

Guidance Note

Winding up a Cayman Islands Partnership

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Introduction

In A Cayman Islands exempted limited partnership (“ELP”) can be voluntarily dissolved by the appointment of a liquidator or it can be dissolved without such appointment if the ELP is struck off the register as a result of an application to the Registrar of Partnerships for the purpose.

Voluntary Liquidation

In circumstances where the ELP has been active and has substantial assets and liabilities, it is normal for the ELP to be liquidated.

If a liquidation is pursued the ELP would normally agree the liquidation fee with the liquidator and will often be requested to provide the liquidators with an indemnity.

Voluntary winding up (liquidation) pursuant to the Exempted Limited Partnership Act (as Revised) (the “Act”) can be commenced by either of the following procedures:

1. an ELP can be voluntarily would up and dissolved pursuant to the provisions of its partnership agreement, typically at the time or upon the occurrence of a specific event specified in the partnership agreement; or
2. if the ELP’s partnership agreement has no specific winding up provisions, and unless the partnership agreement provides otherwise, the ELP can be voluntarily wound up and dissolved by all of the general partners of the ELP, and a two-thirds majority of the limited partners, passing resolutions to wind up and dissolve the ELP.

General Partners and Limited Partners’ Meetings

In the event that general partner and limited partner resolutions are needed, the general partner of the partnership should circulate the appropriate notice convening the meeting. The appropriate period of notice will be determined by reference to the partnership agreement and the ELP Act as the period for a special resolution. The limited partners of the partnership pass a special resolution that the partnership be voluntarily wound up and a liquidator appointed. Alternatively, if the partnership agreement permits it, a written resolution may be signed by all the limited partners of the partnership.

A special resolution is one which is passed by a two thirds majority of the limited partners present at a meeting duly convened by notice specifying the time and place of the meeting and the resolution to be passed.

The resolution of the general partners must be passed unanimously.

A copy of the resolutions are then filed with the Registrar of Exempted Limited Partnerships and the liquidation commences.



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Public Notice

Notice of the special resolution winding up the partnership and appointing the joint liquidators is published in the Gazette advising of the liquidation and advertising for creditors to come forward. The Liquidator then proceeds to collect the assets and discharge the liabilities of the partnership.

If the date of the final meeting can be established at this stage (i.e. the partnership has no assets or liabilities) notice of the date of the final meeting can be placed in the Gazette at this time.

As soon as the affairs of the partnership are fully wound up, the liquidators advertise by public notice or otherwise as the Registrar may direct, the time, place and object of the final general meeting of the partnership, which is to be held not less than one month after the date the notice is published, for the purposes of explaining the final accounts of the liquidation.

If the partnership has no assets or liabilities and the date of the final meeting has already been set at the time that the notice of liquidation was published, the liquidator may proceed to hold the final meeting.

Liquidators' Reports

In the terms of the statutory insolvency provisions, the liquidators must report back to the members of the partnership periodically through the liquidation process so as to keep them informed of the collection and realisation of assets and the settlement of liabilities. All such meetings will be convened at the instance of the joint liquidators.

An interim report by the liquidators will provide detail of the assets identified and the liabilities claimed and accepted as being due and owing. The report may also indicate what, if any, dividend is to be paid on liabilities including any distribution that is anticipated for the benefit of the shareholders.

The liquidation itself is concluded after the liquidators have provided their final report to the members. The liquidators will, once again, convene the appropriate meeting and present their final report. After the conclusion of that final meeting, the liquidators must file a notice confirming that the meeting has been held and the appropriate resolutions approved to conclude liquidation.

The following consequences shall ensue upon the voluntary winding up of the partnership:

- Voluntary winding up and dissolution is taken to have commenced on the date of the special resolution referred to above.
- The partnership from the date of commencement of winding up ceases to carry on its business, except in so far as may be required for the beneficial winding up thereof. However, all of the partnership's corporate powers shall continue until the affairs of the partnership are wound up.
- The property of the partnership shall be applied in satisfaction of its liabilities *pari passu* and subject thereto, shall, unless it be otherwise provided by regulations of the



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partnership, be distributed amongst the members according to their rights and interests in the partnership.

- Upon appointment of the liquidators all the powers of the directors shall cease, except insofar as the partnership, by resolution of its members or the liquidators, may sanction the continuation of such powers. All transfers of shares and any alteration to the status of the members of the partnership requires the sanction of the liquidator.

Dissolution of the Partnership

The liquidator completes the process by preparing a return relating to the final meeting in the prescribed form and filing it with the Registrar of Exempted Limited Partnerships. The partnership is deemed to be dissolved three months from the date of registration of the return.

Winding-Up by the Court

A winding-up by the court, also referred to as a compulsory winding-up or liquidation, follows the filing with the court of a petition presented by the partnership, one or more creditors or shareholders, a combination of these. Against its licensees, the Cayman Islands Monetary Authority (“CIMA”) can also apply for a winding-up of a partnership.

The petition that is filed with the court will nominate a liquidator and briefly summarise the reasons why the party is applying for the partnership to be wound up. The grounds for the petition to wind up the partnership set out in the Law are as follows:

- the partnership has passed a special resolution requiring the partnership to be wound up by the court;
- the partnership does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- the partnership is unable to pay its debts; or
- the court is of the opinion that it is just and equitable that the partnership shall be wound up.

Pursuant to the Grand Court Rules 102(6) it is prescribed that a petitioner must at the same time as issuing a petition, take out a summons for directions. On the hearing of the summons, the court will give such directions as it deems fit, including *inter alia* directions for publication of notices.

There is a moratorium on proceedings (commencing or continuing) against the partnership, unless expressly permitted by the court upon the winding-up order being made. Also prohibited are transfers of shares, adjustments in shareholders’ status and dispositions of property. This is the same for court- supervised liquidations. Upon completion of the liquidation process and asset distribution to entitled parties, the dissolution of the partnership will be ordered by the court.



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Liquidation Under the Supervision of the Court

During a voluntary liquidation, Cayman Islands law provides for the protection of the potential economic interests of creditors. The court can impose its supervision on the voluntary winding-up of the partnership. In this manner, the court protects the interest of the creditors, as well as allowing for the creditors to be involved in the winding-up of the partnership. The application for the liquidation to be supervised by the court can be made by any party, by filing a petition stating a financial interest. Upon the completion of the liquidation process, and when the assets of the partnership have been distributed to those entitled, the dissolution of the partnership will be ordered by the court.

Striking Off

A partnership may apply to the Registrar of Exempted Limited Partnerships and request to be struck off the register. The Registrar has the ability to strike a partnership off the register, thereby dissolving it. A partnership can also be struck off by the Registrar if he believes that the partnership is no longer carrying on business. Striking off is an expedient way of dissolving a partnership and does not require the use of a liquidator therefore, the partnership does not incur the costs of the liquidation process.

The striking off process does not deal with liabilities to creditors and is not suitable for partnerships with intricate dealings or valuable assets. Any assets held by a partnership which is struck off will pass consequently to the Crown as a *bona vacantia* upon dissolution. In cases where there are dissatisfied creditors or members, they can apply to the Registrar for up to two years after the striking off to have the partnership restored to the register. The Governor may allow an extension of 10 years if the court feels that it is right to do so – for example, in such cases where it feels the creditors should be allowed to take proceedings to recover assets. The striking off process, therefore, does not cut off creditors' options in the way that a properly executed liquidation process would, and the creditors who wish to challenge distributions made to the shareholders prior to liquidation, for example, may be able to raise claims well after the striking off.



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Guidance

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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