

Considerations for terminating registration of your Cayman Islands entity before 2021 fees and filings are due

Cayman Islands entities will be receiving their annual invoices for 2021 registration fees in the last quarter of 2020. If you are considering terminating your entity or terminating registration with the Cayman Islands Monetary Authority (**CIMA**) you will need to act promptly in order to avoid or reduce the 2021 registration fees and filings.

Overview

Outside of any insolvency procedure, an entity may be terminated and dissolved by either voluntary winding up or strike off. Where an entity has been conducting business on a regular basis or has assets and liabilities, a voluntary winding up is the preferred route for terminating and dissolving the entity as it provides the means for finalising the entity's affairs. An alternative to winding up an entity is to request the Registrar to strike it off the Register. The strike off method is best suited to an entity that is inactive with no assets, liabilities or creditors due to the limitations set out below.

Voluntarily winding up an entity

When can a company be voluntarily wound up?

A Cayman Islands company can be wound up voluntarily:

- On the expiration of the period fixed for the duration of the entity by its memorandum or articles of association/limited liability agreement (as applicable)
- Because a specific event has occurred and its memorandum or articles of association/limited liability agreement provide that it shall be wound up
- By a special resolution passed by the members of the company (in the case of a company registered under the Companies Law) or affirmative vote of the required majority of members (in the case of a limited liability company)
- In the case of a company registered under the Companies Law, by an ordinary resolution passed by a simple majority of the members of the company if the company is unable to pay its debts as they fall due, or

- In the case of a limited liability company, at any time when it has no members

When can an exempted limited partnership be voluntarily wound up?

A Cayman Islands exempted limited partnership can be wound up voluntarily:

- On the expiration of the period fixed for the duration of the entity by its partnership agreement
- Because a specific event has occurred and its partnership agreement provides that it shall be wound up
- By a resolution passed by the required number of partners

What is the voluntary winding up procedure?

A number of procedural steps must be undertaken to place the entity into voluntary winding up, appoint a voluntary liquidator and give the requisite notices. Please see our [guide](#) for further details.

Once an entity completes voluntary winding up, the entity is deemed to be dissolved three months from registration of the final return.

Who can be appointed as the voluntary liquidator?

For a solvent termination, the entity can appoint one or more persons to act as the voluntary liquidator, including a director, officer, manager, general partner of the entity, the entity's auditors or another appropriate third party. There are no qualification requirements for appointment as a voluntary liquidator.

What powers do the directors/managers/general partners and voluntary liquidator have?

At the commencement of the winding up, the powers of the directors/managers/general partners cease except to the extent required for beneficial winding up of the entity's business and except to the extent the members/partners of the entity may, by resolution, allow certain powers to continue. The voluntary liquidator assumes all powers in relation to the management of the entity from that point.

The voluntary liquidator has a legal duty to wind up the entity's affairs in an orderly and timely manner and in accordance with all legislative requirements. The voluntary liquidator must also ensure that the entity's assets are properly realised and distributed to creditors and investors.

How long does it take to voluntarily wind up an entity?

A straightforward voluntary winding up of an entity which does not have extensive creditors/members/partners can be expected to be completed within 3 months from the start of the process to the date of the voluntary liquidator's filing following the final general meeting of members/partners.

If the entity is registered with CIMA as (i) an investment fund under the Mutual Funds Law or Private Funds Law or (ii) a "Registered Person" under the Securities Investment Business Law, additional steps will be required (set out below) and until the entity is de-registered with CIMA it will be unable to complete the winding up.

If the entity is licensed by CIMA, a significant number of additional steps will be required. Please contact your usual Harneys contact for further details of the procedure to follow.

When must the entity complete the voluntary winding up so that it does not incur 2021 Registry fees?

All required notices must have been filed with the Registrar, by 31 January 2021 in order for the entity not to incur 2021 Registry fees. As noted above, the deemed dissolution date will be after the filings have been made, but an entity does not need to be dissolved by this date to avoid these fees.

If the entity is registered with CIMA it will need to have completed de-registration with CIMA prior to completing the winding up process and so time is very much of the essence in these situations given the additional regulatory considerations that apply.

Striking an entity off the Register

What is the process to strike off an entity from the Register?

On the request of the entity, the Registrar has the power to strike it off the Register. A resolution of the members/partners of the entity requesting the striking off and an affidavit of a director/manager confirming that the entity has no assets or liabilities must be filed with the Registrar. A nominal filing fee is also payable.

When is the entity dissolved in a striking off?

The Registrar strikes companies from the Register at the end of each calendar quarter, at which time the entity is dissolved. A list of the entities being struck off is published in the Cayman Islands Gazette.

What are the key differences between a striking off and voluntary winding up?

