FINANCIAL SERVICES DIVISION GUIDE

GRAND COURT

CAYMAN ISLANDS

FIRST EDITION

April 2011

Existing rules, practice directions etc. are shown in ordinary type.

New provisions/materials etc. are shown in italics.

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Section A General

SECTION A

1 DEFINITIONS

In this Guide:

"assigned judge" means the FSD Judge assigned to the particular proceedings or matter;

"CWR" means the Companies Winding Up Rules as may be revised from time to time;

"exempted insurer" has the meaning ascribed to it in Section 2 of the Insurance Law (2008 Revision);

"the FSD" means the Financial Services Division;

"GCR" means the Grand Court Rules as may be revised from time to time;

"Guide" means this FSD Users' Guide

"mutual fund" has the meaning ascribed to it in Section 2 of the Mutual Funds Law (2007 Revision);

"overriding objective" means the overriding objective set out in the preamble to the GCR;

"PD" means Practice Direction;

"professional services provider" has the meaning ascribed to it in Section 89 of the Companies Law (2010 Revision).

"Registrar" means the Registrar of the Financial Services Division;

"regulatory laws" has the meaning ascribed to it in Section 2 of the Monetary Authority Law (2008 Revision); and

"Users' Committee" means the FSD Users' Committee.

2. THE PROCEDURAL FRAMEWORK

Proceedings in the FSD are governed by the GCR and relevant PDs. GCR 0.72 (Financial Services Proceedings) and GCR 0.73 (Arbitration Proceedings) are set out in Appendix 1 and 2.

The Guide is published with the approval of the Chief Justice in consultation with the FSD Judges and with the advice and support of the Users' Committee. It will be revised from time to time.

The Guide is intended to provide guidance about the conduct of proceedings in the FSD and, within the framework of the GCR and PDs, to establish the practice to be followed in the FSD.

The Guide does not constrain in any way how judges might exercise their discretion under the relevant rules and PDs in accordance with the overriding objective.

The Guide is intended to assist in the effective management of proceedings in the FSD. Where specific provision is not made in the Guide for any particular matter, the parties and their legal representatives will be expected to act reasonably and in accordance with the spirit of the overriding objective and the Guide.

The FSD expects a high level of co-operation and realism from the legal representatives of the parties. This applies to dealings (including correspondence) between legal representatives as well as to dealings with the Court.

3. THE DEFINITION OF FINANICAL SERVICES PROCEEDINGS

GCR 0.72, r.1 (2) provides that:

"financial services proceeding" means —

(a) any proceeding relating to a mutual fund, including an action by or against its directors (in the case of a corporate fund), its trustee (in the case of a unit trust), its general partner (in the case of a limited partnership), its investment manager or adviser, its administrator, its prime broker or its auditor;

(b) any proceeding relating to an exempted insurer, including an action by or against its directors, insurance manager or auditor;

(c) any action for reach of a contract of insurance (including an application for a declaration) where the amount of claimed exceeds $1 million;

(d) any application (including an appeal by a licensee) made to the Court under any of the regulatory laws;

(e) any administration action or application under the Trusts Law (to which Order 85 applies) except those relating to the estates of deceased person who died domiciled in the Islands and the net asset value of the estate is less than $1 million;

(f) any action against a trustee or protector of a trust or the executor or administrator of an estate for breach of trust or breach of fiduciary duty, except those actions relating to a trust or estate whose net asset value is less than $1 million;

(g) any application made to the Court under the Companies Law (to which Order 102 applies), including any application made in a winding up proceeding (two which the Companies Winding Up Rules 2009 apply);

(h) any application for an order for the dissolution of a partnership which carries on business as a mutual fund, including any application made in the dissolution proceeding;

any action for breach of contract or breach of duty by or against a professional service provider, except for actions relating to the non-payment or over-payment of fees where the amount claimed is less than $250,000;

(j) any application for an order for evidence pursuant to a letter of request to which Order 70 applies, including any related application for directions to which Order 103 applies;

(k) any application to which the Grand Court (Bankruptcy) Rules 1977 or the Foreign Bankruptcy Proceedings (International Co-Operation) Rules 2008 apply;

(l) any action for the enforcement of a foreign judgment. Whether at common law or pursuant to the Foreign Judgments Reciprocal Enforcement Law; and

(m) any action for the enforcement of a foreign arbitra I award pursuant to the Foreign Arbitral Awards Enforcement Law.

4. THE OVERRIDING OBJECTIVE

The Preamble to the GCR sets out the overriding objective as follows:-

1. The Overriding objective

1.1 The overriding objective of these Rules is to enable the Court to deal with every cause or matter in a just, expeditious and economical way.

1.2 Dealing with a cause or matter justly includes, as far is practicable-

(a) ensuring that the substantive law is rendered effective and that is carried out;

(b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;

(c) saving expense;

(d) dealing with the cause or matter in ways which are proportionate-

(I) to the amount of money involved;
(ii) to the importance of the case; and
(iii) to the complexity of the issues;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to resources to other proceedings.

2 Application by the Court of the overriding objective

2.1 The Court must seek to give effect to the overriding objective when it-

(a) Applies, or exercises any discretion given to it by these Rules; or
(b) Interprets the meaning of any Rule.

2.2 These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

3. Duty of the parties

The parties are obliged to help the Court to further the overriding objective. In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure to help in this respect.

4. Court's duty to manage proceedings

4.1 The Court must further the overriding objective by actively managing proceedings.

4.2 This may include-

(a) identifying the issues at an early stage;
(b) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
(c) encouraging the parties to co-operate with each other in the conduct of the proceedings;
(d) helping the parties to settle the whole or part of the proceeding;
(e) deciding the order in which issues are to be resolved;
(f) fixing timetable or otherwise controlling the progress of the proceeding;
(g) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
(h) dealing with as many aspects of the proceeding as it s practicable on the same occasion;
(i) dealing with the proceeding without the parties need to attend at court;
(j) conducting procedural hearings by means of telephone conference calls;
(k) making appropriate use of technology; and
(l) giving directions to ensure that the trial proceeds quickly and efficiently.

4.3 Whenever a proceeding comes before the Court, whether on a summons for directions or otherwise, the Court will consider making orders on its own motion for the purpose of giving effect to the overriding objectives of the rules.

5. The FSD USERS' COMMITTEE

The FSD's ability to meet the special problems and continually changing needs of financial and commercial business depends in part upon a steady flow of information and constructive suggestions between the FSD, potential litigants and professional advisers.

The FSD Users' Committee is intended to assist in this process. All concerned with the FSD are encouraged to make the fullest use of this important channel of communication. Correspondence raising matters for the consideration of the Committee should be addressed to the Registrar.

There are a number of professional associations which are closely concerned with the business of the FSD. These will also play an important part in helping to ensure that the FSD remains responsive to business needs and to the overriding objective. These professional associations and other relevant interested bodies include:

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION CAYMAN (AIMA CAYMAN)

ATTORNEY GENERAL'S CHAMBERS

CAYMAN ISLANDS BANKERS' ASSOCIATION

CAYMAN FINANCE

CAYMAN ISLANDS COMPANY MANAGERS ASSOCIATION

CAYMAN ISLANDS DIRECTORS ASSOCIATION

CAYMAN ISLANDS FUND ADMINISTRATORS ASSOCIATION (CIFAA)

CAYMAN ISLANDS LAW SOCIETY

CAYMAN ISLANDS SOCIETY OF PROFESSIONAL ACCOUNTANTS (CISPA)

CAYMAN ISLANDS MONETARY AUTHORITY (CIMA)

CAMANIAN BAR ASSOCIATION

INSURANCE MANAGERS OF CAYMAN (IMAC)

SOCIETY OF TRUST & ESTATE PRACTITIONERS (STEP)

6. REGISTRAR OF THE FINANCIAL SERVICES DIVISION

All communications with the Registrar should be —

(a) by hand delivery at the FSD Registry, 3rd Floor (Room #101), Kirk House; or

(b) by e-mail to audrey.bodden@gov.ky; or

(c) by telephone on 244-3808.

7. COMMENCEMENT OF FINANCIAL SERVICES PROCEEDINGS

GCR 0.72, r.2 provides as follows:

(1) Every financial services proceeding shall be commenced in the Financial Services Division.

(2) Every financial services proceeding shall be commenced by writ, originating summons, originating motion or petition in accordance with Order 5 and entered into the Register of Writs and other Originating Process in accordance with Order 63, rule 8.

(3) The title of every proceeding commenced in or transferred to the Financial Services Division shall include the words *In the Grand Court of the Cayman Islands, Financial Services Division.*

(4) In addition to establishing and maintaining a Court file in accordance with Order 63, rule 2, the Registrar shall create and maintain a computerized record for each financial services proceeding which shall comprise the following documents and/or produce reports comprising the following information:-

(a) a chronological index of all the pleadings, affidavits and orders;
(b) a copy of each pleading, affidavit (without exhibits) and order;
(c) a copy of each skeleton argument (without copy authorities); and
(d) a schedule containing details of-
  (i) the fixed court fee paid;
  (ii) the date and length of each hearing;
  (iii) the court fees paid (if any); and
  (iv) the identity of the party or parties by whom the fixed fee and any court hearing fees have been paid.

(5) The computerised record (created and maintained in accordance with paragraph (4) above) shall enable the Registrar to produce reports in each proceeding which is commenced in or transferred to the Financial Services Division containing the following information —

(i) The date on which the proceeding was commenced or transferred to the Financial Services Division;
(ii) The title of the proceeding;

(iii) The name of the FSD Judge to which it has been assigned;
(iv) Particulars of the parties' attorneys and any foreign lawyers;
(v) The date and a brief description of each hearing;
(vi) The date and estimate length of future hearings;
(vii) Particulars of the date and manner in which the proceeding was concluded.

(6) The Registrar, acting in consultation with the Chief Justice, shall assign every financial services proceeding to one of the FSD Judges and the cause number assigned to it in accordance with-Order 5, rule 1(4)(a) shall include the judge's initials.

(7) The trial of every financial services proceeding shall be heard by the FSD Judge assigned to it.

(8) Every interlocutory application made in a financial services proceeding (including every application made in a winding up proceeding) shall be heard of determined by the Commercial Judge assigned to it, except that another FSD Judge may hear or determine an urgent application if the Judge assigned to the proceeding is not available.

8 TRANSFER OF PROCEEDINGS

GCR 0.72, r.3 provides as follows:

(1) Any cause or matter pending in the Court, including matters commenced prior to the Commencement Date, may be transferred to the Financial Services Division on the ground that —

(a) it is a financial services proceeding which ought properly to have been commenced in the Financial Services Division; or

(b) the Court is satisfied upon the application of any party that it would be appropriate in all the circumstances for the cause or matter to be tried by a FSD Judge.

9. ASSIGNMENT OF PROCEEDINGS TO A FSD JUDGE

PD No. 1/2010 provides:

It is the responsibility of the Registrar, acting in consultation with the Chief Justice, to assign every financial services proceeding, as defined in 0.72, r.1(2), to a named judge of the FSD at the time the proceeding is commenced.

