

Termination of Cayman vehicles - advance planning to minimise 2021 fees

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Do you have Cayman vehicles that you are considering terminating?

If so, you should consider initiating the process now to minimise or eliminate 2021 annual fees. This note contemplates corporate vehicles but similar considerations apply to partnerships.

Termination by voluntary liquidation

The first process available to terminate a vehicle is a voluntary liquidation. Once the vehicle has been dissolved using this process, it cannot be re-instated. You will be able to avoid paying 2021 government fees to the Registrar of Companies (**ROC**) if the Final General Meeting of the vehicle and all ROC filings have been made by the end of January 2021. In order to meet this deadline, the voluntary liquidation process should be commenced in early December at the latest, to allow sufficient time to meet the various statutory notice periods. Of course, it is always preferable to begin the process as soon as possible. Fees for local services providers, such as registered office fees, may still be due until the entity is finally dissolved.

If there is sensitivity in ensuring dissolution is completed prior to year end (ie so that the vehicle will not exist in 2021), there is now some urgency in commencing a formal voluntary liquidation.

What about a strike-off instead of a voluntary liquidation?

The second process available is a strike-off. A strike-off is a more cost effective and less time consuming option but has the downside that it can be undone for a period of 10 years after the strike-off date at the initiation of any member or creditor aggrieved by the strike-off. For this reason we don't usually recommend this option where the entity in question has taken in external investors and/or traded.

If a strike-off is a viable option you will need to have all relevant materials filed before 31 December 2020 to avoid 2021 ROC fees. Fees for local services providers, such as registered office fees, may still be due until the entity is finally struck-off. If you wish to strike-off a vehicle prior to year end (ie so that it will not exist in 2021), all relevant materials must generally be filed by 12 November 2020.

Additional considerations for Cayman funds registered with CIMA

Terminating Cayman entities that are registered with the Cayman Islands Monetary Authority (**CIMA**) as either mutual funds or private funds can also save on 2021 annual fees due to CIMA, other regulatory filing fees and obligations and the risk of incurring an administrative fine, if they move quickly. For regulated mutual funds, there are two options available to do this:

1. If the fund has passed resolutions to cease trading and to wind up the fund, but a liquidator has not yet been appointed, the fund may still apply to CIMA to de-register in advance of year-end and be placed into "Licence under Termination" (**LUT**). A CIMA registered fund that has applied for LUT status by 12:00pm (Cayman Islands time) on 31

December 2021 will be liable for only half of the CIMA annual fees for 2021.

2. If the fund has passed resolutions to cease trading and to wind up the fund, and a liquidator has been appointed, the fund may apply to CIMA to de-register in advance of year-end and be placed into "Licence under Liquidation" (LUL). A CIMA registered fund that has applied for LUL status by 12:00pm (Cayman Islands time) on 31 December 2021 should not incur any CIMA annual fees for 2021.

While CIMA has yet to release formal policies and procedures in connection with the de-registration of private funds, we anticipate broadly similar processes applying.

Administrative Fines

With the recent implementation of the Monetary Authority (**Administrative Fines**) (Amendment) Regulations, 2020 (**Regulations**), CIMA may impose administrative fines upon individuals and entities licensed and/or regulated in Cayman who are in breach of certain prescribed regulatory laws, including the Mutual Funds Law (Revised) (**MF Law**) and regulations and rules issued thereunder such as the Rule on the Cancellation of a Certificate of Registration of a Regulated Mutual Fund (**Cancellation of Registration Rule**). Breaches are categorised in the Regulations as minor, serious or very serious, with the administrative fine ranging between US\$6,098 to US\$1,219,512 [1] depending on the nature and category of the breach and whether it was made by an individual or an entity.

Entities which are regulated mutual funds should note that the Cancellation of Registration Rule requires regulated mutual funds to commence their application for de-registration within 21 days of the date the fund ceases to carry on business or before 31 December of the year the fund ceases to carry on business. Breach of this requirement is categorised as a minor breach, resulting in a US\$6,098 fine, which CIMA has no discretion to waive. The fine may be imposed within six months of CIMA becoming aware of the breach, including on a continuous basis (unless the breach is remedied or the fine is paid in full) up to a maximum of US\$24,390. Failure to de-register may also result in breaches of other provisions of the MF Law and CIMA guidance causing the fund to be at risk of a breach of the Regulations and incurring a fine with CIMA.

If you require further assistance with the termination of a Cayman Islands vehicle, speak to your usual Ogier contact or any of our partners listed here.

We would also be happy to discuss the appointment of Ogier Global ([our affiliated corporate administration business](#)) to serve as voluntary liquidator for any terminating vehicles or to provide other fiduciary roles.

[1] Administrative fines are levied in Cayman Islands dollars. The figures quoted are in US dollars at an exchange rate of US\$1.00=CIS\$0.82, rounded up to the nearest US dollar.

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