

Solvent liquidations of funds in the British Virgin Islands

Insights - 12/01/2011

Solvent liquidations of funds in the British Virgin Islands

Introduction

As a regulated entity, the statutory considerations relevant to the solvent liquidation of a fund domiciled and regulated in the British Virgin Islands (“BVI”) are, as might be expected, more stringent than those applying to unregulated entities domiciled in the BVI.

This note deals with solvent liquidations of BVI funds (being private, professional or public funds licensed under the Mutual Funds Act, 1996). Close-ended funds, which are not regulated in the BVI, will not be subject to these statutory considerations. Similarly, insolvent liquidations are subject to different considerations under Insolvency Act, 2003.

Whilst BVI companies are free to choose any person to act as their liquidator in the event of a solvent liquidation under the BVI Business Companies Act, 2004 (“BCA”), provided that the liquidator is an “eligible individual” (an eligible person essentially being a real person who is not connected to the company, ie not a director), under Section 200(3) of the BCA a resolution by the directors or members of a “regulated person” can not be passed unless the Financial Services Commission (the “FSC”) has:

-
-

Section 200(4) goes on to provide that any resolution passed in contravention of sub-section (3) and any appointment of a liquidator who has not been approved by the FSC under sub-section (3)(b) is void and of no effect.

For these purposes, a “regulated person” has the meaning specified in the Insolvency Act, 2003 and will include all funds licensed by the FSC under the Mutual Funds Act, 1996 .

Historically, BVI funds commencing a solvent liquidation under the BCA would deal with their obligations under Section 200(3) of the BCA within the same letter of application to the FSC signed by the directors of the fund to request the cancellation of their license. Additionally, whilst there are no comparable provisions in the Partnership Act, 1996, BVI funds set up as limited partnerships would, by convention, similarly follow the same process with the FSC.

Significantly for BVI funds, the FSC published a guidance note on 8 April 2008, which formalises the steps required to be followed on solvent liquidation. The FSC notes in this guidance note that its content is expected to be complied with fully.

The guidance note provides as follows as it relates to the approval of solvent liquidations:

-
-
-

a) holds an insolvency practitioner’s license issued by the FSC;

b) has an appropriate professional qualification and experience of providing legal or financial advice to companies in the relevant financial sector;

c) has experience in liquidating companies in the relevant financial sector; or

d) is an eligible liquidator pursuant to the regulations made under Section 240 of the BCA, in circumstances where he or she is a director of the company in respect of which he or she is to serve as liquidator; and

e) the liquidator is fully conversant with relevant financial services legislation, including industry specific legislation (i.e. the Mutual Funds Act, 1996) and the BCA.

For these purposes “good regulatory standing” means that:

-

-
-

In demonstrating solvency, the FSC expects to receive the most recent audited financial statements and unaudited statements subsequent to the audited financial statements for the period up to the date on which the board of directors resolves to apply to liquidate the regulated person. For professional or private funds, this includes the most recent unaudited statements of assets and liabilities

These statements and information are typically provided by the directors via its BVI legal counsel with the letter of application to the FSC mentioned above.

The guidance note goes on to provide that the FSC approval of the liquidation and the liquidator will usually be conditional upon the regulated person or liquidator providing it with copies of the following:

-
-
-
-
-
-
-
-

This information is usually provided to the FSC by the liquidator and/ or the company's BVI legal counsel following the commencement of the liquidation and the publishing of the relevant notices.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Simon Schilder

Partner

British Virgin Islands

E: simon.schilder@ogier.com

T: [+44 1534 514298](tel:+441534514298)

Key Contacts



Nicholas Plowman □□□

Partner □□□

Hong Kong

E: nicholas.plowman@ogier.com

T: [+852 3656 6014](tel:+85236566014)



Nathan Powell

Partner □□□

Hong Kong

E: nathan.powell@ogier.com

T: +852 3656 6054



Simon Dinning

Partner

Jersey

London

E: simon.dinning@ogier.com

T: +44 1534 514251

Related Services

Corporate

Related Sectors

Restructuring and Insolvency