

CAYMAN ISLANDS



Supplement No. 3 published with Gazette No. 04
dated 25 February, 2013.

**THE COMPANIES LAW (2012 REVISION)
COMPANIES WINDING UP (AMENDMENT) RULES, 2013**

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These Rules are made by the Insolvency Rules Committee pursuant to Section 155 of the Companies Law (2012 Revision)

1. Citation, Commencement and Interpretation

- (1) These Rules shall be cited as the Companies Winding Up (Amendment) Rules 2013.
- (2) These Rules shall come in operation on the 1st day of March 2013.
- (3) Words and expressions used in these Rules which are also used in the Companies Winding Up Rules 2008 (referred to as "the principal rules") shall have the same meaning in these Rules as in the principal rules.

2. Amendment of Order Numbers 3, 8, 9, 11, 15, 19 and 25

Orders 3, 8, 9, 11, 15, 19 and 25 of the principal rules are hereby revoked and replaced by the new Orders 3, 8, 9, 11, 15, 19 and 25 contained in Part I of the Schedule to these Rules.

3. Amendment of Forms

Forms No.3, No.5, No.21 and No.22 of the principal rules are hereby revoked and replaced by the new Forms No.3, No.5, No.21 and No.22 contained in Part II of the Schedule to these Rules.

MADE by the Insolvency Rules Committee on the 21st day of January 2013

The Honourable Andrew Jones QC, Judge

The Honourable Sam Bulgin QC, Attorney General

Graham Ritchie QC, Legal Practitioner

Colin McKie, Legal Practitioner

David Walker CA, Qualified Insolvency Practitioner

Jude Scott CPA

SCHEDULE
Part I – Amended Orders

ORDER 3

WINDING-UP PETITIONS AND ORDERS

PART I: GENERAL PROVISIONS

Presentation and Filing of Petition (O.3, r.1)

1. (1) A winding up petition shall be presented by filing it in Court in accordance with GCR Order 9.
- (2) The petitioner shall pay the filing fee prescribed in the First Schedule of the Court Fees Rules.

Form and Content of Petition (O.3, r.2)

2. (1) Subject to any directions given under Rule 12(1)(a) and (b), every winding up petition shall be in CWR Form No.2.
- (2) Every winding up petition shall contain:-
 - (a) particulars of the company's incorporation;
 - (b) a description of the company's business, including a statement about the countries in which it carries on its business;
 - (c) if the company is a foreign company, particulars of the matters contained in section 91(d) of the Law;
 - (d) a concise statement of the grounds upon which the winding up order is sought; and
 - (e) the name and address of the qualified insolvency practitioner (and any foreign practitioner) whom the petitioner nominates for appointment as official liquidator.
- (3) A winding up petition that has been served may be amended only with the leave of the Court.

Verification of Petition (O.3, r.3)

3. (1) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.
- (2) A creditors' petition in respect of debts due to two or more different creditors must be separately verified by or on behalf of each creditor.
- (3) The verifying affidavit shall be sworn by :-

- (a) the petitioner; or
- (b) a director, officer or agent of the petitioner who has been concerned in and has personal knowledge of the matters giving rise to the petition.

Nominated Official Liquidator's Consent to Act (O.3, r.4)

- 4.** (1) Every petition shall be supported by an affidavit sworn by the person or persons nominated for appointment as official liquidator stating that :-
- (a) he is a qualified insolvency practitioner and meets the residency requirement contained in Regulation 5;
 - (b) having made due enquiry, he believes that he and his firm meet the independence requirement contained in Regulation 6;
 - (c) he and/or his firm are in compliance with the insurance requirement contained in Regulation 7; and
 - (d) he is willing to act as official liquidator if so appointed by the Court.
- (2) If the petition seeks an order for the appointment of a qualified insolvency practitioner jointly with a foreign practitioner, it shall be supported by an affidavit sworn by the foreign practitioner stating :-
- (a) his professional qualifications;
 - (b) the country in which he is qualified to perform functions equivalent to those performed by official liquidators under the Law or by trustees under the Bankruptcy Law (1997 Revision);
 - (c) his professional experience;
 - (d) he will have the benefit of professional indemnity insurance in respect of his acts and omissions done in his capacity as an official liquidator of the company meeting the requirements of Regulation 7;
 - (e) if he has been appointed by a foreign court or authority as a liquidator, trustee, receiver or administrator of the company or a related party of the company, full particulars of such appointment; and
 - (f) that, having made due enquiry, he and his firm meet independence requirement contained in Regulation 6.

PART II: CREDITOR'S PETITION

Presentation and Service of Creditor's Petition (O.3, r.5)

- 5.** (1) Prior to presenting a creditor's petition, the petitioner's attorney must apply in writing (by letter or e-mail) to the Registrar to have the proceeding assigned to a Judge and to fix a hearing date.
- (2) A creditor's petition shall not be filed unless and until the proceeding has been assigned to a Judge and a hearing date has been fixed and endorsed on the petition or stated in a notice of hearing filed simultaneously with the petition.

- (3) Every creditor's petition, together with the verifying and supporting affidavits and notice of hearing (if the hearing date is not endorsed upon the petition itself), shall be served upon the company by delivering them to the company's registered office immediately after the petition has been presented.
- (4) In the event that the company is carrying on a regulated business, copies of the petition and affidavits shall also be served upon the Authority immediately after the petition has been presented.
- (5) An affidavit of service shall be filed within 7 days of the presentation of every creditor's petition.

Advertisement of Creditor's Petition (O.3, r.6)

- 6. (1) Unless the Court otherwise directs, every creditor's petition shall be advertised once in a newspaper having a circulation in the Islands.
- (2) In addition, unless the Court otherwise directs, if the company is carrying on business outside the Islands, every creditor's petition shall be advertised once in a newspaper having a circulation in the country or countries in which it is most likely to come to the attention of the company's creditors, in which case the advertisement must be published in the official language of such country.
- (3) The advertisements shall be made to appear not less than 7 business days after service of the petition upon the company and not less than 7 business days before the hearing date.
- (4) An advertisement published in accordance with this Rule shall be in CWR Form No. 3 and shall contain –
 - (a) the title of the petition, including the name of the company;
 - (b) the registered office of the company;
 - (c) the name, address and other contact details of the petitioner and the petitioner's attorneys;
 - (d) the name and address of the qualified insolvency practitioner(s) and any foreign practitioner nominated for appointment as official liquidators;
 - (e) the hearing date;
 - (f) a statement that copies of the petition and affidavits may be obtained, free of charge, from the petitioner's attorneys; and
 - (g) a statement that any creditor intending to appear and be heard on the petition shall give 3 day's notice to the petitioner's attorneys.

Leave for Petition to be Withdrawn (O.3, r.7)

- 7. (1) An application for leave to withdraw a creditor's petition may be made by *ex parte* summons.
- (2) The Court shall grant leave for a creditor's petition to be withdrawn on such terms as have been agreed between the petitioner and the company if it is satisfied that –

- (a) the petition has not been advertised;
 - (b) no notice of intention to appear and be heard on the petition (whether in support or opposition) has been received from any creditor; and
 - (c) the company consents to an order being made under this Rule.
- (3) If a creditor's petition has been advertised, any application for leave to withdraw the petition must be made at the advertised hearing and in any such case the Court will consider making an order for substitution in accordance with Rule 10.

