Guernsey Companies: Voluntary Strike Off and Voluntary Winding Up

Key considerations

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2025

Introduction

This guidance note outlines two procedures available for the elimination of Guernsey companies; being the voluntary winding up procedure in accordance with Part XXII of the Companies (Guernsey) Law, 2008 (as amended) (the "Law") and the voluntary striking off procedure in accordance with Part XX of the Law.

Voluntary winding up

A Guernsey company can be voluntarily wound up through a special resolution passed by at least 75% of its shareholders.

Voluntary strike off

The board of directors of a Guernsey company can apply to the Registrar, to strike off the company from the Register of Companies.

Voluntary winding up: Pros and Cons

Pros

- **Orderly Process:** Liquidation provides a structured process for winding up a company's affairs, ensuring that all creditors (actual or contingent) are notified, debts are settled and assets are distributed according to legal priorities
- **Creditor Protection:** Creditors are given priority in the distribution of assets, which protects their interests
- **Transparency and Independence:** The process involves detailed reporting, which increases transparency. In many cases an independent liquidator will be appointed, who will conduct a thorough review of the company's affairs, thereby giving additional comfort to stakeholders
- **Increased Flexibility:** There is no requirement for the company to have ceased trading three months prior to the winding up and therefore this procedure will be more appropriate for many companies

Cons

- **Cost:** Liquidation is typically more expensive than the striking off process due to legal and administrative fees
- **Time-Consuming:** The process can be lengthy, especially if the company has complex affairs, however liquidation ensures that such complex matters are thoroughly considered and resolved prior to the company's dissolution

Voluntary strike off: Pros and Cons

Pros

- **Cost-Effective**: Voluntary strike off is generally cheaper than liquidation as it involves fewer regulatory and administrative costs. However, its use should be carefully considered depending on the activity and complexity of the company's affairs. It is deemed most appropriate for dormant companies
- **Quick Process:** if the application is successful, the Registrar will give notice and the company will be dissolved after the expiration of a 2-month period, assuming there are no objections during the notice period
- **Simplicity:** It is a straightforward method for dissolving a company that has ceased trading and has no outstanding debts

Cons

- **Limited Use:** An application cannot be made for strike off if the company has traded, disposed of property or rights, or changed its name in the preceding 3 months, which therefore limits its use
- **Potential for Rejection:** If there are outstanding tax liabilities or the company is not in good standing, the strike off application can be rejected by the Registrar
- **Less Formality:** The process lacks formality, independent oversight and the transparency of liquidation, which may be a concern for stakeholders
- **Reinstatement**: If proper care and attention is not taken to ensure that all matters (financial, taxation, regulatory and administrative) are attended to prior to strike off, the company may be required to be reinstated, which is both costly and time consuming
- **Director Offenses:** A director who makes a declaration of compliance which is false, misleading or deceptive is guilty of an offense

Key considerations for Directors

Personal liability

Directors can be held personally liable if they fail to fulfil their duties, such as ensuring the company complies with legal requirements during the winding up or striking off process. This includes liabilities that continue even after the company is dissolved.

Fiduciary Duties

Directors have a fiduciary duty to act in the best interests of the company and, by virtue, its shareholders. Breaching these duties can result in legal action against them.

Regulatory Compliance

If the company is regulated, Directors must ensure that the company complies with all regulatory requirements. Failure to do so can lead to penalties and damage to their professional reputation.

Creditor Claims

Directors must act in the interests of creditors, particularly in the event of insolvency. If they fail to do so, they may face claims from creditors for wrongful trading or misfeasance.

Reputational Risk

Any mismanagement or failure to comply with legal and regulatory requirements can harm the directors' reputations, affecting their professional standing.

Court Actions

Any mismanagement or failure to comply with legal and regulatory requirements can harm the directors' reputations, affecting their professional standing.

If the company is restored to the Register of Companies, directors may be required to address any outstanding issues or liabilities that existed prior to the striking off.

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“KPMG in the Crown Dependencies has over 20 years of experience providing a full suite of restructuring services to clients in Jersey, Guernsey, and Isle of Man.”

Russell Kelly, Head of Advisory

Guernsey company: Voluntary winding up

Special Resolution

A Guernsey company can be voluntarily wound up through a special resolution passed by at least 75% of its shareholders. This resolution must be filed with the Guernsey Companies Registry within 30 days. The Registrar will then publish a notice on its website. If the company is a “supervised company” by the Guernsey Financial Services Commission (“GFSC”), a copy of the resolution must also be sent to the GFSC within the same 30-day period.

Cease operations and appointment of liquidator

Once the voluntary winding up commences, the company must cease its business operations, except as necessary for the winding up process. The company must appoint a liquidator by an ordinary resolution (passed by a majority of 50%) to manage the winding up and the shareholders must also determine the liquidator's remuneration. This can be included in the same special resolution to wind up the company. If the company meets the statutory solvency test, the directors must declare the solvency. If not, they proceed with an insolvent voluntary winding up.

Guernsey company: Voluntary winding up

Liquidator’s fees and role

The costs and expenses of the winding up, including the liquidator's fees, are paid from the company's assets in priority of any other claims. Upon the liquidator's appointment, the directors' powers cease unless continued by an ordinary resolution or the liquidator's approval.

The liquidator's role is to realise the company's assets, settle its liabilities, and distribute any surplus to the shareholders according to their entitlements. If the winding up is not completed within a year, the liquidator must call a general meeting annually to present an account of their actions.

Conclusion of the liquidation

Once the company's affairs are fully wound up, the liquidator prepares a final account detailing the liquidation process and asset disposal. A general meeting is then called to present this account, and the members may release the liquidator from their duties.

After this meeting, the liquidator notifies the Guernsey Registrar of Companies of the final meeting and its date. The Registrar then publishes a notice stating that the company will be dissolved. Three months after the notice is delivered, the company is officially dissolved.

Guernsey company: Voluntary winding up

Bona Vacantia

Any remaining property or rights of the dissolved company pass bona vacantia to the Crown. There is an option to apply to the Guernsey courts to restore the company to the Register of Companies within certain time limits and conditions.

Guernsey company: Voluntary strike off

Strike off application

- The directors of a Guernsey company can apply to the Registrar to strike off the company from the Register of Companies
- The application must be made by the board of directors and include a declaration of compliance with all Guernsey legal requirements, along with any additional information the Registrar may request

Registrar notice

- Upon receiving the application, the Registrar will issue a notice stating that the company will be struck off and dissolved after two months unless an objection is raised. Within seven days of the application, copies must be served by the directors to all shareholders, employees, creditors, directors, managers, and trustees of any employee pension funds
- If the company is regulated, a copy must also be sent to the Guernsey Financial Services Commission ("GFSC") within the same timeframe
- If no objections are raised within the two-month period, the company will be struck off and dissolved. However, an application for voluntary striking off cannot be made if, within the previous three months, the company has changed its name, conducted business, disposed of property or rights for value, or engaged in activities other than those necessary for the striking off application, concluding its affairs, or complying with legal requirements

Guernsey Company: Voluntary strike off

Liabilities and strike off

- A company is not considered to be trading merely by making payments for liabilities incurred during business operations
- An application for strike off cannot be made if the company has outstanding liabilities, is involved in ongoing proceedings, or if insolvency-related proceedings are unresolved
- Even after being struck off, the liabilities of the company's officers and shareholders remain enforceable
- The court retains the authority to wind up the company, and any property or rights held by the company become bona vacantia, belonging to the Crown

Restoration of a company

- There is a provision to restore a company to the Register of Companies within specific time limits and under certain conditions

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