It is the responsibility of the petitioner/plaintiffs attorney to provide the Registrar with any and all information which appears to him to be relevant in determining which judge should be assigned to the matter. For example —

(a) If the plaintiffs attorney considers that it would be appropriate for two or more related matters to be assigned to the same judge, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process ; or

(b) If the plaintiff's attorney considers that it would be inappropriate for a matter to be assigned to a particular judge, for whatever reason, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process.

As soon as a judge has been assigned, the Registrar will —

(a) notify the parties' attorneys; and

(b) deliver the Court file to the assigned judge.

Attorneys can expect to be notified about the name of the assigned judge on the next business day following the day on which the originating process is filed at the FSD Registry.

The docket of the financial services proceedings assigned to each Judge of the FSD will be updated by the judge's secretary and circulated weekly to the Chief Justice, the Registrar and the Listing Officer.

Attorneys are reminded that 0.5, r.1(7) requires that the initials of the assigned judge be included in the title of the proceeding as part of the cause number. It follows that the assigned judge's initials must be included as part of the cause number as it appears in all pleadings, affidavits and orders.

10. AVAILABILITY OF THE JUDGES OF THE FINANCIAL SERVICES DIVISION

PD No, 1/2010 provides:

Judges of the FSD may conduct CMCs and, in appropriate cases, hear summonses for directions and interlocutory applications by means of telephone or video conferences when they are off the Island. Where a hearing takes place by telephone the etiquette for telephonic hearings requires that all participating attorneys must be on line before the appointed time, so that the judge will be the last person to join the conference, whereupon he will ask all the participants to identify themselves.

Telephonic hearings may not be tape recorded without the consent of the Judge. If the Judge permits or directs that the hearing be tape recorded, he will direct that a written transcript be prepared, sent to the judge and circulated amongst the parties. Whenever a hearing is not tape recorded, the note taken or approved by the judge will constitute the official record.

11. LISTING INTERLOCUTORY HEARINGS AND TRIALS

GCR 0.72, r.5 provides:

(1) The Registrar shall be responsible for listing the hearing of all case management conferences, interlocutory applications and trials.

(2) GCR Order 34 shall not apply to proceedings pending in the Financial Services Division.

(3) The Registrar shall maintain —

(a) a composite court diary for the Financial Services Division; and

(b) an individual court diary for each FSD Judge.

12. PROCEDURE FOR LISTING HEARINGS

PD No. 1/2010 provides:

All communications with the Listing Officer should be —

(a) by hand delivery at the FSD Registry, 3rd Floor (Room #105), Kirk House; or

(b) by e-mail with a copy to the assigned judge's secretary.

The expression "hearing" includes summonses for directions, case management conferences (which may take the form of video or telephone conference calls), interlocutory applications and trials.

No matter can be listed for hearing unless and until the proceeding has been assigned to a judge of the FSD who has had an opportunity to review the Court file.

Practice Direction #1/2000 (Listing Forms) does not apply to the FSD,

Notwithstanding that a primary objective of the FSD is to ensure the availability of judges, the Listing Officer is not authorized to fix any hearing date without the prior approval of the assigned judge. If the assigned judge is not already familiar with the issues or cannot readily ascertain the issues relevant to the proposed hearing by reviewing the Court file, the parties may be required to produce an agreed case memorandum in accordance with 0.72, r.4(3).

In the case of trials or other potentially lengthy hearings, the assigned judge will normally fix the hearing date at the hearing of a summons for directions or at a CMC in which all the parties' attorneys (and their leading counsel, if any) will be required to participate.

The Registrar will publish a monthly list (on the 1st of each month) of hearings scheduled in the FSD for the ensuing month.

13. INTERLOCUTORY APPLICATIONS IN FSD PROCEEDINGS

1. INTERLOCUTORY APPLICATIONS ON THE PAPERS

1.1 Although contested applications are usually best determined at an oral hearing, some applications may in the discretion of the judge be suitable for determination on the papers.

1.2 If the applicant considers that the application is suitable for determination on the papers, he should ensure before filing the papers that:

(i) the application, together with any supporting evidence, has been served on the defendant/respondent (if any);

(ii) the defendant/respondent (if any) has been allowed the appropriate period of time to serve evidence in opposition;

(iii) any evidence in reply has been served on the defendant/respondent (if any); and

(iv) there is included in the papers (a) the written consent of the defendant/respondent (if any) to the disposal of the application on the papers without an oral hearing.

1.3 Only in exceptional cases will the court dispose of an application on the papers without an oral hearing in the absence of the consent of the defendant/respondent (if any).

1.4 Any application for an interim injunction or similar remedy will normally require an oral hearing before a judge.

2 EX PARTE INTERLOCUTORY APPLICATIONS

2.1 All applications should be made on notice, even if that notice has to be short, unless

(0 any rule or PD provides that the application may be made without notice; or

(ii) there are good reasons for making the application without notice, for example, because notice would or might defeat the object of the application.

2.2 Where an ex parte application without notice does not involve the giving of undertakings to the court, it may in the discretion of the Court be dealt with on the papers (see Interlocutory Applications on the Papers).

2.3 A party wishing to make an ex parte application without notice which requires an oral hearing should contact the Registrar at the earliest opportunity.

2.4 On all ex parte applications with or without notice it is the duty of the applicant and those representing him to make full and frank disclosure to the court of all matters relevant to the application.

2.5 The papers submitted for an ex parte interlocutory application should include a draft of the proposed order together with the applicant's counsel's estimate of the reading time likely to be required by the court. If the application is urgent, the Registrar should be informed of that and of the reasons for the urgency.

3 ORDINARY INTERLOCUTORY APPLICATIONS

3.1 Inter partes interlocutory applications requiring an oral hearing likely to last less than three hours are to be regarded as "ordinary" applications.

3.2 Subject to the GCR and any PD and to any further or other directions of the court, the timetable for ordinary applications shall be as follows:

(a) (i) all evidence in support must be filed and served with the application;

(ii) all evidence in answer (if any) must be filed and served within 14 days thereafter;

(iii) all evidence in reply (if any) must be filed and served within 7 days thereafter.

(b) This timetable may be abridged or extended by agreement between the parties or abridged or extended by the court, save that no evidence may be filed or served less than

3 clear business days before the hearing date without the leave of the Court. Such leave will only be granted in exceptional circumstances. If a party wishes to file and serve evidence less than 3 clear business days before the hearing date the Court may direct that that the matter is to be taken out of the list and re-listed for hearing on an appropriate future date. In that event the Court may, if it sees fit, make any consequential cost order(s) which it considers appropriate, including any wasted costs order(s).

3.3 The hearing bundle(s) and any authorities bundle(s) must be delivered to the secretary to the assigned judge by noon no later than 3 clear business days before the hearing date. In this Guide business days do not include Saturdays, Sundays or public holidays.

3.4 Except in very short and straightforward cases, skeleton arguments must be provided by all participating parties. These must be delivered to the secretary to the assigned judge at the same time as the hearing bundle(s) are required to be delivered.

3.5 The applicant must, as a matter of course, provide all other parties to the application with a copy of the hearing bundle(s) together with any authorities bundle(s) at the cost of the receiving party no later than the time when such bundles are required to be delivered to the secretary to the assigned judge.

3.6 Any problems with the delivery of the bundles or skeleton arguments should be notified to the Registrar as far in advance of the hearing date as possible. If the required bundle(s) or skeleton argument(s) are not delivered by the time specified, the application may be removed from the list without further warning and the court may, if it sees fit, make any consequential cost order(s) which it considers appropriate, including any wasted costs order(s).

4. LENGTHY INTERLOCUTORY APPLICATIONS

4.1 Inter partes interlocutory applications requiring an oral hearing likely to last three hours or more are to be regarded as "lengthy" applications.

4.2 Lengthy applications normally involve a greater volume of evidence and other documents and more extensive and complex issues. They accordingly require a longer lead time for exchange of evidence and preparation and for reading by the Court.

4.3 Subject to the GCR and any PD and to any further or other directions by the Court, the timetable for lengthy applications shall be as follows:

(a) (i) all evidence in support must be filed and served with the application;

(ii) all evidence in answer (if any) must be filed and served within 21 days thereafter;

(iii) all evidence in reply (if any) must be filed and served within 14 days thereafter.

(b) This timetable may be abridged or extended by agreement between the parties or abridged or extended by the court, save that no evidence may be filed or served less than 5 clear business days before the hearing date without the leave of the Court. Such leave will only be granted in exceptional circumstances. If a party wishes to file and serve evidence less than 5 clear business days before the hearing date the Court may direct that that the be taken out of the list and re-listed for hearing on an appropriate future date. In that event the Court may, if it sees fit, make any consequential cost order(s) q which it considers appropriate, including any wasted costs order(s).

4.4 The hearing bundle(s) and authorities bundle(s) must be delivered to the secretary to the assigned judge by noon no later than 5 clear business days before the hearing date together with a reading list and an estimate of the reading time likely to be required by the Judge as agreed between the attorneys who will appear on the application.

4.5 Skeleton arguments must be provided by all participating parties. These must be delivered to the secretary to the assigned judge at the same time as the hearing and authorities bundle(s) are required to be delivered, together with an agreed chronology and dramatis personae, unless one or other or both are clearly unnecessary.

4.6 The applicant must, as a matter of course, provide all other parties to the application with a copy of the hearing bundle(s) together with the authorities bundle(s), at the cost of the receiving party no later than the time when such bundles are required to be delivered to the secretary to the assigned Judge.

4.7 Any problems with the delivery of bundles or skeleton arguments should be notified to the Registrar as far in advance of the hearing date as possible. If the required bundle(s)

or skeleton arguments are not delivered or provided by the time specified, the application may be removed from the list without further warning and the court may, if it sees fit, make any consequential costs order(s) which it considers appropriate, including any wasted costs order(s).

5. APPLICATIONS TO BE DISPOSED OF BY CONSENT

5.1 Consent orders may be submitted to the Court for approval and signature without the need for attendance on behalf of the parties subject to any direction(s) by the Court requiring such attendance.

5.2 Where an order provides a time by which something is to be done the order should, wherever possible, state the particular date by which the thing is to be done, rather than specify a period of time from a particular date or event.

6. BUNDLES

6.1 In inter partes applications the contents of the hearing bundle(s) shall be agreed. Parties shall not produce and deliver hearing bundle(s) of their own. Only agreed hearing bundle(s) will be accepted and it should be made clear on the front of each bundle that it is an agreed bundle and by which attorneys. if parties cannot agree whether a particular document shall be included in the agreed hearing bundle(s), the disputed document shall nonetheless be included in the bundle, annotated as not being agreed, and parties may argue about it, if necessary, at the hearing of the application concerned. The same applies to authorities bundle(s). Only agreed authorities bundle(s) should be produced and delivered and each party's authorities shall be included in the bundle(s).

6.2 Where a large number of documents is to be included in the hearing bundles an agreed core bundle should be produced and delivered consisting only of the most essential documents or relevant extracts for the assistance of the Court.