Notice of Appearance (O.3, r.8)

8. (1) Every person who intends to appear and be heard on the hearing of a petition shall give 3 day's notice of his intention to the petitioner's attorneys.
- (2) The notice shall be in CWR Form No. 4 and shall specify –
- (a) the name, address and other contact details of the person giving notice and his attorneys;
 - (b) whether he intends to support or oppose the petition;
 - (c) the amount and nature of his debt; and
 - (d) in the event that a winding up order is made, whether he intends to support or oppose the appointment as official liquidator of the person(s) nominated by the petitioner.
- (3) If a creditor intends to oppose the appointment of the petitioner's nominee, he must –
- (a) nominate an alternative qualified insolvency practitioner who is willing to act as official liquidator if so appointed by the Court;
 - (b) file a supporting affidavit in accordance with Rule 4; and
 - (c) serve his notice of appearance and supporting affidavit upon –
 - (i) the company;
 - (ii) the petitioner's attorneys; and
 - (iii) in the event that the company is carrying on a regulated business, the Authority,
 not less than 3 days before the hearing date.
- (4) If a creditor's petition is presented against a company which is licensed to carry on a regulated business, the Authority may appear and be heard provided that it has given 3 day's notice of its intention to appear to the company and to the petitioner's attorneys.
- (5) The Authority's notice of appearance under this Rule shall specify –
- (a) what, if any, regulatory action has been taken by the Authority against the company;
 - (b) whether it supports or opposes the petition;

- (c) in the event that a winding up order is made, whether it intends to support or oppose the appointment as official liquidator of the person(s) nominated by the petitioner.

Evidence in Opposition to Petition (O.3, r.9)

- 9. (1) If the company intends to oppose the petition, its affidavit in opposition must be filed and served upon the petitioner within 14 days from the date upon which the petition was served upon the company.
- (2) The petitioner may serve a notice, at least 3 days prior to the hearing date, requiring that any deponent attend the hearing for cross-examination.

Substitution of Petitioner (O.3, r.10)

- 10. (1) This Rule applies where a creditor petitions and is subsequently found not to have been entitled to do so or where the petitioner –
 - (a) fails to advertise his petition;
 - (b) consents to his petition being withdrawn;
 - (c) fails to appear on the hearing of his petition;
 - (d) allows his petition to be adjourned or dismissed; or
 - (e) appears, but does not apply for an order in terms of the prayer of his petition.
- (2) The Court may, on such terms as it thinks just, substitute as petitioner any creditor who in its opinion would have a right to present a petition and who is desirous of doing so.

PART III: CONTRIBUTORY'S PETITION

Presentation and Service of a Contributory's Petition (O.3, r.11)

- 11. (1) Upon the presentation of a contributory's petition, the petitioner must at the same time issue a summons for directions in respect of the matters contained in Rule 12.
- (2) Prior to presenting a contributory's petition and issuing the summons for directions in respect of it, the petitioner's attorney must apply in writing (by letter or e-mail) to the Registrar to have the proceeding assigned to a Judge and to fix a date for hearing the summons for directions.
- (3) Every contributory's petition and the summons for directions relating to it shall be served immediately after having been presented/issued upon –
 - (a) the company, by delivering it to the company's registered office; and
 - (b) every member of the company whom the petitioner has named or intends to name as a respondent to the petition.

Summons for Directions (O.3, r.12)

- 12.** (1) Upon hearing the summons for directions, the Court shall give such directions as it thinks appropriate in respect of the followings matters –
- (a) whether or not the company is properly able to participate in the proceeding or should be treated merely as the subject-matter of the proceeding;
 - (b) whether the proceeding should be treated as a proceeding against the company or as an *inter partes* proceeding between one or more members of the company as petitioners and the other member or members of the company as respondents;
 - (c) service of the petition upon persons other than the company (as may be appropriate having regard to the directions give under paragraphs (a) and (b) of this Rule);
 - (d) whether, and if so by what means, the petition is to be advertised;
 - (e) whether the petitioner should serve any further particulars of his claim;
 - (f) service of a defence by the company or the respondents (as may be appropriate in the light of the directions given under paragraphs (a) and (b) of this Rule);
 - (g) the manner in which evidence is to be given;
 - (h) if evidence is directed to be given by affidavit, directions relating to cross-examination of the deponents;
 - (i) discovery and inspection of documents;
 - (j) oral discovery; and
 - (k) such other procedural matters as the Court thinks fit.
- (2) A summons for directions under this Rule shall be in CWR Form No. 5.

Hearing of Contributory's Petition (O.3, r.13)

- 13.** (1) An order fixing a date for the trial of a contributory's petition may be made upon the hearing of the summons for directions.
- (2) If it is not appropriate for the Court to fix a trial date upon hearing the summons for directions, the petitioner shall apply subsequently to the Registrar.

PART IV: AUTHORITY'S PETITION

Service of Authority's Petition (O.3, r.14)

- 14.** (1) Prior to presenting a petition, the Authority's attorney must apply in writing (by letter or e-mail) to the Registrar to have the proceeding assigned to a Judge and to fix a date for hearing the summons for directions.
- (2) Every petition presented by the Authority, together with the verifying and supporting affidavits and summons for directions, shall be served upon the company by

delivering them to its registered office immediately after the petition has been presented.

- (3) An affidavit of service shall be filed within 7 days of the presentation of every Authority's petition.

Summons for Directions (O.3, r.15)

- 15.** (1) Upon the presentation of a petition by the Authority, the Authority must at the same time issue a summons for directions in respect of the matters contained in this Rule.
- (2) Upon hearing the summons for directions, the Court shall either –
 - (a) make a winding up order, if the Court is satisfied that the company consents or does not object to an order being made; or
 - (b) fix a hearing date and make such directions as the Court thinks appropriate in respect of the following matters –
 - (i) whether the petition should be served upon the company's members, directors or professional service providers;
 - (ii) the manner in which evidence is to be given;
 - (iii) if evidence is to be given by affidavit, directions relating to cross-examination of the deponents;
 - (iv) if the Authority has appointed a controller, whether such controller should produce any documents belonging to the company or attend for cross-examination on his report or prepare any further report; and
 - (v) such other procedural matters as the Court thinks fit.
- (3) A petition presented by the Authority shall not be advertised unless the Court otherwise directs.

Hearing of Authority's Petition (O.3, r.16)

- 16.** (1) Unless a winding up order is made pursuant to Rule 15(2)(a), the hearing of every petition presented by the Authority shall take place in open court.
- (2) Any member, director or professional service provider of the company may appear and be heard on the petition, whether or not the Court has directed that such person be served.
- (3) Every member, director or professional service provider of the company who intends to appear and be heard on the hearing of the petition shall give 3 day's notice of his intention to the Authority's attorneys.
- (4) No other person may appear and be heard without the leave of the Court.

PART V: WINDING UP ORDERS

Form and Content of Winding Up Orders (O.3, r.17)

- 17.**
- (1) Every winding up order shall be in CWR Form No. 6.
 - (2) Every winding up order shall state the full name, address and contact details of the official liquidator.
 - (3) Every winding up order shall state which of the powers contained in Part I of Schedule 3 of the Law (if any) are given to the official liquidator.

