

**Guide to
Liquidation of
Companies
in the Cayman
Islands**

DILLON  EUSTACE

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Guide to Liquidation of Companies in the Cayman Islands

▣ Introduction

This document sets out the procedures for winding up a Cayman Islands registered company. It is intended for information purposes only. For individual requirements and advice contact Dillon Eustace, Cayman Islands.

Dillon Eustace opened its new office in the Cayman Islands in 2012. Dillon Eustace has a well established and highly regarded Litigation and Dispute Resolution department representing both domestic and international corporations, organizations and individuals. Our clients include some of the leading global banks, financial institutions, product manufacturers, insurers, airlines and public companies. We have gained a reputation for high quality services and results in a variety of practice areas including Financial Services Litigation, Insolvency and Corporate Recovery. The Cayman office is an integral part of the much larger Litigation Department in Dublin.

There are numerous companies registered in the Cayman Islands. It is a domicile of choice for hedge funds and various trusts and is one of the largest financial services centres in the global economy. The growth in hedge funds and ancillary services such as fund administration, audit and legal services is accompanied by a growing demand for litigation services. Liquidations, voluntary and involuntary, are an integral part of litigation services offered by law firms in Cayman Islands. The Cayman Islands Monetary Authority ("CIMA") regulates off-shore companies under its remit in the Cayman Islands and has a statutory role which on occasion results in liquidation of a company for regulatory reasons.

Cayman is a convenient venue for liquidations due to its specially designated Financial Services Division in the Grand Court and the efficiency and expediency of the English common law. Cayman Islands has a reputation for high quality financial services and insolvency and litigation services supported by a stable, efficient and consistent legal system.

▣ Voluntary Liquidation

Director's Meeting

A board meeting is convened at which the directors discuss the reasons for proposed liquidation and voting on a resolution to convene an EGM for the company to consider and vote on the special resolution to commence voluntary liquidation. The company must be solvent for the 12 months following the director's resolution for a voluntary liquidation to proceed.

Declaration of Solvency

All the company's directors must sign a Declaration of Solvency that the company can pay its debts with interest over 12 months following the appointment of a liquidator. The directors should convene a meeting to consider the proposal and have reasonable grounds for arriving at the decision and making the Declaration. The Declaration must be signed by each director within 28 days of the appointment of the liquidator. If it is not signed within the 28 days of commencement of liquidation there is a statutory requirement for the liquidator to apply to court for an order that the

liquidation be subject to court supervision. The requirements of the Declaration of Solvency are set out in section 124(2) of the Companies Law (2010 Revision). It is an offence to make the Declaration without having reasonable grounds for so doing. The penalty on conviction is a fine of \$10,000 or imprisonment for up to 2 years or both. If the liquidator at any time during the liquidation forms the view that the company is or is likely to become insolvent, he is legally obliged to put the liquidation under court supervision.

EGM of the company

An EGM is convened at which the shareholders resolve to wind up the company. Arrangements are then put in train for voting on the resolution, appointment of liquidator, remuneration, provision of indemnity for liquidator and other matters arising on liquidation. Following the members resolution to wind up the company, it is formally in liquidation and directors no longer have control.

Formal Appointment of Liquidator

Notice of the appointment of a liquidator, with signed consent to act and Declaration of Solvency is filed with the Registrar of Companies and a statutory advertisement is placed in the Cayman Islands Gazette of the appointment of the liquidator. A second notice is placed in the Gazette notifying creditors of the company to submit claims to the liquidator by a specified date which should allow 21 days from the date of publication and stating the date of the final meeting of the company.

Company in Liquidation

Creditors claims are dealt with as appropriate by the liquidator. The liquidator prepares an account of the liquidation up to the date of the final meeting of the company notified in the second advertisement of the Gazette. A final meeting of the company is held at which liquidator's accounts are approved by the shareholders. Dissolution of the company follows thereafter through notification to the Registrar of Companies.

Timing of Liquidation Process

The voluntary liquidation of a company with no significant complications where the liquidator is furnished with all information from the outset generally takes 3-4 months to complete.

Fees

Fees for uncomplicated voluntary liquidations can vary between liquidators from US\$4,000 to US\$8,000. If issues arise the fees would increase from there. Disbursements for Government charges approximate to US\$1,250.

If the liquidation continues after the calendar year's end the company would be liable for an annual fee of \$750 approximately.

Advantages of Voluntary Liquidation

- ▣ Appointment of independent liquidator is a comfort for stakeholders that the windup will be dealt with objectively and transparently.

- ▣ The liquidator is legally bound to wind up the company in an orderly manner. (Companies Winding up Rules 2010)
- ▣ Creditors are notified by advertisement to file claims.
- ▣ Company assets are properly realised.
- ▣ Limitation on any future claims by winding up the affairs of the company.
- ▣ Closure of company. The alternative to liquidation is striking off which does not bring closure to the company's affairs. (See below.)

▣ **Striking a Company off the Register**

The directors may alternatively invite the Registrar to strike the company off the Register pursuant to section 156 of the Companies Law. One or more of the directors must file an affidavit with the Registrar with a letter stating that the company is no longer active and has no assets or liabilities. The application and affidavit should be approved by resolution of the directors. The company is dissolved once it is struck off.

Voluntary Liquidation and Strikeoff– Comparisons

- ▣ A strikeoff is used generally for a company which has not traded. If the company is struck off any member or creditor may apply to the court (section 159 Companies Law) for the restoration of the company to the Register.
- ▣ Striking off does not affect individual liabilities of directors, managers officers or members of the company struck off. Liabilities may continue following the strike off.
- ▣ Property owned by a company struck off is vested in the Financial Secretary for the Cayman Islands and may be disposed of by the Governor in Council. By comparison, in a liquidation any remaining balance is distributed amongst shareholders of the company being liquidated.

▣ **Involuntary Liquidation (Section 92 Companies Law 2009 Revision)**

Involuntary or compulsory winding up is by way of petition to the Grand Court by the company itself, a creditor or contributor including a contingent or prospective creditor or the Cayman Islands Monetary Authority if it is a CIMA registered company, seeking the wind up on grounds :

- ▣ Where the company passed a special resolution to that effect.
- ▣ Where the company has suspended business or not commenced business for a whole year.
- ▣ Where the date for winding up the companies affairs in the articles of association has expired.

- ▣ Where a company is unable to pay its debts.
- ▣ Where the Court is of opinion that it is just and equitable that the company be wound up.

Relevant Laws

The Companies Law (2009 Revision) (2010 Revision); Companies Winding up Rules, 2010.

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022
Fax: +1 345 945 0042

Hong Kong

Room 604
6/F, Printing House
6 Duddell Street
Central
Hong Kong
Tel: +852 35210352

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact.

John Fox
e-mail: john.fox@dilloneustace.ie
Tel: +1 345 949 0022
Fax: +1 345 945 0042

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