7. READING TIME

7.1 It is essential for the efficient conduct of the business of the FSD that the parties inform the Court of the reading required in order to enable the assigned Judge to dispose of the

application within the time allowed for the hearing, and of the time likely to be required for that purpose. Accordingly:

(i) In the case of all applications, if any party's attorney considers that the time required for reading by the assigned judge is likely to exceed one hour, each party must deliver to the secretary to the assigned judge, in the case of lengthy applications, not later than noon at least 5 clear business days and in the case of ordinary applications no later than noon at least 3 clear business days before the date of the hearing of the application a reading list with an estimate of the time likely to be required by the assigned Judge for reading;

(ii) The reading list should identify the essential material which each participating party considers that the assigned Judge needs to read.

(iii) If possible, the parties should provide the reading list in an agreed document, but if parties cannot agree each party should provide its own list.

Failure to comply with these requirements may result in the adjournment of the hearing or its removal from the list and the Court may, if it sees fit, make any consequential costs order(s) which it considers appropriate, including any wasted costs order(s).

8. HEARING DATES, TIME ESTIMATES AND TIME LIMITS

8.1 The efficient working of the Court depends on accurate estimates of the time needed for the hearing of an application, including a considered and realistic estimate of the assigned Judge's necessary pre-hearing reading.

8.2 All applications, other than a paper application, must provide an agreed estimate of the time required to dispose of the application.

8.3 If at any time any party considers that there is a material risk that the hearing of the application will exceed the time currently allowed, it must inform the Registrar immediately.

8.4 Where more than one application is to be heard at the same time, a separate estimate of the time required to dispose of each application must be given.

8.5 If the time required for the hearing has been significantly under-estimated, the judge hearing the application may adjourn the matter and may make any costs orders (including orders for the immediate payment of costs and wasted costs orders), as he may consider appropriate.

9. CHRONOLOGIES AND DRAMATIS PERSONAE

9.1 For most lengthy applications, it is of assistance to the Judge for the applicant to provide a chronology, cross-referenced to the documents. A dramatis personae may also be helpful.

10. FORMS OF INTERLOCUTORY INJUNCTION ORDER

10,1 The GCR provide for standard forms of wording for interim freezing, injunction and search orders. These are set out for convenience in Appendix 5. These forms should be followed unless the judge hearing the application orders otherwise.

10.2 A phrase indicating that an interim remedy is to remain in force until judgment or further order means that it remains in force until the delivery of a final judgment or other relevant order in the meantime.

10.3 It is good practice to draft an order for an interim remedy so that it includes a proviso which permits acts that would otherwise be a breach of the order to be done with the written consent of the attorney of the other party or parties. This enables the parties to agree to variations of the order without the necessity of returning to court.

10.4 If an injunction order provides for a return date then, unless the order otherwise provides, the parties may agree that the return date shall be postponed to a later date on which all parties will be ready to deal with any substantive issues. In that event, an agreed form of order continuing the injunction to the postponed return date should be submitted for consideration by the judge and if the order is made in the terms submitted there will be no need for the parties to attend on the day originally fixed as the return date. In such a case any interested party will continue to have liberty to apply to vary or discharge the order.

11. APPLICATIONS TO DISCHARGE OR VARY FREEZING INJUNCTIONS

11.1 Applications to discharge or vary freezing injunctions will usually be treated as matters of urgency for listing purposes. The attorneys of any party applying for discharge or variation of the injunction should ascertain before a date is fixed for the hearing whether, having regard to the evidence which they wish to adduce, the applicant for the injunction would wish to adduce further evidence in opposition to the application for discharge or variation. If so, all reasonable steps must be taken by all parties to agree on the earliest practicable date at which they can be ready for the hearing, so as to avoid the last minute need to vacate a fixed date. In cases of difficulty the matter should be referred to the assigned Judge to consider directions or orders providing for temporary relief pending the hearing.

11.2 If a freezing injunction is discharged on an application to discharge or vary or on a return date, the judge will consider whether it is appropriate that he should assess damages (if any at once and direct immediate payment by the applicant. Where the judge considers that the assessment of any damages should be postponed to a future date he will give such directions as may be appropriate, including, if necessary, with regard to disclosure of documents, exchange of affidavit evidence and experts' reports.

14. CASE MANAGEMENT AND SUMMONSES FOR DIRECTIONS

GCR 072, r.4 provides as follows:

(1) Order 25 shall apply to proceedings pending in the Financial Services Division subject to the following modifications.

(2) The Registrar shall issue an initial summons for directions in Form No. 71 in every financial services proceeding within 3 months of the date on which it was commenced or transferred to the Financial Services Division unless in the meantime:-

(a) the cause or matter has been finally determined;
(b) the Registrar has received notice that the cause or matter has been discontinued or settled;
(c) the Court has already made an order for directions; or
(d) one or other of the parties has taken out a summons for directions.

(3) In order that the Court may be informed of the general nature of the case and the issues which are expected to arise, the attorneys for each party shall prepare and file an agreed case memorandum (within such period as the Registrar shall direct) which should contain —

(a) a short and uncontroversial description of what the case is about;
(b) a list of issues, including both issues of fact and law, to the extent that it is practical to do so having regard to the state of the pleadings; and
(c) a procedural history

(4) The attorneys for the plaintiff shall be responsible for filing the agreed case memorandum.

(5) The Registrar may at any time issue a notice in GCR Form No.72 requiring that the parties' attorneys and their foreign lawyers (if any) attend before the Judge for the purposes of a case management conference.

(6) If the party has instructed or intends to instruct a foreign lawyer to appear at the trial or any interlocutory hearing the Registrar shall be so informed and such foreign lawyer

may be required to appear on any summons for directions or case management conference.

(7) If one or more of the parties have instructed a foreign lawyer, the Registrar may require that the hearing or any summons for directions or any case management conference be conducted via a video link, in which case the parties shall provide suitable conference room facilities for the use of the Judge.

PD No. 1/2010 provides:

1. Without prejudice to the requirements of 0.72, r.4(2), the assigned judge may convene a CMC whenever he thinks fit.

2. A CMC may take the form of a telephone conference call, especially if foreign lawyers and leading counsel have been retained by any of the parties or the assigned judge is likely to be off the Island.

3. When a CMC takes the form of a telephone conference call, the Registrar will direct one of the parties to set up the call and circulate the dial-in instructions and codes to the judge and all the parties.

4. The etiquette for telephonic CMCs requires that all participating attorneys must be on line before the appointed time, so that the judge will be the last person to join the conference, whereupon he will ask all the participants to identify themselves.

5. Telephonic CMC's may not be tape recorded without the consent of the Judge. If the Judge permits or directs that the CMC be tape recorded, he will direct that a written transcript be prepared, sent to the judge and circulated amongst the parties. Whenever a CMC is not tape recorded, the note taken or approved by the judge will constitute the official record.

6. Hearing dates may be fixed by the assigned judge during the course of a CMC and, in appropriate cases, CMCs may be convened for the principal purpose of fixing the date for the trial or further hearings.

15. STANDARD PRE-TRIAL TIMETABLE

Standard Pre-Trial Timetable

1. [Discovery is to be made by [*], with inspection [*] days thereafter.]

2. Witness statements, and hearsay notices where required, are to be exchanged not later than [*].

3. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at trial.

4. Signed reports of experts

(i) are to be confined to one expert for each party from each of the following fields of expertise: [*];

(ii) are to be confined to the following issues: [*];

(iii) are to be exchanged [sequentially/simultaneously];

(iv) are to be exchanged not later than [date or dates for each report in each field of expertise].

5. Meeting of experts

(i) The meeting of experts is to be by [*];

(ii) The joint memorandum of the experts is to be completed by [*];

(iii) Any short supplemental expert reports are to be exchanged [sequentially/simultaneously] by not later than [date or dates for each report in each field of expertise].

6. [If the experts' reports cannot be agreed, the parties are to be at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged pursuant to 4. above.]

[Or: The parties are to be at liberty to apply to call as expert witnesses at the trial those experts whose reports they have exchanged pursuant to 4. Above, such application to be made not earlier than [*] and not later than [*].]

7. *Preparation of trial bundles to be completed in accordance with the FSD by not later than [1.*

8. *The provisional estimated length of trial is [1. This includes [1 pre-trial reading time.*

9. *Within [1 days the parties are to attend on the Registrar to fix the date for trial which shall not be before [1.*

10. *[There is to be a pre-trial review not earlier than [1 and not later than [1].*

11. *Save as varied by this order or further order, the practice and procedures set out in the Guide are to be followed.*

12. *Costs in the Cause.*

13. *Liberty to restore the Case Management Conference.*

16. EXPERT EVIDENCE

16.1 ***Application for leave to call an expert witness***

Any application for leave to call an expert witness or to serve an expert's report should be made at a case management conference or on a summons for directions. The party applying for such leave will normally be expected to identify to which issue or issues the proposed expert evidence relates. The court may limit the length of an expert report.

Parties should bear in mind that expert evidence may lead to unnecessary expense and they should be prepared to consider the use of single joint experts in appropriate cases. In cases where the use of single joint experts is not appropriate each party will generally be given leave to call one expert in each different field requiring expert evidence. These are referred to in the Guide as "separate experts".

When the use of a single joint expert is contemplated, the court will expect the parties to co-operate in developing and agreeing to the greatest possible extent, terms of reference for that expert. In most cases the terms of reference will identify in detail what the expert is asked to do, identify any documentary materials he is asked to consider and specify any assumptions he is asked to make.

16.2 ***Provisions of general application in relation to expert evidence***

The provisions set out below apply to all aspects of expert evidence (including expert reports, meetings of experts and expert evidence given orally) unless the court orders otherwise. Parties should ensure that they are drawn to the attention of any experts who they instruct at the earliest opportunity.

16.3 ***General Requirements***

(i) It is the duty of an expert to help the court on the matters within his expertise. This duty is paramount and overrides any obligation to the party from whom the expert has received instructions or by whom he is paid.

(ii) Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced by the pressures of litigation or any party.

(iii) An expert witness should provide Independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness should never assume the role of an advocate.

(iv) An expert witness should not omit to consider material facts which could detract from his concluding opinion.

(v) An expert witness should make it clear when a particular question or issue falls outside his area of expertise.

(vi) if an expert's opinion is not properly researched because he considers that insufficient data is available, this must be stated in his report with a clear indication that his opinion is no more than a provisional one.

(vii) In a case where an expert witness who has prepared a report is unable to confirm that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be clearly stated in the report.

(viii) If, after the exchange of reports, an expert witness changes his view on a material matter having read another expert's report or for any other reason, such changes of view should be communicated in writing (through the party's attorneys) to the other side without delay, and ,when appropriate, to the court.

15.4 ***Form and Content of Expert's Reports***

Expert's reports must comply with the following requirements:

(a) In stating the substance of all material instructions on the basis of which his report is written an expert witness should state the facts or assumptions upon which his opinion is based.

(b) The expert must make it clear which, if any, of the facts stated are within his own direct knowledge and which are not.

(c) If a stated assumption is, in the opinion of the expert witness, unreasonable or unlikely he should state that clearly,

(d) The expert's report must be limited to matters relevant to the issue or issues in the list of issues to which the relevant expert evidence relates and for which leave to call such expert evidence has been give by the Court.