Filing, Service and Registration of Winding Up Orders (O.3, r.18)

- 18.**
- (1) Every winding up order shall be drawn up and filed in accordance with GCR Order 42, rule 5.
 - (2) The petitioner shall be responsible for ensuring that the winding up order is drawn up and filed immediately after the hearing.
 - (3) The petitioner shall serve copies of the winding up order upon –
 - (a) the company at its registered office;
 - (b) every person who appeared and was heard at the hearing;
 - (c) the official liquidator; and
 - (d) the Authority, if the company is or was licensed to carry on a regulated business,within 2 business days after the order is made.
 - (4) The official liquidator shall within 7 business days after the order is made–
 - (a) file the order with the Registrar of Companies;
 - (b) send notice of the order to the Government Information Service for publication in the next edition of the Gazette; and
 - (c) send copies of the order to every person who appears to him to have been a director or professional service provider of the company at the time the winding up petition was presented.
 - (5) When a winding up order is made in respect of a foreign company, the official liquidator shall also send copies of the order to –
 - (a) the foreign authority responsible for its incorporation;
 - (b) any foreign court or authority which has made an order that the company or any branch thereof be reorganised or liquidated or wound up; and
 - (c) any person or authority who is performing functions in respect of the company in any foreign country equivalent to those performed by an official liquidator.

ORDER 8

MEETINGS OF CREDITORS AND CONTRIBUTORIES

Meetings Convened by Official Liquidator (O.8, r.1)

1. (1) For the purpose of convening meetings and establishing a liquidation committee, the official liquidator shall summarily determine whether, in his opinion, the company should be regarded as being –
 - (a) solvent;
 - (b) insolvent; or
 - (c) of doubtful solvency,and the official liquidator's determination shall be final and binding upon the company's creditors and contributories for the purposes of this Order and Order 9 unless and until it is changed by the official liquidator in accordance with this Rule.
- (2) If and when the official liquidator considers that his initial determination about the company's solvency may no longer be justified, he shall re-consider the matter and may change his determination if he considers that it is appropriate to do so and his changed determination shall also be final and binding upon the company's creditors and contributories for the purposes of this Order and Order 9.
- (3) The official liquidator's initial determination under this Rule shall be certified in CWR Form No. 13 and filed in Court within 28 days of the date on which the winding up order is made and any subsequent change in his determination shall be certified in CWR Form No. 14 and filed in Court immediately after it is made.
- (4) If, and so long as the official liquidator determines that the company should be regarded as insolvent, he shall convene meetings of its creditors only.
- (5) If, and so long as the official liquidator determines that the company is solvent, he shall convene meetings of its contributories only.
- (6) If, and so long as the official liquidator determines that the company is of doubtful solvency, he shall convene meetings of both creditors and contributories and such meetings shall be held on the same day, either concurrently or consecutively.
- (7) A meeting is deemed to have been convened on the day upon which the official liquidator gives notice of it and it shall not be invalidated if, for whatever reason, the official liquidator inadvertently fails to give notice to any creditor or contributory.
- (8) References in this Order to –
 - (a) "a meeting or meetings" shall mean a creditors' meeting or a contributories' meeting or both, depending upon the determination made by the company's official liquidator in accordance with this Rule;
 - (b) "a creditors' meeting" shall mean a meeting of creditors convened when the official liquidator has certified that, in his opinion, the company should be regarded as insolvent; and

- (c) "a contributories' meeting" shall mean a meeting of contributories convened when the official liquidator has certified that, in his opinion, the company should be regarded as solvent.

First Meeting and Subsequent Meetings (O.8, r.2)

- 2. (1) Unless the Court otherwise directs, the official liquidator shall convene a first meeting within 28 days of the date upon which the winding up order is made.
- (2) The first meeting shall be convened for the purpose of electing a liquidation committee and dealing with such other matters or resolutions as the official liquidator thinks fit or the Court may direct.
- (3) Thereafter, the official liquidator shall convene meetings whenever –
 - (a) he considers that it is appropriate to do so; or
 - (b) the Court directs him to do so; or
 - (c) he receives a valid requisition under Rule 3; and
 - (d) in any event, not less than once a year.

Requisitioned Meetings (O.8, r.3)

- 3. (1) A creditors' meeting may be requisitioned by any one or more creditors whose debts are valued in total at \$500,000 or 5% of the company's total unsecured liabilities, whichever is the lesser.
- (2) A contributories' meeting may be requisitioned by one or more contributories who together are entitled to cast at least 5% of the votes capable of being cast at a contributories' meeting.
- (3) A requisition must be made in writing, signed by each of the requisitionists, and must specify the full terms of each resolution intended to be put to the meeting.
- (4) A requisition must be delivered to the official liquidator.
- (5) If the official liquidator is satisfied that the requisitionists are entitled to requisition a meeting in accordance with this Rule, he shall convene the meeting within 21 days of the date upon which the requisition was received.
- (6) If a meeting is requisitioned (whether by creditors or contributories) in respect of a company at a time when the official liquidator has determined it to be of doubtful solvency, he shall convene meetings of both creditors and contributories to be held on the same day, either concurrently or consecutively.

Notice and Advertisement of Meetings (O.8, r.4)

- 4. (1) Notice of a creditors' meeting shall be given to –
 - (a) every person who appears to the official liquidator to be a creditor; and
 - (b) every person who has submitted a proof of debt which has not been rejected.
- (2) Notice of a contributories' meeting shall be given to –

- (a) every person who appears to the official liquidator to be a contributory; and
 - (b) every person recorded as a member in the company's register of members.
- (3) In addition to giving notice in accordance with Rule 4(1), a creditors' meeting shall be advertised –
 - (a) on any website established by the official liquidator; and/or
 - (b) in one or more newspapers having circulations in a country or countries in which the company appears most likely to have creditors and any such advertisement shall be published at least 14 days prior to the date of the creditors' meeting.
- (4) The official liquidator shall give 21 day's notice of a creditors' meeting and such notice may be –
 - (a) sent by pre-paid post; or
 - (b) transmitted by facsimile or e-mail.
- (5) The official liquidator shall give notice of a contributories' meeting in whatever manner may be required or authorised by the company's articles of association.
- (6) The official liquidator may dispense with notice of a creditors' meeting with the unanimous consent of the creditors.

Venue (O.8, r.5)

- 5.
 - (1) Meetings convened under this Order may be held at the official liquidator's office or at any other convenient place, either in the Islands or any other country.
 - (2) A meeting may take the form of a telephone conference call in which case –
 - (a) all notices and advertisements of the meeting must specify the dial in number and codes or provide a contact number and e-mail address to which creditors or contributories may apply to obtain the dial-in number and codes; and
 - (b) any person intending to participate in the meeting must send written notice of his intention to do so to the official liquidator at least 3 days prior to the date of the meeting unless the official liquidator agrees to dispense with notice.

Proceedings at Meetings (O.8, r.6)

- 6.
 - (1) The chairman of the meeting shall be –
 - (a) the official liquidator;
 - (b) a qualified insolvency practitioner or other person who is authorised to act on his behalf; or
 - (c) an attorney-at-law instructed by the official liquidator to act on his behalf.
 - (2) The chairman may adjourn the meeting to such time and place as seems to him to be appropriate in the circumstances.
 - (3) The chairman may suspend a meeting from time to time for periods not exceeding two hours.

