JTC Special Situations

STRONGER TOGETHER

Winding up Cayman Islands entities

Early preparation and cost-saving measures

Operators of Cayman Islands entities that have reached the end of their commercial life should consider the steps required to close down redundant structures well ahead of applicable regulatory and annual fee deadlines.

Early planning can help reduce ongoing regulatory, registered office, director, audit and other operating costs, while supporting the orderly closure of structures that are no longer required.

At JTC Special Situations, we provide direct access to a team of experienced restructuring and insolvency professionals with significant experience acting as liquidators and wind-down directors across multiple jurisdictions. Our team helps clients manage the 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 while 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 may include coordinating:

- Corporate approvals and governance matters;
- Creditor claims and settlements;
- Investor communications;
- Regulatory notifications and filings;
- Asset realisations, transfers and distributions;
- The termination of service-provider arrangements; and
- The statutory steps required before and during the liquidation.

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

Important Cayman Islands filing requirements

Before commencing a wind-down or voluntary liquidation, it is important to confirm that the entity has satisfied all applicable statutory, regulatory and reporting obligations.

Depending on the nature and activities of the entity, these may include:

- Annual company or partnership filings;
- Payment of outstanding Registry and regulatory fees;
- Audited financial statements and fund annual returns;
- Economic substance notifications and returns;
- FATCA and CRS reporting;
- Beneficial ownership requirements;
- AML, CFT, CPF and sanctions-related obligations; and
- Other regulatory filings or outstanding enquiries.

Not every requirement will apply to every entity, and the relevant obligations may continue during the wind-down or liquidation period.

Outstanding non-compliance may result in fees, penalties or regulatory enquiries and can delay completion of the wind-down until the relevant matters have been addressed.

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 reports to investors, which may reduce the need for continued third-party administration support;
- Managing distributions to investors;
- Managing litigation and disputed claims;

- 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 and support with ongoing statutory filings where required; and
- Assisting with applicable continuing and final compliance matters, including FATCA, CRS, beneficial ownership, economic substance, AML, CFT, CPF and sanctions requirements where relevant.

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

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.

Asset Resolution Company SPC, or "ARC", is a JTC Special Situations solution designed to address these challenges.

ARC is a segregated portfolio company that can receive and hold assets and may assist with the wind-down of the transferring entity. ARC has been used to hold assets including:

- Escrow funds;
- FIN 48 reserves;
- Disputed sums;
- Restricted securities;
- Long-dated commercial notes; and
- Illiquid or otherwise difficult-to-value private and publicly traded securities.

Assets may be contributed in kind, with shares or other interests in a dedicated segregated portfolio distributed to investors.

Subject to legal, regulatory, tax, valuation, investor and transferability considerations, ARC may provide a cost-effective structure through which certain residual assets can continue to be held, managed 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 or prime broker relationships.

The suitability of ARC, and the terms upon which any asset can be transferred, must be considered by reference to the circumstances of the relevant entity, asset, creditors and investors.

Cayman regulated entities

A regulated mutual fund or registered private fund must notify the Cayman Islands Monetary Authority, or "CIMA", within 21 days after it ceases, or formally resolves or decides to cease, carrying on business as a fund.

The relevant cessation date should be identified carefully from the fund's resolutions, decisions and liquidation arrangements. Failure to notify CIMA within the prescribed period may result in an administrative fine.

Notification of cessation does not, by itself, complete the cancellation process. The fund must also satisfy the cancellation requirements applicable to its fund type, circumstances and basis for cancellation.

A regulated fund will ordinarily need to address its outstanding audited financial statements, fund annual returns and other regulatory obligations before its licence or certificate of registration can be cancelled. This will ordinarily include the fund's applicable final audited financial statements, unless CIMA grants an audit exemption.

The fund will also generally need to be in good standing with CIMA and satisfy the applicable cancellation requirements, including addressing outstanding:

- CIMA fees;
- Audited financial statements;
- Fund annual returns;
- Regulatory filings;
- Regulatory queries; and
- Other conditions applicable to the cancellation.

The precise requirements will depend on whether the fund is a regulated mutual fund or registered private fund, the basis upon which cancellation is sought and the manner in which the fund is being wound down. CIMA maintains separate cancellation procedures for regulated mutual funds and registered private funds.

A fund may remain liable for applicable annual CIMA fees until its licence or certificate of registration has been cancelled. Operators should therefore begin preparations well in advance and allow sufficient time to complete the final audit or audit-exemption process, resolve outstanding regulatory matters and submit the applicable cancellation materials before year end where avoiding a further annual fee is an objective.

Filing an audit or a cancellation application shortly before year end should not be assumed to guarantee that cancellation will be completed before the next annual fee becomes payable.

CIMA audit exemptions

An audit exemption is not automatically available for a final stub accounting period.

The Mutual Funds Act and Private Funds Act ordinarily require regulated mutual funds and registered private funds respectively to have their accounts audited annually and to file the audited accounts with CIMA within six months of the relevant financial year end, subject to any extension or exemption granted by CIMA.

CIMA considers audit-exemption applications in accordance with the applicable legislation, regulatory policies and guidance.

Audit exemptions are discretionary and may be granted absolutely or subject to conditions. CIMA may require additional information, supporting documentation or reporting before determining an application.

The circumstances in which an exemption may be considered depend on the fund's particular position.