It is helpful if a report contains a glossary of significant technical terms.

Where the evidence of an expert is to be relied upon for the purpose of establishing primary facts, as well as for the purpose of relying on his expertise to express an opinion on any relevant matter, that part of his evidence which is to be relied upon to establish the primary facts is to be treated as factual evidence and must be incorporated into a factual witness statement to be exchanged in accordance with the directions for the exchange of factual witness statements. The purpose of this requirement is to avoid postponement of disclosure of any of a party's factual evidence until service of expert reports.

16.5 ***Statement of truth***

An expert's report must contain (a) a statement of truth and (b) a statement that the expert has read and complied with the General Requirements in the Guide.

16.6 ***Exchange of reports***

In appropriate cases the court may direct that experts' reports be exchanged sequentially rather than simultaneously. The sequential exchange of expert reports may in some cases save time and costs by helping to focus the contents of responsive reports upon true rather than assumed issues of expert evidence and by avoiding repetition of detailed factual material as to which there is no real issue. Sequential exchange is likely to be particularly effective where experts are giving evidence of foreign law or are forensic accountants. This is an issue that the court will normally wish to consider at a case management conference.

16.7 ***Meetings of expert witnesses***

The court will normally direct a meeting or meetings of expert witnesses before trial. In appropriate cases it may also be helpful for there to be further meetings during the trial itself.

The purposes of a meeting of experts are to give the experts the opportunity

(i) to discuss the expert issues

(ii) to decide, with the benefit of that discussion, on which expert issues they share or can come to share the same expert opinion and on which expert issues there remains a difference of expert opinion between them (and what that difference is).

Neither the parties nor their legal representatives should seek to restrict the freedom of experts to identify and acknowledge the expert issues on which they agree at, or following further consideration after, meetings of experts.

Subject to the above, the content of the discussion between the experts at or in connection with a meeting is without prejudice and shall not be referred to at the trial unless the parties so agree.

Subject to any directions of the court, the procedure to be adopted at a meeting of experts is a matter for the experts themselves, not of the parties or their attorneys.

Unless the court orders otherwise, at or following any meeting the experts should prepare a joint memorandum for the court recording:

(1) the fact that they have met and discussed the expert issues;

(ii) the issues on which they agree;

(iii) the issues on which they disagree; and

(iv) a brief summary of the reasons for any such disagreement.

If experts reach agreement on an issue that agreement shall not bind the parties unless they expressly agree to be bound by it.

16.8 ***Documents referred to in experts' reports***

Unless they have already been provided on inspection of documents listed on discovery, copies of any photographs, plans, analyses, measurements, survey reports or other documents relied on by an expert witness as well as copies of any unpublished sources must be provided to all parties at the same time as the report.

It may be of assistance for an expert's report to list all or some of the relevant previous papers (published or unpublished) or books written or contributed to by the expert. However inspection of such material may be impractical, and the cost disproportionate.

However, a party wishing to inspect a document in an expert report should (failing agreement) make an application to the court. The court will not permit inspection unless it is satisfied that it is necessary for the just disposal of the case and that the document is not anyway reasonably available to the party making the application from an alternative source.

17. EVIDENCE BY VIDEO LINK

PD no. 2/2004 provides:

1. Introduction

1.1 This practice direction **applies to all** applications seeking the sanction of the Court for the use of video conferencing (VCF),

1.2 The purpose of this practice direction is to explain and clarify certain procedures and arrangements necessary in this relatively new method of taking evidence in trials or in other parts of any legal proceedings, for example, interim application case management conferences and pre-trial reviews. Further guidance is given in the Video Conferencing Guide appended to this practice direction.

1.3 VCF equipment may be used both (a) in a courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (U) in a separate studio or conference room. In either case, the location at which the judge sits is referred to as the "local site". The other site or sites to and from which transmission is made are referred to as "the remote site" and in any particular case any such site may be another courtroom.

2. Preliminary arrangements

2.1 The court's permission is required for any part of the proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the listing officer or other appropriate court officer of the intention to seek it, and should enquire as to the availability of court VCF equipment for the day or days of the proposed VCF.

2.2 The application for a direction should be made to any of the Judges of the Grand Court. If all parties consent to a direction, permission can be sought by letter, fax or e-mail, although the court may still require an oral hearing. **All** parties are entitled to be heard on whether or not such a direction should be given and as to its terms. If a witness at a remote site is to give evidence by an interpreter, consideration should be given at this stage as to whether the interpreter should be at the local site or the remote site.

2.3 If a VCF direction is given, arrangements for the transmission will then need to be made. The court will ordinarily direct that the party seeking permission to use VCF is to be responsible for this. That party is hereafter —in civil cases - referred to as "the VCF arranging party".

2.4 The VCF arranging party must contact the listing officer or other appropriate officer of the court and make arrangements for the VCF transmission. Details of the remote site, and of the equipment to be used both at the local site (if not being supplied by the Court) and the remote site (including the number of **ISDN** lines and connection speed), together with all necessary contact names and telephone numbers, will have to be provided to the listing officer or other court officer. The Court will need to be satisfied that any equipment provided by the parties for use at the local site and that at the remote site is of sufficient quality for a satisfactory transmission.

3. Costs

3.1 Subject to any order to the contrary, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by, the VCF arranging party. All reasonable efforts should be made to keep the transmission to a minimum and so keep the costs down. All such costs will be considered to be part of the costs of the proceedings and the court will determine at such subsequent time as is convenient or appropriate who, as between the parties, should be responsible for them and (if appropriate) in what proportions.

4. Recording

4.1 The VCF arranging party must arrange for the recording equipment to be provided by the Court so that the evidence may be recorded at the local site.

4.2 Application for a direction from the Court must be made for the provision of recording equipment at the remote site by the arranging party.

4.3 No other recording may be made of any proceedings via VCF, save as directed by the Court.

26 May 2004

VIDEO CONFERENCING GUIDE

This guidance is for the use of video conferencing (VCF) in civil proceedings. It is in part based upon the protocol of the Federal Court of Australia and CPR 32 Practice Direction of the Courts of England and Wales. It is intended to provide a guide to all persons involved in the use of VCF, although it does not attempt to cover all the practical questions which might arise.

VIDEO CONFERENCING GENERALLY

1. VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs, It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation, In particular, it needs to be recognized that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.

2. When used for the taking of evidence, the objective should be to make the VCF session as close as possible to the usual practice in a trial court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by VCF: for example, the administration of the oath, ensuring that the witness understands who is at the local site and what their various roles are, the raising of any objections to the evidence and the use of documents.

3. It should not be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a court by means of VCF. If there is any doubt about this, enquiries should be directed to the Foreign and Commonwealth Office (International Legal Matters Unit, Consular Division) with a view to ensuring that the country from which the evidence is to be taken raises no objection to it at diplomatic level. The party who is directed to be responsible for arranging the VCF (see paragraph 8 below) will be required to make all necessary inquiries about this well in advance of the VCF and must be able to inform the court what those inquiries were and of their outcome.

4. Time zone differences need to be considered when a witness abroad is to be examined in the Cayman islands by VCF. The convenience of the witness, the parties, their representatives and the court must all be taken into account. The cost of the use of a commercial studio is usually greater outside normal business hours.

5. Those involved with VCF need to be aware that, even with the most advanced systems currently available, there are the briefest of delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to "speak over" the witness, whose voice will continue to be heard for a millisecond or so after he or she appears on the screen to have finished speaking.

6. With current technology, picture quality is good, but not as good as a television picture. The quality of the picture is enhanced if those appearing on VCF monitors keep their movements to a minimum.

PRELIMINARY ARRANGEMENTS

7. The VCF arranging party must ensure that an appropriate person will be present at the local site to supervise the operation of the VCF throughout the transmission in order to deal with any technical problems.

8. It is recommended that the judge, practitioners and witness should arrive at their respective VCF sites about 20 minutes prior to the scheduled commencement of the transmission.

9. If the local site is not a courtroom, but a conference room or studio, the judge will need to determine who is to sit where. The VCF arranging party must take care to ensure that the number of microphones is adequate for the speakers and that the panning of the camera for the practitioners' table encompasses all legal representatives so that the viewer can see everyone seated there.

10. The proceedings, wherever they may take place, form part of a trial to which the public is entitled to have access (unless the court has determined that they should be heard in private). If the local site is to be a studio or conference room, the VCF arranging party must ensure that it provides sufficient accommodation to enable a reasonable number of members of the public to attend.

11. In cases where the local site is a studio or conference room, the VCF arranging party should make arrangements, if practicable, for the Royal Coat of Arms to be placed above the judge's seat.

12. In cases in which the VCF is to be used for the taking of evidence, the VCF arranging party must arrange for recording equipment to be provided by the court which made the VCF direction so that the evidence can be recorded. An associate will normally be present to operate the recording equipment when the local site is a courtroom. The VCF arranging party should take steps to ensure that an associate is present to do likewise when it is a studio or conference room. The equipment should be set up and tested before the VCF transmission. It will often be a valuable safeguard for the VCF arranging party also to arrange for the provision of recording equipment at the remote site. This will provide a useful back-up if there is any reduction in sound quality during the transmission, A direction from the court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are court proceedings and, save as directed by the court, no other recording of them must be made. The court will direct what is to happen to the back-up recording.

13. Some countries may require that any oath or affirmation to be taken by a witness accord with local custom rather than the usual form of oath or affirmation used in the Cayman Islands. The VCF arranging party must make all appropriate prior inquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with any local custom. That party must be in a position to inform the court what those inquiries were, what their outcome was and what arrangements have been made. If the oath or affirmation can be administered in the manner normal in the Cayman Islands, the VCF arranging party must arrange in advance to have the appropriate holy book at the remote site. The associate will normally deliver the oath.

14. Consideration will need to be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the VCF arranging party should then send to the remote site.

15. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VCF arranging party should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VCF transmission, Consideration should be given to whether to us a

document camera. If it is decided to use one, arrangements for its use will need to be established in advance. The panel operator will need to know the number and size of documents or objects if their images are to be sent by document camera. In many cases, a simpler and sufficient alternative will be to ensure that there are fax transmission and reception facilities at the participating sites.

THE HEARING

16. The procedure for conducting the transmission will be determined by the judge. He will determine who is to control the cameras. In cases where the VCF is being used for an application in the course of the proceedings, the judge will ordinarily not enter the local site until both sites are on line. Similarly, at the conclusion of the hearing, he will ordinarily leave the local site while both sites are still on line. The following paragraphs apply primarily to cases where the VCF is being used for the taking of the evidence of a witness at a remote site. In all cases, the judge will need to decide whether court dress is appropriate when using VCF facilities. It might be appropriate when transmitting from courtroom to courtroom. It might not be when a commercial facility is being used.

17. At the beginning of the transmission, the judge will probably wish to introduce himself and the advocates to the witness. He or she will probably want to know who is at the remote site and will invite the witness to introduce himself and anyone else who is with him. The judge may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence. The judge will probably wish to explain to the witness the methods of taking the oath or of affirming, the manner in which the evidence will be taken, and who will be conducting the examination and cross-examination. The judge will probably also wish to inform the witness of the matters referred to in paragraphs 5 and 6 above (co-ordination of picture with sound, and picture quality).