- (4) The official liquidator shall be responsible for taking the minutes of the meeting.
- (5) A meeting is not competent to act in the absence of a quorum for any purpose except for the purpose of being adjourned or suspended.
- (6) The quorum for a creditors' meeting is at least 3 creditors or all of the creditors if there are less than 3 in number.
- (7) The quorum for a contributories' meeting is whatever number is specified in the company's articles of association as the quorum for a general meeting of the company.
- (8) References to creditors and contributories are to those present at the meeting in person or by proxy.

Entitlement to Vote at Creditors' Meeting (O.8, r.7)

- 7. (1) A person is entitled to vote as a creditor if –
 - (a) he has lodged a proof of debt by the date specified in the notice convening the meeting and such proof has been admitted for voting purposes; or
 - (b) he appears to the official liquidator to be recorded in the company's books and records as a member of any class of creditors entitled (pursuant to Order 16, rule 7) to vote without need to lodge a proof of debt.
- (2) A creditor may not vote in respect of a claim for an unliquidated amount or any debt whose value is not ascertained except where the chairman agrees to put an estimated minimum value upon it for the purpose of entitlement to vote and admits his proof for that purpose.
- (3) A secured creditor is entitled to vote only in respect of the balance of his debt, after taking account of the value of his security.

Entitlement to Vote at Contributories' Meeting (O.8, r.8)

- 8. (1) A person is entitled to vote as a contributory if –
 - (a) he is recorded as a member of the company in its register of members; or
 - (b) the official liquidator is satisfied that he is liable to contribute to the assets of the company.
- (2) When a custodian or clearing house is recorded as a member of the company in its register of members, such custodian or clearing house may appoint two representatives to act on its behalf for the purpose of addressing the meeting and voting shares both for and against a resolution in accordance with the instructions received from its clients.

Voting on Resolutions (O.8, r.9)

- 9. (1) At a creditors' meeting, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of the resolution.

- (2) At a contributories' meeting, a resolution is passed when a majority in value (determined in accordance with Rule 9(3)) of those present and voting, in person or by proxy, have voted in favour of the resolution.
- (3) At a contributories' meeting, the number of votes attributed to each contributory shall be –
 - (a) In the case of contributories holding voting shares, the number of votes attributed to them under the company's articles of association; or
 - (b) In the case of contributories holding non-voting shares, their voting rights shall be based upon the par value of the shares held; or
 - (c) If there are no par value shares, the contributories' voting rights shall be determined in accordance with the net asset value of the company; and
 - (d) Any shares (whether voting or non-voting) which do not carry the right to participate in any distribution shall have no vote.
- (4) If the official liquidator has determined (in accordance with Rule 1) that the company should be regarded as of doubtful solvency, a resolution is passed when a majority (in value) of creditors and a majority of contributories (by value determined in accordance with Rule 9(3)) have both voted in favour of the resolution.

Recording of Proceedings (O.8, r.10)

- 10. (1) The official liquidator shall be responsible for taking the minutes of every meeting, whether or not he is acting as chairman of the meeting.
- (2) The official liquidator shall also be responsible for making up a list of all those present or participating in the meeting, including a statement of the capacity in which they were acting.
- (3) The minutes of the meeting shall include a record of every resolution passed and shall be signed by the chairman of the meeting.
- (4) The Minutes of every meeting shall be kept by the official liquidator as part of the records of the liquidation.
- (5) A copy of the minutes of every meeting shall be circulated to the creditors and contributories (in whatever manner is considered by the official liquidator to be most effective and economic) within 28 days of the date on which the meeting was held.

ORDER 9

LIQUIDATION COMMITTEES

Establishment of Liquidation Committee (O.9, r.1)

1. (1) Unless the Court otherwise directs, a liquidation committee shall be established in respect of every company which is being wound up by the Court.
- (2) The provisions of this Order shall also apply to a liquidation committee required to be established pursuant to an order made under Order 4, rule 7(3)(f).
- (3) The liquidation committee shall comprise not less than three nor more than five creditors (if the official liquidator has determined that the company should be regarded as insolvent) or contributories (if the official liquidator has determined that the company should be regarded as solvent).
- (4) The liquidation committee of an insolvent company shall be elected at the first meeting of creditors convened in accordance with Order 8, rule 2.
- (5) The liquidation committee of a solvent company shall be elected at the first meeting of the contributories convened in accordance with Order 8, rule 2.
- (6) In the case of a company determined by its official liquidator to be of doubtful solvency, the liquidation committee shall comprise not less three nor more than six members, of whom a majority shall be creditors elected at a meeting of creditors and at least one of whom shall be a contributory elected at a meeting of contributories.
- (7) After the liquidation committee has been established, the official liquidator may, with the consent of a majority of the remaining members of the committee, appoint a creditor or contributory (as the case may be) to fill any vacancy.
- (8) The liquidation committee does not come into being, and accordingly cannot act, until the official liquidator has issued a certificate in CWR Form No. 15 of its due constitution, which shall state the name, address and contact details of each member.
- (9) The official liquidator's certificate shall be filed in Court.

Membership of Liquidation Committee (O.9, r.2)

2. (1) A liquidation committee cannot be established unless and until it has the minimum number of members required by Rule 1.
- (2) Any creditor of the company (other than one whose debt is fully secured) is eligible to be a member of a liquidation committee, so long as –
 - (a) he has lodged a proof of his debt; and
 - (b) his proof has neither been wholly disallowed for voting purposes nor wholly rejected for purposes of distribution or dividend.
- (3) If some or all of the shares of a company are registered in the name of a custodian or clearing house, a beneficial owner of the shares may be elected as a member of the liquidation committee provided that the custodian or clearing house certifies in writing

that it is holding the shares (the number of which must be specified) as custodian or nominee on behalf of such person.

- (4) A corporate member of the liquidation committee must be represented by an individual who is duly authorised in writing by a letter sent to the official liquidator at least 2 days before any meeting in which he intends to participate unless the official liquidator agrees to dispense with notice.
- (5) If an individual member of the liquidation committee becomes bankrupt, his trustee in bankruptcy shall be recognised as a member of the committee in his place.
- (6) If a corporate member of the liquidation committee is put into liquidation under this Law or made the subject of a bankruptcy or reorganisation proceeding under the law of a foreign country, it shall continue to be a member of the committee if and so long as its official liquidator, trustee, receiver or administrator or other appointee consents to act as its representative.

Reconstitution of the Liquidation Committee (O.9, r.3)

3. (1) If, during the course of the liquidation, the official liquidator changes his certification of the company's solvency or insolvency (as the case may be), he shall take the following steps to reconstitute the liquidation committee.
- (2) If the company is certified to be solvent, any creditor members of its liquidation committee shall automatically cease to be members and the official liquidator shall convene a meeting of contributories for the purpose of electing new members from amongst the company's contributories.
- (3) If the company is certified to be insolvent, any contributory members of its liquidation committee shall automatically cease to be members and the official liquidator shall convene a meeting of creditors for the purpose of electing new members from amongst the company's creditors.
- (4) Nothing in this rule shall prevent the official liquidator from convening a meeting in anticipation of changing his certification of the company's solvency or insolvency (as the case may be).

