8

At the final meeting the liquidator is required to present their report on the liquidation process and how the company's property has been disposed of to the shareholders. The shareholders will be asked to pass resolutions to approve the liquidator's report, his / her remuneration and the destruction of the company's books and records within a specific time period (typically five years).

Step 9

Within seven days after the final meeting, the liquidator is required to file a return with the Registrar. The liquidator will also request a certificate of dissolution for the company from the Registrar.

Step 10

The company will be deemed dissolved three months after the Registrar issues a certificate of dissolution.

Note that if the company is a regulated entity then an additional procedure will need to be undertaken with the Cayman Islands Monetary Authority (CIMA) in order to complete the liquidation.

Voluntary liquidation (insolvent)

Although beyond the scope of this guidance, a company may proceed to voluntarily liquidate if it appears to be doubtfully solvent or insolvent at the commencement date, or becomes so at any time during the liquidation process. Should this occur, the liquidator will need to apply to the court to bring the liquidation under court supervision. At that point a creditor can oppose the existing liquidator becoming the official liquidators appointed by the court – at least one of the official liquidators would need to be a Cayman Islands licensed insolvency practitioner.

How can we help?

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If you have a dormant entity or you are looking to consolidate your group structure, get in touch with us on cayman@collascrillcs.com so that we can help you complete the process before the end of the year to save next year's registry fees.

About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

About Collas Crill

We are a leading offshore law firm. We are known for being easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

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