The appointment of a third-party liquidator, or the preparation of a liquidator's review or report, does not by itself guarantee that an exemption will be granted.

In appropriate circumstances, JTC Special Situations can assist with:

- Identifying the information required to support an exemption application;
- Coordinating with auditors, administrators and other service providers;
- Reviewing the period since the last audited financial year end;
- Preparing relevant supporting information and reports; and
- Coordinating the audit-exemption and regulatory cancellation processes.

Any exemption remains subject to CIMA approval.

A prescribed application fee may be payable and should be confirmed against CIMA's current fee schedule at the time of the application. CIMA's public fee guidance confirms that its fees are prescribed under the applicable Acts and Regulations and are subject to the current fee schedule.

Continuing compliance during a wind-down

A decision to wind down or liquidate a fund does not necessarily bring all regulatory and compliance obligations to an immediate end.

During the wind-down, the fund and its operators should continue to consider the obligations applicable to the entity, including:

- AML, CFT and CPF compliance;
- Financial sanctions and targeted financial sanctions;
- Investor and beneficial ownership information;
- FATCA and CRS classifications and reporting;
- Economic substance obligations;
- Books and records;
- Regulatory notices and filings; and
- The preservation of information required for audit, tax and liquidation purposes.

CIMA has issued Rules addressing effective AML, CFT and CPF compliance programmes and compliance with financial sanctions and targeted financial sanctions. The detailed application of those requirements depends on whether the entity and its activities fall within the relevant scope.

Operators should therefore review the fund's continuing compliance arrangements rather than assume that existing compliance appointments and services can be terminated immediately upon a decision to cease business.

Timing considerations

For Cayman Islands companies and partnerships approaching the end of their lifecycle, early planning is important.

The time required to complete a solvent voluntary liquidation will depend on factors including:

- The legal form and regulatory status of the entity;
- The complexity of its affairs;
- The completeness of its books and records;
- The status of its regulatory and statutory filings;
- The existence of illiquid or restricted assets;
- The timing of investor distributions;
- Outstanding liabilities or potential creditor claims;
- Ongoing disputes or litigation;
- Audit requirements;
- Tax and investor-reporting obligations; and
- The availability of the entity's directors, operators and service providers to approve and complete the required steps.

Based on our experience, a straightforward solvent voluntary liquidation may often be completed in approximately two months once the entity is ready to enter liquidation and all required information is available.

This is an indicative operational estimate rather than a statutory period or guaranteed completion timetable. Situations involving illiquid assets, litigation, regulatory matters, incomplete records, unresolved liabilities or outstanding investor distributions may take materially longer.

For regulated funds, additional time should be allowed for:

- The cessation notification to CIMA;
- Completion of the applicable final audit;
- Preparation and determination of an audit-exemption application, where appropriate;
- Completion of outstanding Fund Annual Returns and other filings;
- Resolution of regulatory queries;
- Satisfaction of CIMA's good-standing and cancellation requirements; and
- Processing of the cancellation application.

Early engagement allows the proposed timetable, likely costs, regulatory requirements and potential savings to be assessed before important deadlines arise.

Annual CIMA fees

All CIMA-regulated entities are required to pay applicable annual regulatory fees. CIMA's published fee guidance states that annual fees are payable by 15 January each year.

A fund seeking to avoid a further annual CIMA fee should not wait until the annual fee payment date to commence its cancellation process.

The time required to complete an audit, obtain an audit exemption, address outstanding filings and queries and complete CIMA's cancellation process should be considered well before year end. Submission of cancellation documents does not necessarily mean that cancellation has been completed or that a further annual fee will not arise.

Applicable CIMA fees and cancellation requirements should be checked against the current CIMA fee schedule, Rules and procedures when the wind-down timetable is being prepared.

Cayman Islands companies and partnerships

For Cayman Islands companies and exempted limited partnerships, careful planning may help minimise unnecessary future costs and administrative burdens.

Corporate liquidation, dissolution and the cancellation of a fund's regulatory status are separate processes. Where an entity is also a regulated fund, its CIMA cancellation requirements should be addressed as part of the wider wind-down plan and before the corporate dissolution is completed.

In the case of a solvent voluntary liquidation, the required resolutions, notices, meetings and filings must be completed in the prescribed sequence before the entity can be dissolved.

Under the Cayman Registrar's published policy for companies in liquidation, a company may avoid the relevant annual company fee where the filing confirming that the final general meeting has been held and the accounts laid and accepted is submitted on or before 31 January. A filing submitted on or after 1 February attracts the full relevant annual company fee. The notice of the final general meeting must also be filed within the applicable statutory period.

The position for exempted limited partnerships and other entity types should be considered separately by reference to the legal form of the entity and the current Registrar requirements.

The applicable annual fee treatment and filing requirements should always be confirmed against the Registrar's current policy and the circumstances of the particular entity before a completion date is agreed.

Accounting considerations

Groups seeking a particular accounting outcome before a reporting date should obtain accounting advice at an early stage.

Commencing or completing a liquidation does not by itself determine whether or when an entity is deconsolidated. The accounting treatment will depend on the applicable financial-reporting framework and the particular facts, including whether control continues at the relevant reporting date.

Other jurisdictions

We are also able to support wind-down and liquidation projects involving structures established in other jurisdictions, including the British Virgin Islands, 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 Nicola Cowan, Trudy-Ann Scott or Sarah McGraynor for further information and tailored assistance.

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