Official Liquidator's Duty to Report (O.9, r.4)

4. (1) It is the duty of the official liquidator to report to the members of the liquidation committee all such matters as appear to him to be, or as the members have indicated to him as being of concern to them with respect to the winding up.
- (2) The official liquidator need not comply with a request for information where it appears to him that –
 - (a) the request is frivolous or unreasonable;
 - (b) the cost of complying would be excessive, having regard to the relative importance of the information; or
 - (c) there are not sufficient assets to enable him to comply.
- (3) The official liquidator shall communicate information to members of the liquidation committee in whatever way may be agreed between them, including –

- (a) orally by telephone;
 - (b) in writing, transmitted by facsimile or e-mail; or
 - (c) by accessing a website.
- (4) The official liquidator shall provide each member of the liquidation committee with a written report and accounts and convene a first meeting within 3 months of the committee's establishment and thereafter he shall convene a meeting –
 - (a) on such dates or at such intervals as may be resolved by the committee; or
 - (b) if so requested in writing by any two members of the committee; and
 - (c) in any event, not less than once every six months.
- (5) A "meeting" of the liquidation committee may take the form of –
 - (a) a physical meeting at the official liquidator's office or such other place as may be resolved upon by the committee, in which case the official liquidator must give at least 10 business day's notice of the meeting and any member who cannot attend in person must be allowed to participate by telephone; or
 - (b) a telephone conference call, in which case the official liquidator must give at least 5 business day's notice of meeting.
- (6) A liquidation committee may, by unanimous consent, agree to hold a meeting on short notice.

Proceedings of Liquidation Committee (O.9, r.5)

- 5. (1) The official liquidator shall attend every meeting of the liquidation committee, either in person or by a duly authorised representative who must be a partner or employee of the official liquidator's firm having experience in insolvency matters.
- (2) The quorum for a meeting of the liquidation committee shall be the official liquidator (or his representative) and at least two members.
- (3) The chairman of the meeting shall be the official liquidator (or his representative) unless the members resolve that one of their number should act as chairman.
- (4) The chairman at any meeting may call upon a person claiming to act as a committee-member's representative to produce his letter of authority and may exclude him if it appears that his authority is defective.
- (5) The official liquidator shall prepare an agenda for each meeting including –
 - (a) all the matters which the official liquidator intends to put before the meeting;
 - (b) any matter which a committee-member intends to put before the meeting; and
 - (c) any resolutions which the official liquidator or any committee member intends to put to a vote.
- (6) The official liquidator shall be responsible for taking the minutes of the meeting, a draft of which shall be prepared and circulated to all the members within 14 days after the meeting.

- (7) Each committee member shall have one vote and a resolution is passed when a majority of members present or represented (either in person or by telephone) have voted in favour of it.
- (8) If the liquidation committee comprises both creditors and contributories, a resolution is passed only when a majority of the creditor members and a majority of contributory members present or represented (either in person or by telephone) have voted in favour of it.
- (9) Whenever the official liquidator considers that it would be impractical or unnecessary to convene a meeting of the liquidation committee for the purpose of considering any resolution, he may send a copy of it to each member, inviting them to deal with it as a written resolution, and it shall be treated as passed if every member of the committee signs it within such period or by such deadline as may be specified by the official liquidator.

Counsel to the Liquidation Committee (O.9, r.6)

- 6. (1) The liquidation committee may resolve to appoint an attorney to give legal advice to the committee, either generally or in respect of any specific matter arising in connection with the liquidation.
- (2) The attorney appointed in accordance with this Rule is referred to as "counsel to the liquidation committee".
- (3) The legal fees and expenses reasonably and properly incurred by the liquidation committee shall be paid out of the assets of the company as an expense of the liquidation.
- (4) If the official liquidator or any committee member considers that the amount of the fees and expenses charged by counsel to the liquidation committee is excessive, he may require that such fees and expenses be taxed on the indemnity basis in accordance with Order 25.
- (5) Conversely, if counsel to the liquidation committee considers that the amount which the official liquidator offers to pay is inadequate, he may require that his bill of costs be taxed on the indemnity basis in accordance with Order 25.
- (6) Counsel to the liquidation committee shall be entitled to be paid out of the assets of the company as an expense of the liquidation the amount(s) stated in the costs certificate and the official liquidator shall have no authority to pay more than that amount.

Travel and Other Expenses of Committee Members (O.9, r.7)

- 7. (1) Travelling expenses and/or telephone charges reasonably and properly incurred by committee members or their representatives in attending meetings of the liquidation committee shall be reimbursed by the official liquidator out of the assets of the company.
- (2) No other expenses incurred by any committee member in connection with the liquidation shall be reimbursed unless such expense was incurred –

- (a) pursuant to a resolution of the liquidation committee; and
- (b) with the prior approval of the liquidator.

Resignation and Removal of Committee Members (O.9, r.8)

8. (1) A committee member may resign by notice in writing delivered to the official liquidator.
- (2) A creditor's membership of the liquidation committee is automatically terminated if he ceases to be a creditor by reason of the fact that –
- (a) his proof of debt has been wholly rejected; or
 - (b) his claim has been paid in full.
- (3) A contributory's membership of the liquidation committee is automatically terminated if –
- (a) he ceases to be a registered member of the company; or
 - (b) the custodian or clearing house withdraws the certificate issued pursuant to Rule 1(2).
- (4) Any person's membership of the liquidation committee is automatically terminated if he (or his representative) fails to attend three successive committee meetings either in person or by telephone.
- (5) Any member of the liquidation committee may be removed by a resolution passed at a meeting of which the member in question has been given at least 14 day's prior notice (referred to in this Rule as a "removal resolution").
- (6) A removal resolution may be proposed by the official liquidator or any committee member.
- (7) It shall not be necessary to give any reasons for proposing a removal resolution, nor shall the liquidation committee or the official liquidator be required to give the former member any reasons for passing a removal resolution.

Applications to the Court (O.9, r.9)

9. (1) Any application required to be made to the Court under this Order may be made in writing by a letter addressed to the assigned Judge.
- (2) A letter to the assigned Judge shall be supported by an affidavit.

ORDER 11

SANCTION APPLICATIONS

Introduction (O.11, r.1)

1. (1) Any application to Court made by –
 - (a) the official liquidator for a order sanctioning his exercise or proposed exercise of any power conferred upon him by Part I of the Third Schedule of the Law or otherwise; or
 - (b) a creditor or contributory for an order directing the official liquidator to exercise or refrain from exercising any of his powers in a particular way,is referred to in these Rules as a "sanction application".
- (2) Sanction applications shall be made by summons in CWR Form No. 16.

Service of Sanction Applications (O.11, r.2)

2. (1) Every sanction application made by the official liquidator shall be served on –
 - (a) each member of the liquidation committee ; or
 - (b) counsel to the liquidation committee, if an attorney has been appointed by the liquidation committee with authority to act generally; and
 - (c) such other creditors or contributories as the Court may direct.
- (2) Every sanction application made by the liquidation committee shall be served on –
 - (a) the official liquidator; and
 - (b) such creditors or contributories as the Court may direct.
- (3) Every sanction application made by a creditor or contributory (other than the liquidation committee) shall be served on –
 - (a) the official liquidator; and
 - (b) each member of the liquidation committee; or
 - (c) counsel to the liquidation committee, if an attorney has been appointed by the liquidation committee with authority to act generally; and
 - (d) such other creditors or contributories as the Court may direct.
- (4) A sanction application shall not be heard on less than 4 clear day's notice.
- (5) The Court may direct that the hearing of a sanction application be advertised.