18. The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, cross-examination and re-examination, the witness must be able to see the legal representative asking the question, and also any other person (whether another legal representative or the judge) making any statements in regard to the witness's evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.

18. TAKING EVIDENCE ABROAD

In an appropriate case permission may be given for the evidence of a witness to be taken abroad.

In a very exceptional case, and subject in particular to all necessary approvals being obtained and diplomatic requirements being satisfied, the court may be willing to conduct part of the proceedings abroad. However, if there is any reasonable opportunity for the witness to give evidence by video link, the court is unlikely to take that course.

19. TRANSITIONAL PROVISIONS

GCR 0.72, r.6 sets out transitional provisions.

Section B

COMPANIES

1. Capital Reductions

11 Requirements under PD 1/2010

When presenting a petition for an order confirming a resolution for reducing the share capital of a company (under s.15 of the Companies Law) the petitioner's attorney is required (pursuant to 0.102, r.5) to issue a summons for directions at the same time as presenting the petition. If upon reading the petition, affidavit and written submissions, the assigned judge is satisfied that settling a list of creditors should be dispensed with under s.15(3) or that the reduction is not an exceptional case where settlement of a list of creditors is required under s.15(2), and the materials filed do not disclose any other reason for the assigned judge to require additional evidence or submissions, then he may make an order for directions without the need for a hearing.

1.2 Supporting affidavit

At the stage of the hearing or consideration of the summons for directions the Court will require to be satisfied on the evidence (1) that the Company had the power under its articles of association to reduce its capital; (2) that sufficient appropriate information about the proposed capital reduction was provided to the shareholders to enable them to make an informed decision; (3) that the shareholders have been and will be treated equitably; (4) that a valid resolution approving the proposed reduction of capital has been passed and (5) that the company's actual and contingent creditors will be adequately protected.

1.4 Hearing of the petition

The Court will usually require notice of the petition and its hearing date to be advertised in a place or places where such notice is most likely to come to the attention of creditors.

The Court will only dispense with such advertisement in exceptional circumstances. Relevant draft forms of order are appended to this Section B (see Index to Appendix B below).

2. <u>Schemes of Arrangement</u>

These are dealt with by PD 2/2010. Please see Schedule 4 of this Guide for a complete reproduction of this PD. A draft form of order for directions is appended to this Section B (see Index to Appendix B below).

3. Restoration of Companies to the Register

3.1 *Applications for orders that struck-off companies be restored to the register are governed by GCR 0.102, rr.17 and 18 and paragraph 6 of Practice Direction No.1/2010.*

3.2 *Restoration applications are normally made by solvent companies for the purpose of regaining assets which have been vested in the Financial Secretary by operation of law pursuant to section 162 of the Companies Law. Such applications are governed by GCR 0.102, r.17. The application is by an originating application in GCR Form No.66, supported by an affidavit which addresses all the matters specified in rule 17(2). The application must be accompanied by a draft order in GRC Form No.67.*

3.3 *The application will be determined by the Registrar on the papers. If the Registrar is not satisfied that an order can properly be made, he will normally either require the applicant to file further evidence or assign the matter to a judge, who will probably require an oral hearin, in which case the Registrar will send notice of the hearing to the applicant by e-mail.*

3.4 *Restoration applications may also be made by creditors in respect of insolvent companies. Unless the Court can be satisfied that an insolvent company will have a registered office and a board of directors who can be expected to deal with its affairs in a proper manner, it will not make a restoration order without at the same time putting the company into compulsory liquidation and appointing official liquidators. For this reason, such applications are treated as a preliminary step towards the making of a winding up order.*

3.5 *It follows that a creditor's petition should normally seek both an order that the company be restored to the register and an order that it be would up. The petition is made in GCR Form No.68 and CWR Order 3 applies, except that the petition is served on*

the last known registered office and on the Registrar of Companies. The petition must nominate a qualified insolvency practitioner whom the court can appoint as official liquidator and he must swear a supporting affidavit complying with the requirements of CWR Q.3, r.4. The petition will need to be advertised and the hearing will take place before a judge of the FSD in open court.

4. Winding Up of Companies — General Provisions

4.1 Form and content of winding up petitions

See CWR 0.3, r.2 and CWR Form no.2. The petition should contain only a concise statement of the facts relied upon. The evidence should be set out in the verifying affidavit which must be filed at the same time as the petition.

4.2 Nomination of qualified insolvency practitioner

Every petition must state the name and address of the qualified insolvency practitioner (and any foreign practitioner) whom the petitioner nominates for appointment as official liquidator. A failure to comply with this requirement will result in the Registrar refusing to fix a hearing date unless and until the petition is amended. The supporting affidavits required to be sworn by the nominated insolvency practitioners (CWR 0.3, r.4) must be filed at the same time as the petition.

4.3 Hearings in open court

By presenting a winding up petition the creditor/contributory is invoking class rights and every other member of the class is entitled to be heard. For this reason the notice of the hearing will require to be advertised unless all those in the class can be given notice in some other way. It also follows the hearing of winding up petitions will always take place in open court.

4.4 Form and content of winding up orders

See CWR 0.3, r.16 and CWR Form No.6 .

The exercise by an official liquidator the powers set out in Part I of the Third Schedule to the Companies Law require the sanction of the Court. The Court will require to be satisfied that the exercise of any such power should be sanctioned in the particular

circumstances. It will not usually sanction the exercise of all such powers when making the winding order.

4.5 Filing, service and registration of winding up orders

Winding up orders are orders in rem, binding on all persons whether or not they had notice of the proceeding. CWR 0.3, r.17 requires that all winding up orders must be drawn up, filed, served, gazetted, and registered with the Registrar of Companies and any other relevant authorities within strict time limits. Any failure to comply strictly with these time limits is likely to have serious adverse consequences for the official liquidator.

S. Creditor's Petitions

5.1 Presentation of the petition and fixing the hearing date

See CWR 0.3, r.5. The petitioning creditor's attorney should consult with the Registrar before filing a creditor's petition in order to fix a hearing date, which must be endorsed on the petition itself or specified in a separate notice of hearing. The hearing date will normally be not less than four (4) weeks and not more than six (6) weeks the after the date upon which the petition is filed.

5.2 Verifying affidavit and supporting affidavits

The form and content of these affidavits must comply with the requirements of CWR 0.3, rr.3 and 4. The verifying affidavit (sworn by or on behalf of the petitioning creditor) and the supporting affidavits (sworn by the nominated insolvency practitioners) must be filed at the same time as the petition. Any failure to file these affidavits will prevent the Registrar from fixing a hearing date and will be regarded as an abuse of the process.

5.3 Advertisement and provision of documents to creditors

See CWR 0.3, r.6 and CWR Form No.3

Unless the Court otherwise directs, every creditor's petition is required to be advertised and the advertisement must be published with the prescribed time limits. Any application for an order dispensing with the need to advertise or for directions relating to the manner of advertising must be made by summons issued at the same time as filing the petition. Any such summons will normally be heard within 48 hours.

In most cases the hearing will need to be advertised locally and in the foreign country or countries in which the company is carrying on business, in which case the advertisement may need to be translated into a foreign language.

5.4 Withdrawal of petition

Because a winding up petition invokes class rights, it may not be withdrawn without the leave of the Court. If a petition has not been advertised and no notice of intention to appear has been received from any other creditor, the Court may allow it to be withdrawn by consent. If it has been advertised, any application for leave to withdraw the petition must be heard at the advertised hearing and is likely to be refused if any other creditor applies to be substituted. See CWR 0.3, rr.7 and 10.

5.5 Company's response to the petition

CWR 0.3, r.9 requires that if the company intends to oppose the petition, its affidavits in opposition must be filed and served on the petitioner within 14 days from the date upon which the petition was served.

5.6 Appearance by opposing and/or supporting creditors

For case management reasons, creditors wishing to appear on the petition must give at least three day's notice (in CWR Form No.4) of their intention to do so. Creditors who support the making of a winding up order, but oppose the appointment of the petitioner's nominee as official liquidator, must nominate an alternative qualified insolvency practitioner who is willing to act. The alternative candidate must swear a supporting affidavit complying with the requirement of CWR 0.3, r.4, otherwise the Court will not hear the application.

5.7 Substitution of petitioner

If the petitioning creditor is not entitled to a winding up order or fails to pursue his petition in one or other of the ways specified in CWR 0.3, r.10, the Court may make an

order that another creditor be substituted as petitioner. An order for substitution may be made on summons prior to the advertised hearing or at the advertised hearing. In either case, the party applying for substitution must prepare a draft amended petition and swear an affidavit which establishes his right to a winding up order. In an appropriate case the Court will make a winding up order at the advertised hearing upon the amended petition of the substituted creditor.

6. Contributory's Petitions

6.1 Presentation of petition and summons for directions

When presenting a contributory's petition on the just and equitable ground, the petitioner must file the petition, a verifying affidavit(s), the supporting affidavit sworn by the qualified insolvency practitioner nominated for appointment as official liquidator and a summons for directions in CWR Form No.5. The Registrar will assign the matter to a judge fix a date for hearing the summons for directions. A date for hearing the petition will be fixed by the judge as part of the order for directions.

6.2 Characterisation of the proceeding

At the hearing of the summons for directions the judge will consider all the matters set out in CWR 0.3, r.11. In particular, the judge must always determine whether the proceeding should be treated as (a) a proceeding against the company, in which case it will be treated as the respondent or (b) an inter partes proceeding between one shareholder(s) as petitioner and another shareholder(s) as respondent. The way in which the proceeding is characterized determines the manner of its future conduct.

6.3 Directions — proceeding against the company

If the company is treated as the respondent to the petition, it follows that the judge must always consider how the petition will be drawn to the attention of the shareholders (other than the petitioner) who are entitled to be heard. The Court may direct that the other shareholders be served and/or that the petition be advertised. In the case of a mutual fund, the Court will normally direct that its administrator send copies of the petition and affidavits to the registered shareholders by whatever method of

communication is normally used in the ordinary course of business. The Court will fix a date for hearing the petition and set a timetable for the exchange of affidavit evidence.

6.4 Directions — inter partes proceeding between shareholders

If the company is treated as the subject-matter of the petition (as it will be in any case in which the petitioner alleges that its management is deadlocked, for example), the opposing shareholders will be treated as the respondents and the Court will direct that they be individually served. In these circumstances, it will not be appropriate for the petition to be advertised. The Court will give directions for trial and will consider directing service of pleadings, exchange of affidavit evidence and attendance for cross-examination. Any application for a pre-emptive costs order should be made at the summons for directions.

6.5 Application for validation order

Any application by the company for a validation order under section _ of the Companies Law should normally be made at the summons for directions or as soon as possible thereafter.

7. Monetary Authority's Petitions

7.1 Presentation of petition and summons for directions

When presenting a petition on regulatory grounds, the Monetary Authority must file with its petition, a verifying affidavit sworn by an appropriate officer (to which any controller's report must be exhibited), a supporting affidavit sworn by the qualified insolvency practitioner nominated for appointment as official liquidator and a summons for directions. The Registrar will fix a date for hearing the summons for directions as a matter of urgency, bearing in mind that the Monetary Authority has an obligation under CWR 0.3, r.13 to ensure that the petition, summons and affidavits are served by delivering them to the company's registered office immediately after they are filed.