Although a striking off is a less expensive form of dissolution, it differs fundamentally from a winding up and, in particular, the following points should be noted:

- The striking off does not affect the liability, if any, of any director, manager, officer or member of the entity, and such liability continues and may be enforced as if the entity had not been dissolved
- If any member or creditor of the entity feels aggrieved at a striking off, they may make an application to the Court for the entity to be reinstated. In order to reinstate the entity, it must be shown that the entity was in operation at the time of the striking off, or the Court must deem it just that the entity be reinstated
- On reinstatement, the entity must pay a reinstatement fee equivalent to the original incorporation or registration fee
- On reinstatement the Court also has the discretion, either on reinstatement or subsequently, to award damages to any person, in order to place them in the position they would have been in if the entity had never been struck off
- Where the strike off method is used to dissolve an entity, it is vital that all of the assets and liabilities of the entity are discharged prior to strike off. If assets are not discharged then, following strike off, they will cease to be the property of the entity and will automatically vest with the Financial Secretary for the benefit of the Cayman Islands

De-registration with CIMA

In what circumstances can a fund de-register with CIMA?

A regulated fund may de-register for various reasons, including where the fund:

- Is in voluntary winding up
- No longer meets the definition of a mutual fund or private fund under the Mutual Funds Law or Private Funds Law, respectively, such as where it has become a single investor fund
- Has never carried on business or ceases carrying on business as a regulated fund

What is the process for de-registration of a fund with CIMA?

There are various core requirements which must be met to de-register a fund with CIMA. For a mutual fund registered under the Mutual Funds Law, the core requirements are:

- The mutual fund must be in good standing with CIMA, having paid all fees due and submitted all filings required
- The original registration certificate for the mutual fund must be submitted (if one was issued)
- A fee of US\$730 must be paid

- A certified copy of a resolution of the operator (directors for corporate funds, for example) confirming the date the mutual fund will cease or has ceased to carry on business as a mutual fund in or from the Cayman Islands must be submitted

Further documents must then be filed with CIMA depending on the reason for de-registering.

Where the mutual fund is going into voluntary winding up additional documents include filing the notice of the winding up and voluntary liquidator's consent to act. Filing these documents with CIMA before the end of 2020 allows the fund to be placed in "Licence under Liquidation" status by CIMA. If the fund is not in good standing with CIMA further documents may need to be submitted by the voluntary liquidator.

For those mutual funds which are de-registering for other reasons and which have filed some but not all of the required de-registration documents before the end of 2020 can be placed in "Licence under Termination" status.

Mutual funds in either Licence under Liquidation or Licence under Termination status will be contacted by CIMA during the 12 months after the mutual fund is placed in that status to follow up on any remaining documents and/or fees needed to complete the de-registration. Mutual funds are also expected to provide CIMA with comprehensive updates on the status and progress of the winding down within this 12-month period.

As at the date of this guide, the requirements for deregistration of a private fund registered under the Private Funds Law have not been issued by CIMA, but we expect them to be substantially the same as the above requirements for mutual funds registered under the Mutual Funds Law.

Please contact us for details of the documents required for different types of de-registration.

Does a fund need to conduct a final audit or can we get a waiver?

Unless a fund qualifies for an audit waiver, it will have to be up to date with all audit requirements up to the prior financial year end. It will also have to provide audited accounts from the last financial year end for which audited statements have been filed as part of the de-registration process. CIMA may grant an audit waiver on an application by a fund which is being voluntarily wound up where a third party (for example, no association with the investment manager or GP) liquidator has been appointed on terms which require a review of the period since the last financial year end, and in other limited circumstances. Please contact us for more details on CIMA's policy on audit waivers.

What 2021 CIMA fees will be payable for funds being wound up?

For a mutual fund registered under the Mutual Funds Law, provided the filings have been made with CIMA before the end of 2020:

- No annual fees for 2021 will be payable to CIMA where the mutual fund is to be placed in "Licence under Liquidation" status by CIMA, or
- Half the annual fees for 2021 will be payable to CIMA where the mutual fund is to be placed in "Licence under Termination" status by CIMA

As noted above, at the date of this alert the requirements and the fees for deregistration of a private fund registered under the Private Funds Law have not been issued by CIMA, but we expect them to follow substantially the same discounts as the above fees for mutual funds registered under the Mutual Funds Law.

The annual fees are currently US\$4,268 for a mutual fund or private fund and US\$3,048 for a regulated master fund.

If the fund is continuing to operate but is no longer required to be registered with CIMA under the Mutual Funds Law or the Private Funds Law, or has not voluntarily wound up or been struck off within the applicable time, it will remain liable for the ongoing fees of its service providers and for annual Cayman Islands registry fees for its structure.

In what circumstances can a "Registered Person" voluntarily de-register with CIMA?