Hearing of Sanction Applications (O.11, r.3)

3. (1) Sanction applications shall be heard in chambers unless –
 - (a) the Court has directed that the application be advertised, in which case it must be heard in open court; or
 - (b) the Court directs, for some special reason, that it should be heard in open court.

- (2) It shall be the duty of the official liquidator to attend and be prepared to assist the Court in respect of any sanction application made by the liquidation committee or any creditor or contributory.
- (3) The Court may direct that, when a sanction application gives rise to an issue in respect of the substantive rights as between the company and any creditor or contributory or any class thereof, it shall be adjudicated as an *inter partes* proceeding as between shareholders, creditors or any class of shareholders or creditors (as the case may be), for which purpose the Court may –
 - (a) make a representation order; and/or
 - (b) direct that the official liquidator's role shall be limited in such way as the Court thinks fit; or
 - (c) direct that the official liquidator shall take no further part in the proceeding.
- (4) In addition to those who are entitled to be served in accordance with Rule 2, the Court may allow the following classes of persons to be heard –
 - (a) any other creditor, if the company is insolvent;
 - (b) any other contributory, if the company is solvent;
 - (c) any other creditor or contributory, if the official liquidator has determined that the company should be regarded as of doubtful solvency.

Evidence for Use in Sanction Applications (O.11, r.4)

- 4. (1) When a sanction application is made by the official liquidator –
 - (a) he may rely upon affidavit evidence; and/or
 - (b) he may rely upon the whole or part of any report or reports which have been filed in Court, whether or not such reports were prepared specifically for the purpose of the application.
- (2) When a sanction application is made by the liquidation committee or any creditor or contributory –
 - (a) the application must be supported by an affidavit containing full particulars of the grounds upon which the application is made; and
 - (b) it shall be the duty of the official liquidator to swear an affidavit in reply or make a report which states whether he –
 - (i) supports the application; or
 - (ii) opposes the application, in which case his affidavit or report must contain the evidence and analysis upon which he relies in opposition to the application; or
 - (iii) adopts a neutral position, in which case his affidavit or report must contain any evidence, not already before the Court, which he considers to be relevant to the Court's decision.
- (3) An affidavit sworn by the official liquidator may contain statements of his opinions.

ORDER 15

APPLICATION FOR SUPERVISION ORDER

Introduction (O.15, r.1)

1. (1) An application for a supervision order must be made by a company's voluntary liquidator in accordance with section 124 of the Law if its directors fail to make and deliver their declaration of solvency to the voluntary liquidator within 28 days of the commencement of the liquidation.
- (2) Notwithstanding that a declaration of solvency has been duly made in accordance with section 124 of the Law, the voluntary liquidator or any contributory or any creditor may apply to the Court for a supervision order on the grounds contained in section 131 of the Law.

Application under section 124 (O.15, r.2)

2. (1) The requirement to apply for a supervision order under section 124 of the Law shall apply only if the voluntary liquidation was commenced on or after the commencement date.
- (2) An application for a supervision order under section 124 shall be made by petition.
- (3) A petition under this Rule shall contain –
 - (a) particulars of the company's incorporation;
 - (b) particulars of the method by which the company was put into voluntary liquidation;
 - (c) particulars of the persons who are or were directors of the company on the date on which its voluntary liquidation commenced;
 - (d) a statement that the voluntary liquidator did not receive, within 28 days of the commencement of the liquidation, a declaration of solvency in the prescribed form signed by all of the company's directors; and
 - (e) if the voluntary liquidator is a qualified insolvency practitioner, a statement that he consents to being appointed as official liquidator; or
 - (f) if the voluntary liquidator is not a qualified insolvency practitioner or is unable to comply with the independence requirements of the Regulations or is unwilling to be appointed as official liquidator, the name and address of a qualified insolvency practitioner nominated for appointment as official liquidator.
- (4) Every petition under this Rule must be presented within 35 days of the date upon which the liquidation is deemed to have commenced under section 117(1) of the Law.
- (5) Unless the voluntary liquidator is a qualified insolvency practitioner who is willing and properly able to accept appointment as official liquidator, the voluntary liquidator must give notice of the petition to the company's members by whatever means is

provided in its articles of association for giving notice of a general meeting of the company.

Application under section 131 (O.15, r.3)

3. (1) An application by a voluntary liquidator, contributory or creditor for a supervision order to be made under section 131 shall be made by petition.
- (2) A petition under this Rule shall contain full particulars of the grounds upon which it is presented.
- (3) Upon the presentation of a petition under this Rule, the petitioner must at the same time issue a summons for directions in respect of the matters contained in this Rule.
- (4) Upon hearing the summons for directions, the Court shall either –
 - (a) make a supervision order, if the Court is satisfied that the company's members consent or do not object to an order being made; or
 - (b) fix a hearing date and make such directions as the Court thinks appropriate in respect of the following matters –
 - (i) whether the petition should be served and, if so, upon whom it should be served;
 - (ii) whether the petition should be advertised and, if so, in what manner it should be advertised;
 - (iii) the manner in which further evidence is to be given; and
 - (iv) such other procedural matters as the Court thinks fit.
- (5) A petition under this Rule may be presented at any time.

Supporting Affidavits (O.15, r.4)

4. (1) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.
- (2) An affidavit verifying a petition under Rule 2 shall be sworn by the voluntary liquidator personally.
- (3) An affidavit verifying a petition under Rule 3 shall be sworn by –
 - (a) the petitioner; or
 - (b) the voluntary liquidator; or
 - (b) any director, officer or agent of the petitioner who has been concerned in and has personal knowledge of the matters giving rise to the petition.
- (4) Unless the voluntary liquidator is a qualified insolvency practitioner who is willing and properly able to accept appointment as official liquidator, a petition under Rule 2 or Rule 3 must also be supported by an affidavit sworn by the person or persons nominated for appointment as official liquidator and containing the information required by Order 3, rule 4.

Hearing of section 124 Petition (O.15, r.5)

5. (1) If the voluntary liquidator is a qualified insolvency practitioner who has sworn an affidavit verifying that he is willing and properly able to accept appointment as official liquidator, a Judge may make a supervision order under section 124 of the Law without the need for any hearing if he is satisfied that –
- (a) notice of the petition has been given to the company's creditors and, if it appears to the voluntary liquidator that the company may in fact be solvent, to its shareholders; and
 - (b) there is no reason to believe that any creditor or, if applicable, any shareholder objects to the appointment of the voluntary liquidator as official liquidator.
- (2) In any other case, the voluntary liquidator shall apply to fix a date for hearing the petition in open court and –
- (a) give notice of the hearing of the petition to the company's creditors and, if applicable, to its shareholders in whatever manner is likely to bring it to their attention; and
 - (b) advertise the hearing of the petition once in a newspaper having a circulation within the Islands and, if the company is carrying on business outside the Islands, once in a newspaper having a circulation in a country in which the company appears most likely to have creditors, in which case the advertisement shall be published in the official language of such country.
- (3) An advertisement under this Rule shall be in CWR Form No. 22.
- (4) Any member or creditor of the company may appear on the petition and be heard upon the question of who should be appointed as official liquidator provided that he has given notice of his intention to do so and has complied with the requirements of Order 3, rule 8(3).

