

Client Memo

GUERNSEY | STRIKING OFF AND WINDING UP GUERNSEY COMPANIES

Introduction

Under the Companies (Guernsey) Law, 2008 (the "**Companies Law**") there are two procedures available for the voluntary dissolution of a Guernsey company. A Guernsey company may be dissolved either by way of a "voluntary striking off" or a "voluntary winding up". We set out below the details of each procedure.

Ultimately, whether the voluntary winding up procedure or the voluntary striking off procedure is the most appropriate to dissolve the company will depend on various factors, including whether the criteria for using the voluntary striking off procedure are met, the commercial timescales and objectives and the costs involved.

Voluntary Striking Off

Procedure

The voluntary striking off procedure takes between approximately two to five months and is only available to companies that meet certain criteria that are set out in the Companies Law. Accordingly, the procedure is most commonly used to dissolve companies that are dormant and which have no liabilities. The procedure involved is outlined broadly below.

The company must apply to the Registrar to be struck off the Register of Guernsey companies.

The application must be made by the board of the directors of the Company and be accompanied by:

1. a signed declaration of compliance (voluntary striking off), which is a declaration signed by a director of the company certifying that all of the requirements of the Companies Law in respect of the application for striking off have been fulfilled; and
2. such other information as may be required by the Registrar.

Within seven days of the application being made, a copy of the application must be given to every person who is on that day a member, employee, creditor or director of the company (save for the directors who are party to the application), or any manager or trustee of any pension fund established for the benefit of employees of the company.

If the Company is a "supervised company", a copy of the application must also be given to the the Guernsey Financial Services Commission (the "**GFSC**") within seven days after the day on which the application is made to the Registrar. Broadly speaking, a "supervised company" is a company that is or was licensed by the GFSC.

The application for striking off cannot be made if at any time in the three months preceding the date of the application the company:

1. has changed its name;

2. has traded or otherwise carried on business;
3. made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business. In this regard we note that pursuant to section 358 of the Companies Law a company is not to be treated as trading or otherwise carrying on business by virtue only of the fact that it makes payment of a liability incurred in the course of trading or otherwise carrying on business; or
4. engaged in any other activity, except which is necessary or expedient for the purpose of:
 - (a) making an application for strike off or deciding whether to do so;
 - (b) concluding the affairs of the company; or
 - (c) complying with the requirements of any enactment.

An application must also not be made if the company:

1. is party to any legal proceedings;
2. has certain types of proceedings connected with its solvency which have not been concluded (for example, if a compulsory winding up application has been made in respect of the company which has not been concluded); or
3. has any outstanding liabilities (other than an obligation to return share capital to members on or prior to dissolution).

Following receipt of the application the Registrar must give notice stating that after two months the company will be struck off the Register. Unless cause is shown to the contrary, at the end of the two month period the Registrar will strike the company off the Register and the company will be dissolved.

Costs

From a costs perspective, the fee payable to the Registry for making a striking off application is £10 for filing the application electronically and £20 if the application is filed by post or by hand.

Although the board is responsible for the application, the Guernsey Corporate Services Provider ("**CSP**") of the company often assists with this on the basis that generally it will have the company information and documentation to hand. The costs payable to the CSP will ultimately depend on what is negotiated with it and the scope of its role. As far as legal fees are concerned, these are usually estimated on a case by case basis and will depend on the complexity of the matter, as well as the role of the CSP.

Voluntary winding up

Procedure

An application for the voluntary winding up of a Guernsey company is typically commenced by the passing of a special resolution of the members. However, the Companies Law allows a company to be wound-up by an ordinary resolution of members where:

1. the period (if any) in the company's memorandum and articles for the duration of the company expires; or
2. an event occurs, on the occurrence of which the memorandum and articles provide that the company shall be dissolved.

The special or ordinary resolution (the "**Resolution**") must approve:

1. the winding up of the company;
2. the appointment of a liquidator to wind up the company; and
3. fix the liquidator's remuneration.

Importantly, there are no specific requirements in respect of the qualifications or the location of the liquidator.

The Resolution must be lodged within 30 days of passing with the Registrar and the Registrar must give notice of the Resolution. Failure to deliver the Resolution to the Registrar within the 30 day time period is an offence. A supervised company and a company engaged in a financial services business must also deliver a copy of the Resolution to the GFSC within a period of 30 days after the date of the Resolution being passed. A failure to do so does not however render the Resolution void.

Where it is proposed to wind up a company voluntarily the board of directors may make a declaration of solvency, which is a declaration signed by a director stating that, in the opinion of the board, the company satisfied the solvency test. To be effective, the declaration must be made within the period of five weeks immediately preceding the date of, or on the same date as, the Resolution. Where a declaration of solvency is not signed within this period there are limitations on who the company may appoint as a liquidator under the Resolution (ie must be an independent liquidator), and there are also additional requirements and circumstances the liquidator will need to take into account his time in office.

Once appointed, the liquidator must then carry out the liquidation of the company, by realising the company's assets and discharging the company's liabilities. Having done so, the liquidator must distribute any surplus amongst the members according to their respective entitlements.

As soon as the affairs of the company are wound up, the liquidator must prepare an account of the winding up, giving details of the conduct of the liquidation and the disposal of the company's property. The liquidator must then convene a general meeting of members, at which meeting the liquidator presents and provides an explanation of the account (the "**Final Meeting**").

After the Final Meeting the liquidator must give notice to the Registrar of the holding of the Final Meeting and its date.

The Registrar is required to publish notice of the fact of the Final Meeting and that the company is to be dissolved, which usually appears on the Registry's website.

On the expiration of three months beginning on the date of delivery of the notice of the Final Meeting by the liquidator, the company is dissolved.

The members of a company may by ordinary resolution release the liquidator of a company, which is being wound up voluntarily, from its office. A release may be granted subject to such terms, conditions, restrictions and limitations as the members of the company may specify by ordinary resolution. The Court in certain circumstances may revoke an ordinary resolution of the members of a company granting a release.

Effect

The Companies Law provides that from the commencement of the winding up:

1. the company shall cease to carry on business except in so far as may be expedient for the beneficial winding up of the company;
2. subject to the above, the company's corporate state and powers continue until dissolution;
3. all powers of the directors cease (except to the extent that the company by ordinary resolution or the liquidator sanctions their continuance); and
4. any transfer of the company's shares, other than a transfer made to or with the sanction of the liquidator, is void.

In addition, immediately upon the dissolution of the company, it is prohibited from undertaking business or contracting to incur any debts or obligations.

Costs

From a costs perspective, the statutory fee payable to the Registry for a voluntary winding up is £10 for filing a copy of the Resolution electronically and £20 if the resolution is filed by post or by hand. The costs of the liquidator will depend on the nature and complexity of the assets and liabilities of the company and whether the liquidation is carried out in-house by the CSP or if a third-party specialist liquidator is appointed. Although there is no statutory requirement to appoint an independent liquidator of a Guernsey company, in our experience many companies choose to appoint an independent liquidator to carry out the liquidation.

There will also likely be some legal fees for the drafting of the Resolution and generally assisting the liquidator. We are always happy to provide an estimate of such fees as these will vary depending on the complexity of the winding up in each individual case.

Restoration to the Register following dissolution

An application can be made to restore both struck-off and wound-up companies to the Register, provided certain conditions are met. In this regard, we refer you to our client memorandum entitled Restoration of a Guernsey Company to the Register of Companies.

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For further information please refer to your usual contact or:

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