If an entity currently registered as a "Registered Person" under the Security Investment Business Law ceases to conduct all types of securities investment business that requires licensing or registration, it must de-register with CIMA.

What is the process for a "Registered Person" voluntary de-registration with CIMA?

Similarly, to a fund, there are various core requirements which must be met to de-register a Registered Person with CIMA:

- The entity must be in good standing with CIMA, having paid all fees due, submitted all filings required and no outstanding queries from CIMA
- A written request to de-register must be submitted
- A fee of US\$610 must be paid
- A certified copy of the resolution of its directors/senior officers confirming the date the entity ceased to carry on securities investment business must be submitted
- An affidavit of a director/senior officer certifying certain prescribed requirements

Where a Registered Person is going into voluntary winding up the documents that must be filed with CIMA are the notice of the winding up, voluntary liquidator's consent to act and declaration of solvency.

Where a Registered Person never commenced business an affidavit of a director/senior officer certifying as such must be filed with CIMA.

When must the entity complete the voluntary de-registration so that it does not incur 2021 CIMA fees?

The entity should complete the de-registration by 15 January 2021 in order not to incur the 2021 annual CIMA registration fee.

If the entity is being wound up, it will need to complete the de-registration well before this date if it wishes to avoid any 2021 Registry fees (see above).

FATCA/CRS considerations

At what stage in the termination process must the entity be so that it does not have to make FATCA/CRS filings in 2021?

For an entity that is required to file FATCA/CRS reports it must be *dissolved* by 31 December 2020 so that it does not have to file FATCA/CRS reports in 2021. If an entity is in voluntary winding up in 2020 but only dissolved in 2021, it will be required to file FATCA/CRS reports in 2021, if filing is applicable to it before it can surrender its registration.

This includes the CRS Annual Return.

During any period of liquidation, if an entity is registered for FATCA and CRS purposes with the TIA, it is still obliged to make necessary filings until the dissolution is complete.

Once all FATCA and CRS filings and returns have been filed you must surrender your GIIN registration with the US Internal Revenue Service and submit a de-registration filing with the Cayman Islands Tax Information Authority. This must be accompanied by the Certificate of Dissolution.

When is the entity dissolved in a voluntary winding up?

As noted above an entity in voluntary winding up is deemed to be dissolved 3 months after filing of the final return to the Registrar.

When is the entity dissolved in a striking off?

As noted above, the Registrar strikes companies from the Register at the end of each calendar quarter. In order to meet the 31 December 2020 strike off and dissolution date the entity must have completed the striking off and have notified the Registrar by November 2020.

Does a fund in "Licence under Liquidation" status or "Licence under Termination" status still need to make FATCA/CRS filings?

Yes, a fund in either of these categories will still be required to make FATCA/CRS filings.

Does a fund that has de-registered from CIMA still need to make FATCA/CRS filings?

A fund that has de-registered from CIMA, but is not yet dissolved, will still be required to make FATCA/CRS filings.

Director de-registration

When can the directors of a de-registered investment fund or Registered Person de-register with CIMA under the Directors Registration and Licensing Law?

Where a director has registered with CIMA under the Directors Registration and Licensing Law by virtue of being a director of an entity which was previously registered as a mutual fund under the Mutual Funds Law or a Registered Person under the Securities Investment Business Law, such director may terminate their registration with CIMA following the de-registration of such entity (assuming that such director is not also a director of any other 'covered entity').

The director must take positive steps to deregister and pay a cancellation fee of US\$731.71. A failure to do so would mean that the registration and the corresponding liability to pay the annual fees (and any corresponding late payment penalties) would continue to accrue.

When must the director complete the de-registration so that they do not incur 2021 CIMA fees?

The director must complete the de-registration and pay the cancellation fee (together with any arrears) on or before 31 December 2020 in order to avoid the annual fees for 2021.

Economic substance considerations

Does an entity in voluntary winding up need to make economic substance filings in 2020?

All economic substance requirements continue to apply to all entities until they are dissolved. For entities that submit their final paperwork to the Registrar prior to 31 January 2021, no economic substance notification would be required in 2021.

For an entity that has been conducting a relevant activity, if the dissolution takes place before the Economic Substance portal is available, no filings will be necessary. However, in line with the FATCA and CRS requirements, an entity that has conducted a relevant activity in a prior period would have to complete its economic substance filings as part of the termination process.

The ES Portal is not yet live at the date of this publication and we will know more detail about this process when that is available.

For further information on economic substance please see our [client guide](#).

Harneys assistance

Harneys experienced team can assist with all aspects of a voluntary winding up, including provision of a voluntary liquidator.

For further information about winding up or striking off a company or exempted limited partnership or to de-register an entity with CIMA please contact your usual Harneys contact.



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