Release of Voluntary Liquidator (O.15, r.6)

6. (1) Unless a voluntary liquidator is appointed as official liquidator, he shall cease to hold office automatically upon the making of a supervision order.
- (2) When a voluntary liquidator ceases to hold office in accordance with this Rule, he shall prepare a final report and accounts for the period from the commencement of the voluntary liquidation until the date of the supervision order.
- (3) The voluntary liquidator shall deliver his final report and accounts to the official liquidator within 28 days of the date upon which the supervision order was made and the official liquidator shall –
- (a) file the report and accounts in Court; and
 - (b) publish the report and accounts to the company's members and creditors in such manner as he thinks fit.
- (4) Having delivered his final report and accounts, the voluntary liquidator may apply (but shall not be obliged to apply) to the Court for an order that his accounts (including the

amount of his remuneration) be approved and that he be released from the performance of any further duties.

Delivery of Company's Books and Records (O.15, r.7)

7. (1) A voluntary liquidator who ceases to hold office upon the making of a supervision order shall forthwith deliver to his successor the company's books and a copy of his liquidation files (maintained in accordance with Order 26, rule 2).
- (2) The official liquidator shall allow the voluntary liquidator to have unrestricted access to the company's books and records for the purpose of preparing his report in compliance with Order 13, rule 8.

Supervision Order (O.15, r.8)

8. (1) A supervision order shall be in CWR Form No. 23.
- (2) The requirements of Order 3, rules 17 and 18 shall apply to supervision orders as they apply to winding up orders.

ORDER 19

PART I: CALLS ON CONTRIBUTORIES

Calls by Official Liquidator (O.19, r.1)

1. (1) The power contained in section 113 of the Law to make calls on contributories shall be exercised by the official liquidator with the sanction of the Court.
- (2) A sanction application under this Rule shall be made in accordance with the provision of Order 11.

Making and Enforcement of Calls (O.19, r.2)

2. (1) Notice of the call shall be given in Form 35 to each of the contributories concerned and shall specify the amount or balance due from him.
- (2) A call shall be payable immediately upon service on the contributory concerned.
- (3) A call shall be enforceable against the contributory concerned in the same manner as a judgment or order of the Court.

Appeal against Calls (O.19, r.3)

3. (1) If a person against whom a call is made is dissatisfied either with the decision that he is a contributory or with the amount of the call made against him, he may appeal to the Court for the decision to be reversed or varied.
- (2) An appeal under this Rule shall be made within 21 days of the date upon which the contributory received notice of the call.
- (3) The provisions of Order 16, rules 19 and 20 shall apply to appeals under this Rule (as if references to "creditors" and "proofs" are read as referring to "contributories" and "calls").
- (4) An appeal under this Rule shall be permitted only on terms that the full amount of the call is paid into Court within 7 days after service of the contributory's summons.

PART II: TRANSFERS OF SHARES

Application for Validation Order (O.19, r.4)

4. (1) An application pursuant to Section 99 of the Law for an order validating the transfer or proposed transfer of any shares of a company may be made by its liquidator or by the transferor or transferee of the shares in question.
- (2) Provided that –
 - (a) the shares in question are fully paid; and
 - (b) the liquidator does not object to the transfer,the application shall be made by letter addressed to the Judge to whom the proceeding is assigned.

- (3) In any other case the application shall be made by summons and, if made by the transferor or transferee, the summons must be served on the liquidator.

Supporting Documentation (O.19, r.5)

- 5. (1) An application made by letter pursuant to rule 4(2) shall be supported by –
 - (a) an affidavit confirming that the shares are fully paid and that the liquidator has no objection to the transfer; and
 - (b) a draft of the order sought by the applicant
- (2) An application required to be made by summons shall be supported by an affidavit, sworn by or on behalf of the applicant, which contains a full explanation of the reasons for the transfer and the applicant's response to the liquidator's objections.

ORDER 25

OFFICIAL LIQUIDATOR'S LAWYERS

Appointment of Lawyers (O.25, r.1)

1. (1) Subject to obtain the Court's sanction pursuant to paragraph 11 of Part I of the Third Schedule to the Law, the official liquidator may retain attorneys and/or foreign lawyers (whether or not temporarily admitted as attorneys) only on terms of engagement which comply with the requirements of this Rule.
- (2) The terms upon which lawyers are engaged by the official liquidator must be stated in writing and shall be signed by both parties.
- (3) Every engagement letter or retainer agreement shall contain particulars of the basis upon which the lawyers will be remunerated, including, if applicable, a statement of the agreed hourly rates.
- (4) The official liquidator shall not retain (whether directly or indirectly) any foreign lawyer unless he (being a sole practitioner) or the firm of which he is a partner or employee has signed an engagement letter or retainer agreement which expressly states that –
 - (a) the contract is governed by Cayman Islands law;
 - (b) the lawyer/law firm submits to the exclusive jurisdiction of the Court for all purposes in connection with the engagement;
 - (c) the lawyer/law firm understands and agrees that the amount of fees payable by the official liquidator is subject to taxation in accordance with this Order;
 - (d) the lawyer/law firm shall have no right to exercise any lien over his files as against the official liquidator
- (5) The official liquidator has no authority to engage any lawyers on terms which are inconsistent with the requirements of this Rule and any term of an engagement letter or retainer agreement which is inconsistent with the requirements of this Rule shall be void and of no effect.
- (6) Nothing in this rule shall affect the validity or effectiveness of any engagement letter or retainer agreement made prior to 1 March 2013.

Lawyer's Fees (O.25, r.2)

2. (1) All lawyers engaged by the official liquidator shall be remunerated on a time spent basis (at agreed hourly rates which are stated in the engagement letter) unless the Court has sanctioned some other basis of remuneration.
- (2) If the official liquidator or the liquidation committee consider that the amount of fees and expenses charged by the official liquidator's lawyer is excessive, the official liquidator may require that such fees and expenses be taxed on the indemnity basis by the taxing officer.

- (3) Conversely, if the lawyer considers that the amount which the official liquidator offers to pay is inadequate, he may require that his bill of costs be taxed on the indemnity basis by the taxing officer.
- (4) The lawyer shall be entitled to be paid out of the assets of the company as an expense of the liquidation the amount(s) stated in the costs certificate and the official liquidator shall have no authority to pay more than that amount.

Procedure for Taxation of Lawyer's Fees (O.25, r.3)

- 3. (1) A taxation under this Order shall be governed by and conducted in accordance with GCR Order 62.
- (2) The lawyer shall prepare a bill of costs in GCR Form 314 and serve it on the official liquidator.
- (3) The official liquidator shall state the extent to which he disagrees with the amount charged and/or the scope of the work done by completing column 4 and returning the completed bill of costs to the lawyer within 21 days or such other period as may be agreed.
- (4) In addition to completing column 4, the official liquidator may also serve a written statement of his objections to the amount charged.
- (5) Proceedings for taxation of the bill of costs shall be commenced (by either party) by lodging the following documents with the taxing officer –
 - (a) an application for taxation in GCR Form 301;
 - (b) the bill of costs, completed in accordance with this Rule;
 - (c) any written statement of objections by the official liquidator;
 - (d) any written reply by the lawyer; and
 - (e) a copy of the engagement letter or retainer agreement.

