



Voluntary liquidation of a Cayman Islands company

Considerations for all stakeholders



The following document provides an overview of issues that should be considered by all stakeholders when winding up a Cayman Islands company and the advantages of placing a company into voluntary liquidation. This brochure applies to all non-regulated companies including special purpose vehicles and non-regulated funds. It also provides a brief summary of the substantial changes regarding voluntary liquidations as a result of the new insolvency legislation that came into force in the Cayman Islands on March 1, 2009.

Voluntary Liquidation

In circumstances where a company has ceased trading, it is considered “Best Practice” for such a company to be placed into voluntary liquidation.

The advantages of a company entering voluntary liquidation are as follows:

- The appointment of an independent third party as Liquidator provides comfort to stakeholders that the winding up will be dealt with objectively, transparently, and in accordance with all legislative requirements;
- The Liquidator has a legal duty to wind up the company’s affairs in an orderly and timely manner;
- The liquidation process fulfills notice and advertisement requirements of the winding up which are required to be given to allow all potential creditors of the company to file claims;
- The liquidation process ensures that the company’s assets are properly realised and that such assets are properly distributed to creditors and investors in accordance with statutory priorities;
- The liquidation process minimises the likelihood of any future claims being made against the company and its directors;
- The alternative to voluntary liquidation is the “striking off” of the company from the Registrar of Companies. However strike off does not necessarily bring closure to the company’s affairs. Stakeholders should be aware that any investor or creditor of a company that has simply been struck off the Registrar can apply to the Cayman Court to have the company reinstated for a period of up to 10 years, thereby leaving open the ongoing potential for claims against the directors, officers or shareholders of the company.

New requirements for Voluntary Liquidations post March 1, 2009

Declaration of Solvency

A Declaration of Solvency is required to be signed by all current directors at the commencement of liquidation. If the Declaration of Solvency is not signed by all directors within 28 days¹ of the commencement of the liquidation there is a statutory requirement for the Liquidators to apply to Court for an order that the liquidation be subject to Court supervision. This application along with the process of Court supervision will significantly increase the costs of the liquidation.

The requirements of the Declaration of Solvency are set out in section 124(2) of the Companies Law (2010 Revision). This states that a Declaration of Solvency is a voluntary declaration or affidavit which must be in the form prescribed by the legislation. All directors must sign or swear that a full enquiry into the company's affairs has been made and that to the best of the directors' knowledge and belief the company will be able to pay its debts in full, within a period not exceeding 12 months from the commencement of the winding up.

Any person who knowingly makes a Declaration of Solvency without having reasonable grounds for the opinion that the company will be able to pay its debts in full, within the period specified, commits an offence and is liable, if convicted, to a fine of \$10,000 or to imprisonment for a term of 2 years, or both.

Irrespective of the Declaration of Solvency of the Directors, if, at any time during the liquidation, the Liquidator becomes of the view that the company is, or is likely to become insolvent, he is statutorily obliged to take the liquidation under Court supervision.

While any individual or company, including a director or officer of the Company, can act as Voluntary Liquidator, if the liquidation is subsequently taken under Court supervision, qualified Insolvency Practitioners as specified in the Insolvency Practitioner's (Amendment) Regulations 2010 will be required to act. The Partners of Deloitte who act as Voluntary Liquidators in the Cayman Islands are also qualified Insolvency Practitioners ensuring any transition to Court supervision will be as smooth as is possible in the circumstances.

Further obligations of the Voluntary Liquidator

The new insolvency legislation codifies various requirements on the Voluntary Liquidator as to notices, meetings, reports and prescribed forms to be compliant with the legislation. Non-compliance with the legislation can incur fines of \$10,000 for each offence.

¹ Although the Companies Law (2010 Revision) provides for 28 days for the Declaration of Solvency to be filed from the date of liquidation, our policy normally requires that such Declarations of Solvency be completed in advance of our appointment unless other specific engagement terms will need to be agreed.

Timing and Costs for a Voluntary Liquidation

Various factors will impact the timing and costs of the voluntary liquidation. The most significant factor is usually whether the assets and liabilities of the company have been realised and settled prior to the appointment of the Liquidator. If there are remaining assets prior to the company going into liquidation, the Liquidator will be responsible for realising such assets. Other outstanding points including significant creditor claims or outstanding litigation can also affect the scope and timing of the liquidation.

The voluntary liquidation of a company with no significant outstanding issues generally takes 3-4 months to complete, provided all information is given to the Liquidator at the commencement of the liquidation. Fees in these circumstances normally start from around US\$7,000 but may be higher if issues are encountered, if assets are required to be realised, or if there is a delay in the provision of information to the Liquidator.

Other costs include:

- Liquidators' disbursements - normally approximately US\$1,250. This amount mainly relates to Government charges associated with advertising, lodgment and dissolution fees.
- Registrar of Companies fees - this amount will fluctuate depending upon whether all annual fees are paid up to date. If the liquidation continues after the December 31 calendar year end, the company will be liable for annual fees to the Registrar of Companies which starts at approximately \$750, depending on the company's capitalisation.

Commencement of Voluntary Liquidation Process

The usual procedures that are undertaken to place a company into voluntary liquidation are as below:

1. The directors resolve to cease trading of the company and make a recommendation to shareholders that the company be placed into voluntary liquidation;
2. All of the directors sign the Declaration of Solvency;
3. Shareholders with voting rights resolve to place the company into liquidation and appoint the liquidators; and
4. The Liquidators submit their Consent to Act and the Declarations of Solvency to the Registrar of Companies, following which their appointment is deemed to commence.

Completion of the Voluntary Liquidation Process

Depending on the circumstances of the company there may be some residual assets or liabilities to realise and settle. Under these circumstances, interim distributions or a single and final distribution of funds to the shareholders of the company can be made by the Liquidators.

The liquidation is concluded by way of preparing a final Liquidators' report and statement of accounts and holding a final meeting. Dissolution of the company follows thereafter through an application to the Registrar of Companies.

Contacts

Should you have any questions or require any information in relation to voluntary liquidations or the procedures outlined above please contact:

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This document is intended as a general guide for the voluntary liquidation of Cayman Islands companies. Different procedures will apply for unit trusts and limited partnership structures.

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