7.2 Hearing of summons for directions

Petitions presented by the Monetary Authority on regulatory grounds are always characterized as proceedings against the company, but the Court may direct that the petition be served personally on directors, professional service providers and/or shareholders. If, at the hearing of the summons for directions, the Court is satisfied that the company consents or does not object to a winding up order being made, the Court will make an order summarily under CWR 0.3, r.14(2)(a). In any other case, the judge will fix a hearing date and give directions for trial.

8. Applications for Appointment of Provisional Liquidators

8.1 Application by creditor or contributory

I. Summons and supporting affidavits

An application for the appointment of a provisional liquidator may be made by a petitioning creditor or contributory on the grounds that there is a prima fade case for making a winding up order and the immediate appointment of a liquidator is necessary in order prevent the dissipation or misuse of the company's assets or to prevent oppression of minority shareholders or to prevent mismanagement or misconduct on the part of the directors. It will not be necessary to make a provisional appointment if it appears to the Court that the same result can be achieved by the grant of an injunction. Any such application must be made by summons which may, and usually should, be issued at the same time as the presentation of the petition.

i i . S e r v i c e

Under CWR 0.4, r.1(2) the company is entitled to a least four (4) clear day's notice of any application to appoint provisional liquidators unless there is some exceptional circumstance which justifies an order being made without notice. Evidence that the directors are likely to dissipate the company's assets or oppress minority shareholders or otherwise mismanage the company's affairs may justify the grant of an ex parte interlocutory injunction but it cannot, by itself, justify making an ex parte provisional winding up order.

i i i . Applicant's undertaking in damages

The Court will not make a provisional winding up order without requiring the petitioner/applicant to give an undertaking that he will pay (a) any damage suffered by the company as a result of the appointment and (b) the remuneration and expenses of the provisional liquidator, in the event that his petition is ultimately withdrawn or

dismissed. CWR 0.4, r.3 requires such an undertaking to be given in every case, but the jurisdiction to require security is a discretionary one.

iv. Form and content of the order

See CWR 0.4, r.4 and CWR Form No.7. A provisional liquidator's powers must be specified in the order. The Court will not make generalized orders to the effect that the provisional liquidator be empowered to exercise all the powers of the directors.

8.2 Application by the company

i. Ex Parte Summons

When a company is in financial difficulty, it may itself present a winding up petition and apply for the appointment of provisional liquidators under section 104(3) of the Companies Law on the basis that they will promote a restructuring of its affairs through the mechanism of a scheme of arrangement with its creditors. Such applications are made by ex parte summons issued simultaneously with the winding up petition.

ii. Directors' affidavit and other evidence

The matters required to be addressed by the company's directors in their supporting affidavit are set out in CWR 0.4, r.6(3). The Court will expect to see a detailed analysis of the company's business, the reasons why it got into financial difficulty and reasons why its directors belief believe that its affairs are capable of being restricted such that it can continue as a going concern. In addition to an affidavit sworn by the company's CEO or the chairman of its board of directors, the Court will normally expect to see a report prepared by the company's auditors and/or independent financial advisers. The company's auditor cannot be appointed as liquidator, but a qualified insolvency practitioner may be nominated for appointment as provisional liquidator notwithstanding that he has been retained by the company to give advice in connection with the application.

iii. Form and content of the order

See CWR 0.4, r.7 and Form 8 in Appendix B. The purpose and effect of a provisional winding up order made under section 104(3) is to give the company the benefit of the automatic stay for a limited period during which the provisional liquidators will investigate its affairs and advice whether or not it is capable of continuing as a going concern. The order will define the powers of the provisional liquidators and the powers (or limitations upon the powers) of the directors to manage the company's business. The Court will give directions for the establishment of a liquidation committee; the preparation of reports by the provisional liquidators; and the publication of those reports to the creditors and shareholders.

9. Applications by Voluntary Liquidators for Supervision Orders

9.1 Voluntary liquidations must be solvent

The general principle is that the liquidation of a company can proceed as a voluntary winding up only if, and so long as, the company is solvent. If the company is insolvent or of doubtful solvency, the liquidation must be brought under the supervision of the Court and the voluntary liquidator will not be permitted to continue in office as official liquidator unless he is a qualified insolvency practitioner who meets the residency, independence and insurance requirements of the Insolvency Practitioner's Regulations. A company in voluntary liquidation is deemed to be insolvent unless a declaration of solvency, signed by all of its directors, is filed with the Registrar of Companies within 28 days of the commencement of the liquidation.

9.2 Voluntary liquidator's application for supervision order

If the directors fail, for whatever reason, to sign a declaration of solvency within the 28 days time limit, the voluntary liquidator is required (by section 124 of the Companies Law) to apply for a supervision order. The application is made by petition which must contain the particulars specified in CWR 0.15, r.2. The verifying affidavit must be sworn by the voluntary liquidator personally. If the voluntary liquidator is a qualified insolvency practitioner who is ready, willing and properly able to accept appointment as official liquidator, the petition does not need to be served and the assigned judge will normally make a supervision order (in CWR Form No.23) without the need for a hearing.

9.3 Application for supervision order under section 131

Notwithstanding that a company's directors have all signed a declaration of solvency, it is still open to the voluntary liquidator or any creditor or contributory to make an application for a supervision order for cause under section 131 of the Companies Law. The application is made by petition in accordance with CWR 0.15, r,3. The petition must be verified by affidavit. At the same time as presenting the petition, the petitioner must

take out a summons for directions which will be listed for hearing by the assigned judge Unless the judge is satisfied that the company's members consent or do not object to a supervision order being made (in which case it will be made summarily) he will give directions for trial. The order for directions will deal with service, advertisement and the manner in which the issues will be defined and the manner in which the evidence will be given. The trial of the petition will take place in open court.

10. Sanction Applications

10.1 General

A "sanction application" is (a) an application by an official liquidator for an order of the Court sanctioning the exercise or proposed exercise of any of his powers or (b) an application by a creditor or contributory for an order directing an official liquidator to exercise or refrain from exercising his powers in a particular way. All sanction applications are made by summons in the liquidation proceeding. The procedure is governed by CWR 0.11.

10.2 Sanction applications made by official liquidators

0.11, r.2(1) requires that every sanction application made by the official liquidator must be served on the liquidation committee (either by serving the committee's general counsel or by serving each member individually). Typically, liquidation committees agree to act on the basis that all documentation, including liquidator's summonses, will be delivered as attachments to e-mails. If there is no liquidation committee, the judge will give directions as to service on creditors/contributories and, if necessary, the judge may give directions about advertisement. The official liquidator will normally need to swear an affidavit specifically in support of a sanction application, but this may not be necessary if all the relevant evidence is contained in a report or affidavits already on the Court file. Whether or not it is necessary for the liquidator's counsel to prepare a written skeleton argument will depend upon the nature and complexity of the matters in issue.

10.3 Fixing the hearing of a liquidator's sanction application

The Registrar will refer the application to the assigned judge before taking any steps towards fixing a hearing date. If, having read the summons, written submissions and the supporting affidavits/reports, the judge is satisfied that the application has been duly served and is supported by the liquidation committee, he may make an order in terms of the summons without an oral hearing. If the judge is not prepared to make an order on the papers, a date will be fixed for an oral hearing which will normally take place in

chambers. Liquidator's counsel should not attempt to fix dates for hearing sanction applications without first filing all the supporting evidence,

10.4 Sanction applications made by creditors or contributories

A sanction application may be made by the liquidation committee (acting collectively through counsel appoint pursuant to CWR 0.9, r.5) or by an individual creditor or contributory acting personally. Such applications are normally only made as a 4result of some difference or disagreement with the official liquidator. The application is made by summons which must be supported by an affidavit containing full particulars of the grounds upon which it is made. The application must be served on the official liquidator who has an obligation under 0.11, r.4(2)(b) to respond to the application by swearing an affidavit or making a report in which he states whether he supports the application, opposes it or takes a neutral position. The Registrar will fix a hearing date in every case. Sanction applications made by liquidation committees or individual creditors or contributories will not be determined on the papers without a hearing.

11. <u>Applications for a direction that payment of court fees be deferred</u>

PD No. 1/2010 provides:

An application by an official liquidator or officeholder for a direction, pursuant to Rule 6(4) of the Court Fees Rules 2009 (as amended), that payment of court fees be deferred must be made to the assigned judge.

Such applications should be made by letter addressed to the assigned judge (with a copy to the Registrar) and signed by the officeholder personally.

The application will be determined by the assigned judge and his decision will be communicated to the applicant and the Registrar by the judge's secretary.

In the event that the application is refused, the officeholder shall have the right to ask the judge to reconsider his decision, for which purpose the applicant may ask the judge's secretary to fix an appointment for him to appear before the judge in person.

The purpose of Rule 6(4) is to ensure that an officeholder who is required or entitled to make an application to the Court in the performance of a legal duty in circumstances where the court fees will be payable out of a fund under his control, should not be deterred from performing his duty by being put in the position of having to pay the court fees out of his own pocket.

For the purposes of determining whether an official liquidator has under his control "sufficient money with which to pay the fees immediately" within the meaning of Rule 6(4), the judge will have regard to the general rules as to priority contained in CWR Order 20, the effect of which is that court fees rank ahead of an official liquidator's remuneration.

If the officeholder does have some cash or cash equivalent assets under his control, his application letter must state (a) the amount which is immediately available; (b) the amount

which is likely to become available to him within the next 90 days; (c) the purposes for which he intends to spend such cash over the next 90 days; and (d) whether he has received any remuneration or holds funds in trust for that purpose.

12. Applications for a direction that multiple proceedings be treated as "consolidated" for the purposes of assessing court fees

PD No. 1/2010 provides:

An application by a petitioner/plaintiff for a direction that two or more separate proceedings governed by the Companies Winding Up Rules or GCR 0.102 be treated as consolidated into one for the purposes of calculating the amount of fixed fees and/or court hearing fees payable pursuant to Rules 3 and/or 5 of the Court Fees Rules 2009 (as amended) must be made to the Registrar.

Such applications should be made by letter addressed to the Registrar at the time of filing the originating process.

The application will be determined by the assigned judge and his decision will be communicated to the applicant and the Registrar by the judge's secretary.

In the event that the application is refused, the officeholder shall have the right to ask the judge to reconsider his decision, for which purpose the applicant may ask the judge's secretary to fix an appointment for him to appear before the judge in person.

COMPANIES

APPENDIX TO SECTION B

DRAFT PRO FORMA TEMPLATES

CONTENTS:

Appendix B Doc. 1: Standard Form of FSD Order

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's Initials)]

1 [PLAINTIFF/ APPLICANT]

AND

J [DEFENDANT/ RESPONDENT]

OR

[IN THE MATTER OF

[In Chambers / In Open Court / In Chambers as Open Court]

[Date]

Before The Honourable Mr Justice [ ]

ORDER

OR

[WINDING UP ORDER / SUPERVISION ORDER / ORDER FOR SECURITY FOR COSTS / ETC.]

