

Reorganisation Services

Funds and Funds of Funds; Illiquid Asset and Side Pocket Solutions



Our Reorganisation Services team undertakes a significant number of liquidations and wind downs each year for entities with illiquid, slow to realize and difficult to value assets and side pockets. Our experience and expertise ensures that stakeholders are provided with comfort that a winding up is dealt with actively, objectively, transparently and in accordance with all legislative and contractual requirements.

Our team is seeing a significant increase in Cayman and Delaware funds in run-off that are beginning to lose critical mass and are suffering from “stakeholder fatigue” as the easier to realize illiquid investments in their portfolios have gradually translated into cash over the last few years. After more than three years in wind down, the prospect of several more years to go is causing investment managers and service providers to start to question the scale of their current operations. Maintaining the existing infrastructure of an investment manager, directors, an administrator, a custodian and auditors can mean that it becomes uneconomic to continue operational scale for “business as usual”.

However, these funds often still hold valuable, but highly illiquid assets, or side pockets. Investors with a longer term view to recovering value generally do not wish to liquidate positions at steep discounts in secondary market transactions, recognizing that potentially significantly more value can be obtained by continuing to manage such portfolios using a scaled down, lower cost, run-off platform for operations.

Various solutions are available, ranging from the most common voluntary liquidation procedure, through to more bespoke solutions such as the restructuring of a fund’s assets and liabilities into a longer term liquidating type trust structure. With these types of solutions most service providers can be consensually terminated with a Liquidator taking on the roles of monitoring and disposing of the assets, reporting to investors, making distributions and relieving the directors and investment managers of the difficulties and risks associated with managing difficult to value positions. Indeed many administrators and custodians are actively giving fund clients notice of termination of services due to a lack future relationship prospects.

Our Reorganisation Services team is currently involved in the active realization of over 100 side pockets and slow to liquidate positions. Integral to this process is regularly meeting underlying investment managers to research, monitor and challenge in detail the underlying realization strategies and assumptions. In our experience many underlying managers are doing their best in challenging circumstances but it is useful to meet and monitor their progress.

In other cases certain investment managers have adopted an approach that is suboptimal for investors. Over the last two to three years, our active management, via appointment as liquidators, has achieved significant benefit for investors in these types of situations including making underlying managers provide enhanced transparency and more detailed reporting, reducing fees and supplementing boards of directors with additional independent divestment experience. Frequently we identify and then group with other like minded investors to ensure that a wind down is delivered in a fair and timely manner.

Where the financial case is justified we have also undertaken a number of secondary market portfolio and individual position transactions. The transactions have been entered into after a thorough assessment of the cash flows, strategy and risks to timely realization of underlying assets.

The most common approach for a fund nearing the end of its life is a voluntary liquidation.

[Advantages of Appointing Voluntary Liquidators](#)

Some of the advantages of placing a fund with side pockets and illiquid positions in liquidation are:

- The process ensures that the entity's assets are realized and that the proceeds are distributed to creditors and investors in accordance with contractual and statutory priorities;
- The process minimizes the likelihood of any future claims being made against the entity, its directors, or other service providers particularly regarding issues such as valuations and decisions to retain or dispose of investments;
- There is active monitoring and management provided by the Liquidators who will continue to

report to investors and creditors on a frequent basis, usually quarterly;

- The process affords various cost savings as the investment manager, auditor, directors, registered office, administrators and other service provider contracts are often consensually terminated. In addition, the annual CIMA regulatory fees can be reduced by 50%;
- Once the assets are fully realized the liquidation process fulfills all statutory notice requirements to potential creditors and the residual affairs of the entity are dealt with in a proper and complete manner.

Liquidation costs are dependent on a number of factors such as the number of positions remaining, the number of shareholders and the frequency of reporting. Typically we will agree to work on a fixed fee basis which can be scaled down in line with the reduction of workload over time. We do not work on a percentage of assets under management, believing this to be an inappropriate incentive to the timely liquidation of assets and return of cash to investors.

[Voluntary Liquidation Process](#)

A Voluntary Liquidation typically commences when the directors of the company resolve to cease the company's operations and make a recommendation to shareholders to place the company into Voluntary Liquidation. The Voluntary Liquidator is then in control of the entity and takes the necessary steps to terminate prior service providers and realize the assets to maximize return to investors.

If the Voluntary Liquidator deems the company as insolvent and unable to pay down creditors in full, the Liquidators are obligated to place the liquidation under the supervision of the Cayman court.

[Creation of a Liquidating Entity](#)

An increasingly popular approach for stakeholders is the creation of a liquidating entity into which the assets are placed with investors receiving their pro-rata share. The function of Deloitte and the work approach is fundamentally the same as in a Voluntary Liquidation. Depending upon the individual circumstances such entities may not be subject to the Mutual Funds Law of the Cayman Islands, which enables costs to continue to

be streamlined. Typically a special purpose vehicle is created that has a fixed duration, often several years.

As positions are realized, proceeds are passed to investors in much the same way as would occur in a formal liquidation. Towards the end of the life of the vehicle any residual positions would be sold off in the secondary markets to facilitate a final redemption to investors.

An advantage of this approach is that investors understand the finality and time frame of their investment, which can often be re-classified from “current assets” to “long term assets” for client reporting purposes.

[Involvement of the Investment Manager](#)

Depending on the wishes of the stakeholders, investment managers can continue to be involved in the realization of assets in a liquidation process. Often this gives investors additional comfort and the investment manager is retained on either a formal consultancy capacity or as an informal unpaid advisor. This approach is particularly common where the investment manager is still a significant investor in the fund or if there is continuity of relationships through investments in a sister fund for example.

[Frequently asked questions](#)

We have included below answers to commonly asked questions from stakeholders unfamiliar with a liquidation process.

[NAV Statements and Position Confirmation](#)

The Liquidators are able to tailor the reporting to the needs of the investors and when required can calculate and distribute NAV estimates to stakeholders.

[Re-registration of nominees](#)

The Liquidators have the ability to amend the share registers and requests for name changes or custodian changes can often be approved with ease.

[Distributions](#)

One of the most important factors is understanding the frequency of distributions. The Liquidators endeavour to pay distributions as frequently as possible and will pay them whenever sufficient cash balances are

available, typically after the realization of a significant investment or on an agreed periodic basis. Often this will commence quarterly.

We are also able to undertake in-specie distributions of non cash assets where it is practical to do so.

[Who we are](#)

Our dedicated team of chartered accountants and qualified insolvency practitioners have conducted liquidation assignments that range from complex work outs and realisations of many different asset types, often involving difficult litigation, to straightforward ‘no-asset’ end of life liquidations. We act for investors, lenders, investment managers and service providers, delivering timely, value for money liquidations and dissolutions, often working across multiple jurisdictions. Our recent investment in bespoke liquidation case management and fund administration software, we believe, also assists in setting us apart from our competition.

[Deloitte Cayman](#)

Operating in the Cayman Islands since 1973, the local practice of Deloitte draws from the resources of 10 partners and over 150 staff members. We are also able to draw from the deep intellectual capital of the 169,000 professionals within the Deloitte Touche Tohmatsu member firms and their affiliates worldwide. Access to this broad base of knowledge enables our professionals to address a broad range of issues involving people, processes, and technology. Our services are scalable and can be tailored to your circumstances and specific needs. For more information about our organization and its structure, please see www.deloitte.com.

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