Subsequent Procedure on Taxation (O.25, r.4)

- 4. (1) A taxation shall be inquisitorial in nature.
- (2) The taxing officer shall enquire into the bill of costs and determine the amount to be paid in accordance with Rule 4 for which purpose the taxing officer shall obtain such written explanations from the official liquidator and/or the lawyer as may be appropriate to enable him to make such determination fairly.
- (3) The taxation shall be conducted in accordance with the Guidelines issued from time to time by the Grand Court Rules Committee pursuant to GCR Order 62, rule 16(3), insofar as such Guidelines relate to taxation on the indemnity basis.
- (4) The taxing officer may require the lawyer to produce –
 - (a) his time records;
 - (b) his files and any other documents reflecting the work done; and
 - (c) invoices in respect of any disbursements included in the bill of costs.

- (5) The taxing officer shall not give reasons for any of his decisions.
- (6) The taxing officer shall send an office copy of his costs certificate to the official liquidator and to the lawyer.

Criteria Applicable on Taxation (O.25, r.4)

- 4. (1) The lawyer is entitled to be fairly remunerated in accordance with the terms of his engagement letter for all work reasonably and properly done on the instructions of the official liquidator.
- (2) In determining whether the remuneration claimed is fair, the taxing officer shall have regard to all the relevant circumstances, including –
 - (a) the difficulty or novelty of the issues involved;
 - (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by the attorneys engaged;
 - (c) the number and importance of the relevant documents (however brief) prepared or perused;
 - (d) the overall size of the estate;
 - (e) the amount of money or value attributable to the issues involved; and
 - (f) the overall importance to the liquidation of the issues involved.
- (3) In determining whether the work done by the lawyer was reasonably and properly done, the taxing officer shall have regard to all the relevant circumstances, including –
 - (a) the duties of the official liquidator;
 - (b) the instructions given by the official liquidator; and
 - (c) any relevant directions given by the Court.
- (4) Work done by the lawyer shall be presumed not to have been done reasonably and properly if the work done or advice given caused or contributed to a breach of duty on the part of the official liquidator.

Part II – Amended Forms

CWR Form No. 3

Advertisement of Winding Up Petition (0.3, r.6)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 20__

IN THE MATTER OF the Companies Law

AND IN THE MATTER OF [*state name of company*]

TAKE NOTICE that a petition for an order that [*state name of company*] whose registered office is situated at [*state address*] (the "Company") be put into liquidation and wound up in accordance with the provisions of the Companies Law has been presented to the Grand Court of the Cayman Islands.

The petition was presented by [*state full name, address and contact details of the creditor*]. Copies of the petition and supporting affidavits may be obtained free of charge from the petitioner's attorneys [*state address and contact details*].

The Petition seeks an order that [*state full name, address and contact details of the qualified insolvency practitioner(s) nominated for appointment as official liquidator(s)*] be appointed as official liquidators of the Company.

AND FURTHER TAKE NOTICE that the hearing of the petition will take place on [*state date*] at the Law Courts, George Town, Grand Cayman at 10.00am. Any creditor or shareholder of the Company may be heard on the questions whether or not a winding up order should be made and, if a winding up order is made, who should be appointed as official liquidator(s) of the Company. Any creditor or shareholder who opposes the appointment of [*state name of Petitioner's nominee*] must nominate an alternative qualified insolvency practitioner(s) who consents to act and has sworn an affidavit complying with the requirements of the Companies Winding Up Rules, Order 3, rule 4.

CWR Form No. 5

Summons for Directions (0.3, r.11)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 20__

IN THE MATTER OF the Companies Law

AND IN THE MATTER OF [*state name of company*]

SUMMONS FOR DIRECTIONS

LET THE [*identify respondent(s)*] attend before the Mr Justice [*state name of assigned Judge*] in Chambers at the Law Courts, George Town, Grand Cayman on [*state date*] at [*state precise time*] upon an application by [*identify petitioner*] for the following orders:

1. [*set out in numbered paragraphs the precise relief sought by reference to the matters contained in CWR Order 3, Rule 12(1).*]
2. Such further or other directions as the Court sees fit.

Dated this day of 20__.

[*Signature of Applicant's Attorney*]

TO: The Registrar of the Financial Services Division

AND TO:

1. the Company
2. [*list the names and addresses of all the shareholders upon whom it is intended to serve the Summons for Directions.*]

TIME ESTIMATE: The estimated length of the hearing of this summons is [*state time*].

This Summons for Directions was issued by [*state name, address and contact details of the attorneys acting on behalf of the petitioner*].

CWR Form No. 21

Declaration of Solvency (O.14, r.1)

THE COMPANIES LAW

DECLARATION OF SOLVENCY

[Name of company] (In voluntary liquidation)

Registration No ____

I/we, [state the name or names of the directors], being a director of the Company do solemnly and sincerely declare that I/we have made a full inquiry into the affairs of the Company and that, having done so, we believe that the Company will be able to pay its debts in full, together with interest at the prescribed rate within a period of twelve (12) months from the commencement of the winding up [or state a shorter period].

1

[Signature of Director]

[Full Name and Address of Director]

[Date]

2

[Signature of Director]

[Full Name and Address of Director]

[Date]

3

etc.

[The Declaration of Solvency must be signed by all the directors]

A person who knowingly makes a declaration without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the prescribed rate, within the period specified commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

CWR Form No. 22

Advertisement (Application for Supervision Order) (O.15, r.5)

THE COMPANIES LAW

[*Name of company*] (In voluntary liquidation)

Grand Court Cause FSD No ____ (____)

TAKE NOTICE that: -

1. The above-named Company was put in to voluntary liquidation on [*state commencement date*] and [*state the name, address and contact details*] were appointed as voluntary liquidators of the Company ("the Voluntary Liquidator).
2. A petition has been presented to the Grand Court of the Cayman Islands, for an order that the liquidation continue under the supervision of the Court and that [*the Voluntary Liquidator*] [*alternatively, state the name address and contact details of the qualified insolvency practitioner(s) nominated for appointment*] be appointed as official liquidator(s) of the Company .
3. The hearing of the petition will take place at the Law Courts, George Town, Grand Cayman on [*state date*] at [*state time*].
4. Any creditor or shareholder of the Company is entitled to appear at the hearing of the petition for the purpose of being heard upon the question of who should be appointed as official liquidator(s) of the Company provided that he gives three (3) day's notice of his intention to do so to the Voluntary Liquidator. Any creditor or shareholder who opposes the appointment of [*state name of the petitioner's nominee*] must nominate an alternative qualified insolvency practitioner(s) who consents to act and has sworn an affidavit complying with the requirements of the Companies Winding Up Rules, Order 3, rule 4.

Dated this day of 20__.

[*Signature of Voluntary Liquidator*]