JTC *Special Situations*

STRONGER TOGETHER

Winding up BVI entities

Early preparation and cost-saving measures

Operators of BVI companies that have reached the end of their commercial life should consider the steps required to close down redundant structures well ahead of the applicable annual company fee date. Early planning can deliver savings across regulatory, registered office, director, audit and other ongoing costs.

A company may only enter solvent voluntary liquidation under the BVI Business Companies Act if it is solvent. Before commencing the process, directors should carefully assess the company's assets, liabilities and ability to meet its obligations as they fall due and ensure that the statutory solvency requirements can be satisfied.

At JTC Special Situations, we provide direct access to a team of experienced restructuring and insolvency professionals who have significant experience acting as liquidators and wind-down directors across multiple jurisdictions, helping clients to achieve an efficient and orderly wind-down of their structures.

Overview of JTC Special Situations' wind-down services

We appreciate that the liquidation or wind-down phase of an entity's lifecycle may not be a primary focus of operators or an efficient use of their teams' time.

We offer wind-down services that allow operators to step away from this part of the lifecycle, enabling them to focus on their core business whilst seeking to reduce ongoing costs.

JTC Special Situations is equipped to support clients during the critical pre-liquidation phase. We can be appointed before an entity reaches "clean shell" status to provide tailored wind-down services and comprehensive case management.

Our team works closely with stakeholders to resolve outstanding matters, including litigation where required, settle obligations and bring an entity to clean shell status in readiness for formal liquidation. This includes coordinating the required solvency assessments, corporate approvals, appointment documents and statutory notices and filings in the prescribed sequence.

This proactive approach can support an orderly transition, help identify potential cost savings and reduce risks arising during the wind-down process.

Important BVI filing requirements

Before commencing a wind-down or voluntary liquidation, the company and its registered agent should confirm that all applicable statutory and regulatory obligations have been addressed.

These may include maintaining or filing information relating to directors, members and beneficial owners, completing applicable annual financial returns, paying outstanding annual fees and penalties and remedying any other outstanding Registry or regulatory filings.

Outstanding non-compliance may result in fees, penalties or regulatory enquiries and can delay the liquidation until the relevant issues have been resolved.

Dealing with illiquid and problematic assets - Asset Resolution Company SPC ("ARC")

Many liquidations involve residual asset-related issues. These often arise where assets are difficult to value, highly illiquid, subject to restrictions or otherwise problematic to realise.

ARC is a JTC Special Situations solution designed to address these challenges.

ARC is a Segregated Portfolio Company ("SPC") that can receive and hold assets and may assist with the wind-down of the transferring entity. In recent years, ARC has been used to hold escrow funds, FIN48 reserves, disputed sums, restricted securities, long-dated commercial notes and a variety of illiquid or otherwise difficult-to-value private and publicly traded securities.

Assets are typically contributed in kind, with shares in a dedicated cell distributed to investors.

Subject to legal, regulatory, tax, valuation and transferability considerations, ARC may provide a cost-effective structure through which certain residual assets can continue to be held or realised following their transfer from the winding-down entity.

Where appropriately supported and documented, ARC may also assist in addressing positions assessed as having little or no reasonably realisable value and facilitate the termination of associated custody and prime broker relationships.

Integrated wind-down services

Our experienced team offers a combination of services often undertaken by multiple providers, creating efficiencies and convenience throughout the wind-down process.

Services regularly provided include:

- Realising assets;
- Arranging and managing the sale of illiquid assets on secondary markets;
- Resolving remaining liabilities and terminating service providers;

- Preparing NAV estimates and investor reports that may reduce the need for continued third-party administration support;
- Distributions to investors;
- Managing litigation;
- Preparing information used by tax advisers to support applicable US investor reporting, including Schedule K-1 and PFIC-related reporting where relevant;
- Providing registered office services, including support with ongoing Registry filings where required; and
- Assisting with applicable continuing and final compliance matters, including FATCA, CRS, beneficial ownership and economic substance reporting where relevant.

By consolidating these activities with a single provider, it is often possible to reduce duplicated service-provider costs over the remaining life of a structure.

BVI regulated entities

A BVI company that is a regulated person must obtain the prior written consent of the BVI Financial Services Commission ("FSC") before being placed into solvent voluntary liquidation, and the FSC must approve the proposed liquidator. The FSC may impose conditions relating to the approval, the conduct of the liquidation and the cancellation or revocation of the entity's regulatory status.

A regulated fund will ordinarily need to address its outstanding financial statement and regulatory filing obligations before the cancellation of its recognition or registration can be completed. Depending on the fund's category and circumstances, this may require final audited financial statements or an exemption or extension approved by the FSC.

Accordingly, operators of regulated structures should begin planning the wind-down process well in advance of their desired completion date.

FSC audit waivers

An exemption from applicable audit or financial statement requirements is not automatic.

The FSC considers applications in accordance with the relevant legislation and guidance, taking account of the fund's category, circumstances, the relief requested and the supporting information provided. The FSC may grant relief subject to conditions or require additional information or reporting.

Where appropriate, JTC Special Situations can assist with the preparation of supporting information for exemption applications and support clients through the regulatory cancellation process.

Any exemption remains subject to FSC approval.

Timing considerations

BVI companies are commonly divided into:

- First Half Companies ("FHCs"), incorporated between 1 January and 30 June; and
- Second Half Companies ("SHCs"), incorporated between 1 July and 31 December.

Annual company fees ordinarily fall due on 31 May for FHCs and 30 November for SHCs.

Operators considering a solvent voluntary liquidation should begin preparations well ahead of the applicable fee date. Time may be required to resolve outstanding liabilities, realise or transfer assets, complete distributions, address statutory filing deficiencies, obtain regulatory approvals where required and complete the necessary liquidation and Registry filings.

Based on our experience, a straightforward solvent voluntary liquidation may often be completed in approximately two months once the company is ready to enter liquidation and all required information is available. More complex situations, including those involving illiquid assets, litigation, regulatory issues, incomplete records or unresolved liabilities, may take materially longer.

Groups seeking a particular accounting outcome before a reporting date should obtain accounting advice early. Commencing or completing a liquidation does not by itself determine whether or when an entity is deconsolidated.

Early engagement allows a proposed timetable, likely costs and potential savings to be assessed before key deadlines arise.

Other jurisdictions

We are also able to support wind-down and liquidation projects involving structures established in other jurisdictions, including Delaware, Bermuda and Ireland.

Our team has experience navigating the practical and regulatory considerations associated with wind-downs across multiple jurisdictions and can work with the relevant JTC Group entities and local advisers where appropriate to help coordinate an orderly and efficient process.

To discuss wind-down or liquidation solutions, please contact Anna Silver, John Ayres or Bijorn Bullock for further information.

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