UPON *[the Plaintiff's / Defendant's / etc.] Summons dated [*

OR

UPON *[the Petition of] presented on [*

AND UPON *reading the affidavit(s) of [ ] sworn on [ ]* ***[NB:*** *Identify all affidavits read — do not say "as recorded on the file as having been read". This does not have any practical meaning. If a large number of affidavits were read say* ***"AND UPON*** *reading the affidavits in the attached schedule to this order".]*

AND UPON *hearing [leading] counsel for the [1 and [leading] counsel for the [ ]*

IT IS ORDERED [AND DIRECTED] THAT: [AS FOLLOWS]

1, 1 .1

2. [Etc.....]

Dated the [ ] day of [ ]
Filed the [ ] day of [ ]

The Honourable Mr. Justice [ ]
Judge of the Grand Court
Financial Services Division

This Order is filed by [ ], attorneys-at-law for the [ ], whose address for service is that of [his / its] said attorneys-at-law, [Street address, Grand Cayman etc.], Cayman Islands, Tel: (345) [ ] [(Ref:)]

Appendix B Doc. 2: appoint JOLs and sanction JOLs agreement

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's Initials)]

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)
AND IN THE MATTER OF [ ] (IN OFFICIAL LIQUIDATION)

In Chambers
[Date]
Before The Honourable Mr. Justice [

ORDER

UPON *the application of the Joint Official Liquidators* ***("JOLs")*** *of [ ]* ***("the Company")*** *by Summons dated [ ]*

AND UPON *reading the Affidavit(s) of [ ]sworn on [ ]*

AND UPON *hearing counsel for the JOLs [and counsel for .l*

IT IS ORDERED AND DIRECTED THAT:

3. the JOLs' exercise of the power under paragraph 5 of Part l of the Third Schedule to the Companies Law (2010 Revision) to make compromises and arrangements with the creditors of the Company with regard to the distribution of the Company's assets on the

terms of the distribution proposals exhibited to the Affidavit of ***f*** *] ("the* ***Distribution Proposal?)*** *is hereby sanctioned.*

4. *Pursuant to CWR 0.18, r.5(2) the JOLs may divide and distribute the Company's assets among its creditors in specie in accordance with the Distribution Proposals.*

5. *The JOLs' casts of and incidental to this application may be paid out of the assets of the Company.*

Dated the [ ] day of [.1
Filed the ***i*** *] day of j .1*

The Honourable Mr. Justice ( ]
Judge of the Grand Court
Financial Service Division

This Order was filed by [ ], attorneys-at-law for the Joint Official Liquidators, whose address for service is that of their attorneys-at-law [Cayman Islands [(Ref:)]

Appendix B Doc. 3: release and appoint new JOL

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF j [(Judge's Initials)]

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)
AND IN THE MATTER OF j 1

In Chambers
[Date j
Before The Honourable Mr. Justice I .1

ORDER

UPON *the application of the Joint Official Liquidators* ***("JOLs")*** *of [j ("the Company") by Summons dated [ ]*

AND UPON *reading the affidavit(s) of [j sworn on* ***[Date)***

AND UPON *hearing counsel for the JOLs [and counsel for* I

IT IS ORDERED AND DIRECTED THAT:

1. *The entry by the JOLs, acting on behalf of the Company, into the [j Agreement as defined in and exhibited to the Affidavit of [I sworn on* ***[Date]*** *be and is hereby sanctioned pursuant to section 110(2) of the Companies Law (2010 Revision).*

2. *Pursuant to CWR 0.5, r.4:*

2.1 [ ] of [ ] be released from the performance of any further duties as JOL of the Company and

2.2 [ ] of ( ] [Tel: ; email] be appointed as successor JOL of the Company jointly with [ ] [without the need for any report or accounts to be prepared].

3 All references to the Liquidators in the Order dated [ ] shall with effect from the date of this order be references to [Mr./Ms.] and [Mr./Ms.]

4. [The requirement for publication of notice of the appointment of [Mr./Ms.] in accordance with CWR 0.5, r,3 be dispensed with.]

5. The costs of this Summons:

5.1 In relation to the sanction of the [j Agreement be paid out of the assets of the Company as an expense of the liquidation; and

5.2 In relation to the appointment of a successor JOL of the Company be borne by the JOLs.

Dated the [ ] day of[1
Filed the [ ] day of[I

The Honourable Mr. Justice [ ]
Judge of the Grand Court
Financial Service Division

This Order was filed by [ ], attorneys-at-law for the Joint Official Liquidators, whose address for service is that of their attorneys-at-law [ ], Cayman Islands Pet II

Appendix B Doc.4: Pro Forma Order — consolidation of fees

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's Initials)]

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)

AND IN THE MATTER OF [ ]

In Chambers
[Date]
Before The Honourable Mr Justice [/

ORDER

UPON READING *the letter [from dated]*

AND UPON *the Court being satisfied that pursuant to paragraphs 7 and 8 of Practice Direction 1/2010 the proceedings in FSD Cause No: [ ] and FSD Cause No: [ ] may be treated as "consolidated" for the purpose of assessing court fees*

IT IS ORDERED *that:-*

*1 The filing fee of [CIS] paid to the Court Office on **[Date]** pursuant to Part B of the First Schedule of the Court Fees (Amendment) Rules 2009 be refunded to [ ].*

Dated the [ ] day off j
Filed the [1 day of [I

The Honourable Mr. Justice [1
Judge of the Grand Court
Financial Service Division

This Order was filed by [j whose address for service is [ ], Cayman Islands [(Ref)1

SECTION C

TRUSTS AND ESTATES

1. INTRODUCTION

1.1. This section contains guidance about a number of aspects of proceedings concerning trusts and estates falling within the jurisdiction of the Financial Services Division pursuant to Grand GCR 0.72 (other than probate claims).

1.2. The topics covered in this section include:

(a) Applications made pursuant to GCR 0.85, r.2;

(b) Applications by a trustee, executor, or personal representative for an opinion, advice or direction or related matters pursuant to the Trusts Law (as revised) ("the Trusts Law");

(c) Applications pursuant to section 63 of the Trusts Law;

(d) Applications pursuant to section 72 of the Trusts Law; and

(e) The appointment of guardians ad litem under GCR 0.80, r.3.

2. PARTIES

2.1. In proceedings to which this chapter applies, all of the trustees must be parties and if any of them do not consent to being a plaintiff, they must be made a defendant.

2.2. In proceedings to which this section applies, the plaintiff may make any person with an interest in or claim against the estate, or an interest under the trust, party to the proceedings having regard to the nature of the order sought.

2.3. In the case of a private or STAR trust, it will usually be clear which parties need to be joined as defendants. if there are only two views as to the appropriate course, and one is advocated by one beneficiary or enforcer, that beneficiary or enforcer should be joined. Consideration should be given to whether it is appropriate for the trustee to present the

other arguments so that it may not be necessary to join other beneficiaries or enforcers.

2.4. If the trustee is in doubt as to which beneficiaries or enforcers should be made parties, it is open to the trustee to issue the application on an ex parte basis but seeking an urgent direction as to which persons shall be joined as parties or to whom notice should be given.

2.5. In the case of an exclusively charitable trust (including a STAR trust), the Attorney-General should always be a defendant. If the trust contains trusts for charity and the relief sought in the application will or might affect the interests of charity, the Attorney-General should be a defendant.

3. PROCEEDING WITHOUT A HEARING

3.1. With the exception of applications made pursuant to section 72 of the Trusts Law, in respect of which the parties should always appear, the court will always consider in its discretion whether it is appropriate to deal with any of the other applications set out at paragraph 2 above on the papers without a hearing.

3,2. if the applicant wishes to proceed without a hearing the originating summons may be issued in accordance with GCR 0.7, r.2 as an ex parte originating summons.

3.3. The originating summons must be accompanied by:

(a) An affidavit setting out the material facts justifying determination without a hearing and in particular —

N identifying those affected by the remedy sought; and

(ii) detailing any consultation of those so affected and the result of that consultation; and

(b) A draft order for the remedy sought.

3.4. The originating summons may also be accompanied by a statement of agreed facts signed in accordance with GCR 0.85, r.8(4).

3.5. If the court considers that the case does not require a hearing, it will proceed to consider the application on the papers. Further guidance as to paper applications can be found in Section [1.

3.6. If the court considers that an oral hearing is required, it will give appropriate directions.

3.7. In cases involving trusts for charity, the court may deal with the case without a hearing on the basis of a letter from or on behalf of the Attorney-General that sets out his position with regard to the application.

4. APPLICATIONS FOR DIRECTIONS

4.1. Applications to the court by a trustee, executor, administrator or enforcer for directions in relation to the administration of a trust or in relation to a deceased person's estate pursuant to section 48 of the Trusts Law, are to be made by originating summons, and are governed by GCR 0.85 and PDs in that connection if any.

4.2. In all applications for directions, the evidence should be given by affidavit or affirmation and should contain full disclosure of all relevant matters so as to ensure that if directions are given, the applicant party is properly protected by the order.

4.3. Applications for directions whether or not to take steps in or to defend or pursue litigation should be supported by evidence including the advice of an appropriately qualified lawyer as to the prospects of success and all other relevant matters for the court to take into account. The qualifications of the lawyer providing the said evidence as to prospects of success must be stated and the advice must state fully the basis on which it is given. If the advice is given on formal instructions, the instructions should be put in evidence. Draft 1 in Appendix [A] to this section is a draft application for directions whether or not to take steps in or to defend or pursue litigation.

4.4. The evidence in such an application should include a costs estimate for the steps the applicant proposes to take or for the defence or pursuit of the litigation and should include any known information concerning the means of any opposite party to the proceedings.

4.5. If a beneficiary of the trust or estate is a party to the litigation about which directions are sought, with an interest opposed to that of the applicant trustee, executor, or personal representative, that beneficiary should be a defendant to the application but any material which would be privileged as regards that beneficiary in the litigation should be put in

evidence as exhibits to the applicant's affidavit and the said exhibit(s) should not be served on the beneficiary defendant. The said beneficiary defendant may also be excluded from that part of any hearing which is devoted to discussion of the material which has been withheld.

4.6. When it is proposed that a party or interested person should be excluded from any part of the hearing the applicant must inform the Court of precisely what is proposed and of the nature of any dispute about the proposal if not by applicant at least by letter copied to all parties/interested persons by noon at least 3 clear business days before the hearing date.

4.7. All applications for directions should be supported by evidence showing the value of the trust assets, the significance of the proposed litigation or other course of action for the trust and why the court's directions are required.

4.8. In all applications for directions, the evidence must explain what, if any, consultation there has been with beneficiaries and with what result.

4.9. In an application for directions in respect of litigation, the court will expect evidence that the following steps have been taken in preparation for the application:

(a) If the trust is a private trust and/or the estate is one where the beneficiaries are not numerous and are all or mainly adult, identifiable and traceable, the trustee or personal representative has canvassed with all of the adult beneficiaries the proposed or possible courses of action before making the application for directions, and if not, why not.

