



# Voluntary Liquidation & Striking Off of a Company

**HIGGS & JOHNSON**  
Counsel & Attorneys-at-Law



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# Preface

The Companies Law of the Cayman Islands (“the Law”) offers three options for voluntarily “shutting down” a company and removing it from the Register of Companies, namely:

- a members' voluntary liquidation,
- striking off upon request, and
- striking off without consent.

Each has certain advantages and disadvantages, as set out below. This guide does not address an involuntary liquidation or a liquidation under the supervision of the court.

### MEMBERS' VOLUNTARY LIQUIDATION

A company may commence voluntary winding up by passing a special resolution to commence such. A voluntary winding up is a more secure method of terminating the life of a solvent company because the members/ creditors cannot bring any post liquidation claims against the company. The company will need to appoint a liquidator and any person, director or officer of the company may act as liquidator.

A voluntary liquidation will take a minimum of five months to complete as a result of the various notice requirements and the fact that the company is only deemed to be dissolved three months after the Registrar receives notice that the final meeting has been held. Each case will depend on its own facts and some voluntary liquidations will take considerably longer than five months to complete.

The cost of a members' voluntary liquidation is dependent upon the complexity of the liquidation and, in particular, the type of business the company has been undertaking, the services required by the liquidator and the position with regard to the debtors and creditors (if any) of the company. Liquidators fees are likely to start at approximately US\$2,000 and will increase according to the complexity of the matter. If there are no assets or liabilities, and the matter is uncomplicated, legal fees might be in the region of US\$3,000 – 5,000, plus disbursements. Legal fees will increase according to the complexity of the matter.

Please note that all costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

For your reference we attach hereto an outline of the general steps of a voluntary liquidation.

### STRIKING OFF – UPON REQUEST

The strike-off method is best suited to a company that is inactive with no assets, no liabilities, and no creditors. Upon request on behalf of the company, the Registrar of Companies has the power to strike off a company from the Register where the Registrar has reasonable cause to believe that the company is not carrying on business or is not in operation. Upon striking off the company is dissolved. The Registrar will require a resolution of the company requesting same, and an affidavit of a director confirming that the company has no assets or liabilities.

It is important to note that striking off the company does not affect the liability (if any) of any director, manager,

officer or member of the company, and such liability shall continue and may be enforced as if the company had not been dissolved. If any member or creditor of the company feels aggrieved at such a dissolution, they may make an application to the court for the company to be reinstated. The time period allowed for such an application is generally two years, but may extend to a maximum of ten years if the Governor in Council allows.

In order to reinstate the company, it must be shown that the company was in operation at the time of the striking off, or the Court must deem it just that the company be reinstated. Upon reinstatement the company must pay a reinstatement fee equivalent to the original incorporation or registration fee. In addition, the court has the discretion, either upon reinstatement or subsequently, to award damages to any person, in order to place them in the position they would have been in if the company had never been struck off. The application to the Court can be made on paper and if there are no problems, will be granted by the Clerk of the Court without the need for a Court hearing.

Please note that, as with item 3 below the liabilities and responsibilities of the directors continue (in some circumstances the directors can become personally responsible for certain liabilities of the company). Additionally, any assets held by the company will automatically vest with the Financial Secretary for the benefit of the Cayman Islands.

The Registrar sometimes acts quickly on such applications, but at other times the procedure may take several months. Legal fees will be in the region of US\$1500.00 plus disbursements, although outstanding annual fees (if any) may also be required to be paid depending on the circumstances of the application.

### STRIKING OFF - WITHOUT CONSENT

A final option is to simply discontinue paying the annual fees and allow the company to lapse. When a company fails to pay its annual fees, the Registrar will eventually take action and strike it from the Register. He will usually give a delinquent company ample opportunity to pay its outstanding fees before striking it from the record, such that several years may pass before the company is finally struck off. If the company holds any assets when it is struck from the Register those assets automatically vest with the Financial Secretary for the benefit of the Cayman Islands.

The liability of the members, directors, officers and managers continues as described above, and in addition, such a company's directors, officers and managers will

become known to the Registrar as delinquent, and that may affect future decisions by the Registrar in connection with those individuals.

**CONCLUSION**

The three methods described for removing a company from the Register vary in cost, procedure and time required. While the shorter, less expensive methods might seem attractive, it must be remembered that the liability of the individuals connected to such a company continues after the company is struck from the Register.

Although the voluntary liquidation procedure takes several months or even years to accomplish, the directors, officers, managers and members of the company have the extra comfort that (in the absence of fraud) all liabilities of the company are extinguished on final dissolution and the company cannot be resurrected.

In each case a Certificate of Dissolution or Strike-Off may be obtained from the Registrar at a cost of approximately US\$122.00.