(b) If the trust is a private trust and/or the estate is one with a large number of beneficiaries, including those not yet born or identified, and/or includes minors or incapacitated persons, the trustee or personal representative has canvassed with those adult beneficiaries nonetheless principally concerned the proposed or possible courses of action before making the application for directions.

(c) If the trust contains trusts for charity whose interests are or may be affected by the proposed course of action, the Attorney-General has been consulted.

4.10. If the court gives directions allowing the trustee or personal representative to take, defend or pursue litigation it may allow such steps only up to a particular stage in the litigation, requiring the trustee or personal representative, before it proceeds beyond that stage, to renew its application to the court for directions. In such a case, the court may direct that the application may be dealt with on the papers at that stage, if the beneficiaries support

the continuation of the directions and the written advice of an appropriately qualified lawyer stating that he or she advises the further directions is submitted in evidence. On consideration of the papers, the court may give the trustee or personal representative a direction to continue with the litigation up to a further stage or indefinitely as it sees fit.

4.11. In any application for directions where a minor is a defendant, the court will expect to have put before it the instructions to and advice of an appropriately qualified lawyer as to the benefits and disadvantages of what is proposed and any other relevant course of action from the perspective and interests of the minor.

4.12. In a case of urgency, such as where a limitation period or period for service of proceedings is about to expire, the court may be able to give directions on a summary consideration of the evidence to cover the steps which need to be taken urgently but limiting those directions so that the application must be renewed on fuller consideration at the earliest possible stage.

5. ADMINISTRATION ACTIONS — GCR 0.85, R.3

5.1. The court will only make an administration order if it considers that the issues between the parties cannot properly be resolved in any other way.

5.2. If, in a claim for an administration order, the plaintiff alleges that the trustee or personal representatives has not provided proper accounts, the court may —

(a) stay the proceedings for a specified period, and order proper accounts to be filed and served within that period; or

(b) if necessary to prevent proceedings by other creditors or persons claiming to be entitled to the estate or fund, make an administration order and include in it an order that no such proceedings are to be taken without the leave of the court.

5.3. Draft 2 in Appendix C is a standard form application for an account pursuant to GCR 0.85, r.3.

5.4. Where an administration order has been made in relation to the estate of a deceased person, and a claim is made against the estate by any person who is not a party to the proceedings —

(a) no party other than the executors or administrators of the estate may take part in any proceedings relating to the claim without the permission of the court; and

(b) the court may direct or permit any other party to take part in the proceedings, on such terms as to costs or otherwise as it thinks fit.

5.5. Where an order is made for the sale of any property vested in a trustee, the court shall direct who shall have the conduct of the sale.

6. APPLICATIONS UNDER SECTION 63 OF THE TRUSTS LAW

6.1. An application under section 63 of the Trusts Law should be made by originating summons.

6.2. The court may in appropriate cases, consider the application on the papers without the need for a hearing.

6.3. The evidence in support of an application pursuant to section 63 of the Trusts Law should contain the following:

(1) A full description of the transaction which the trustee wishes to undertake;

(g) The reason(s) why the said transaction cannot be undertaken by reason of the absence of a specific power in the trust instrument;

(h) The reason(s) why the said transaction would be expedient;

N Any other information which the trustee considers relevant, including details of any consultation with the beneficiaries and the results of the said consultation; and

(1) A draft of the order sought.

7. APPLICATIONS UNDER SECTION 72 OF THE TRUSTS LAW

7.1. An application under section 72 of the Trusts Law (as revised) should be made by originating summons.

7.2. Unless the court orders otherwise, any person who settled the trust or provided property for the purposes of the trust must, if still alive, be made a party to the application.

7.3. Where minor or unborn or unascertained beneficiaries will be affected by a proposed arrangement to vary the trusts of a settlement, the evidence filed in support of the application must:

(a) Show that their guardians or the trustees support the arrangements as being in the interests of the minor or unborn or unascertained beneficiaries; and

(b) Unless the court orders otherwise, be accompanied by a written opinion to this effect by the lawyer who will appear on the hearing of the application.

7.4. A written opinion filed under paragraph 7.3 (b) must:

(a) If it is given on formal instructions, be accompanied by a copy of those instructions; or

(b) If not, state fully the basis on which it is given.

7.5. No written opinion is required to be filed in support of an application to approve an arrangement under section 72(1)(d) of the Trusts Law (discretionary interests under protective trusts).

7.6. Where the interests of two or more minors, or two or more of the minors and unborn or unascertained beneficiaries, are similar, only a single written opinion requires to be filed.

8. PRE-EMPTIVE COSTS ORDERS

8.1. Where the trustee has power to agree to pay the costs of a party to an application, and exercises such a power, an order is not required and the trustee is entitled to recover out of the trust fund any costs which it pays pursuant to the agreement made in the exercise of such power.

8.2. Where the trustee does not have, or decides not to exercise, a power to make such an agreement, the trustee or the party concerned may apply to the court at any stage of proceedings for an order that the costs of any party (including the costs of the trustee) shall be paid out of the fund (known as a 'pre-emptive costs order'). The court may direct that such parties or any of them be indemnified out of the trust fund in any event for any or all costs incurred by them and for any or all costs which they may be ordered to pay to any other party.

8.3. Such an order may provide for payments out of the trust fund from time to time on account of the indemnity so that the parties' costs may be paid on an interim basis. Applications for pre-emptive costs orders should be made on notice to the trustee. The court will require to be satisfied that there are matters which need to be investigated. How far the court will wish to go into that question, and in what way it should be done, will depend on the circumstances of the case. The order may be expressed to cover costs incurred only up to a particular stage in the proceedings, so that the application has to be renewed, if necessary, in the light of what has occurred in the proceedings in the meantime.

8.4. The court, on an application for a pre-emptive costs order, may:

(a) In the case of the trustee's costs, authorise the trustee to raise and meet such costs out of the fund on an indemnity basis;

(b) In the case of the costs of any other party, authorise or direct the trustee to pay such costs (or any part of them, or the costs incurred up to a particular time) out of the trust fund to be taxed, if not agreed by the trustee, on the indemnity basis or, if the court directs, on the standard basis, and to make payments from time to time on account of such costs.

8.5. The evidence in support of an application for a pre-emptive costs order should be given by affidavit or affirmation. The trustee and the applicant (if different) must ensure full disclosure of all relevant matters to show that the case is one which falls within the category of case where a pre-emptive costs order may properly be made.

8.6. Draft 3 in Appendix A is a draft pre-emptive costs order.

9. REPRESENTATION ORDERS

9.1. The court may, in an appropriate case and if it is satisfied that it is expedient to do so, make an order appointing a person to represent any other person(s) where the person or persons to be represented:

(a) Are unborn;
(b) Cannot readily be ascertained;
(c) Although ascertained, cannot be found; or
(d) Are a class of persons who have or may have the same interest in or be affected

in the same way by the application; and

(i) one or more members of that class are within sub-paragraphs (a, (b) or (c) above; or

(ii) to appoint a representative would further the overriding objective and save expense.

9.2. A trustee or any party or person who seeks to be appointed may apply for a representation order at any time.

9.3. An application for a representation order must be served on all parties to the proceedings and upon the person proposed to be appointed, if that person is not the applicant or a party to the application and on any other person as may be directed by the court.

9.4. Draft 4 in Appendix [A] is a draft form of representation order.

10. APPLICATIONS FOR GUARDIANS AD LITEM (GCR 0.80, r.3)

10.1. A guardian ad litem is required for "persons under disability" which is defined in GCR 0.80, r,1(c) as "a person who is a child or a patient". A "patient" is a patient as defined by the Mental Health Law (as revised) or a person in respect of whom a guardian has been appointed under section 14 of the Grand Court Law (as revised).

10.2. A person under disability may not defend, make a counterclaim, intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on him, except by his guardian ad !item.

10.3. Subject to the exceptions set out in paragraphs (3) and (4) of GCR 0.80 r.3, a guardian ad Rem can be appointed by a party without order of the court. In such cases, the guardian ad litem is required only to give his written consent to act in that role, and that consent must be duly filed with the court. Draft 5 in Appendix [A] is draft consent letter.

10.4. Whether a guardian ad !item has been appointed by a party or by order of the court, for the guardian ad litem to be recognized by the court, the documents prescribed by GCR 0.80 r 3(6), described further at paragraphs 10.5, 10.6, and 10.7 below must be filed and the guardian ad litem must be represented by an attorney.

10.5. Where the guardian ad them is to represent a child, the documentation to be filed is:

(a) The written consent referred to at paragraph 10.3 above; and

(b) A certificate by the attorney for the child certifying that:

he knows or believes, as the case may be, that the person to whom the certificate relates is a child, giving the grounds of his knowledge and belief; and

(ii) the person so named as guardian ad litem has no interest in the cause or matter in question adverse to that of the person under the disability. Draft 6 in Appendix [A] is a draft form of an Attorney's Certificate for an attorney acting for a child. Draft 7 in Appendix [A] is a draft form of an Attorney's Certificate for an attorney acting for a person under disability.

10.6. There is a separate procedure for the appointment of a guardian ad litem by the court in circumstances where a person under disability has not acknowledged service of an originating summons. The relevant party must make an application to court for the appointment of a guardian ad litem for that person before the action can proceed further.

10,7. Such an application must be supported by evidence which shows that:

(a) The person to whom the application relates is a person under disability;

(b) The person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability;

(c) The originating summons was duly served on the person under disability; and

(d) Notice of the application to appoint a guardian ad litem was so served on the person under disability within time.

TRUSTS AND ESTATES

APPENDIX TO SECTION C

DRAFT FORMS

CONTENTS:

Appendix C Doc.1: Application for Directions (Beddoe Application)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's Initials)]

IN THE MATTER OF etc

AND IN THE MATTER OF THE TRUSTS LAW [2009 REVISION]

BETWEEN

[Plaintiff]

II1irffiti

-and-

[Defendant]

Defendant

ORIGINATING SUMMONS

TO: [insert Defendant's name and address]

LET THE DEFENDANT, within [14 days] after service of this Summons on him, counting the day of service, return the accompanying Acknowledgment of Service to the Courts the Registrar, Financial Services Division, Court Office, P.O. Box 495 GT, George Town, Grand Cayman KY1-1106, Cayman Islands.

BY THIS ORIGINATING SUMMONS, which is issued on the application of [the trustee] of the trusts of the settlement dated [ ] made by [ ] and [ ] known as the [ ] Trust/Settlement or executor named in the Will of [j dated [3 or administrator of the estate of [j who died on [j, the Plaintiff seeks the following relief pursuant to GCR 0.85 r.2(2)(a):

1. *An order that the Plaintiff be at liberty to bring a claim against [ ] seeking the following relief [ ] or make application to join and defend an action brought by [ ] against [ ] bearing Grand Court Cause No. [ ] for the following relief [.1 or to take the following steps in an action brought by [ ] against [ ] bearing Grand Court Cause No. [ ] for the following relief [ ];*

2. *That the Plaintiff be indemnified against all and any costs and expenses arising out of, and incidental to, the said action out of the trust assets/out of the estate of the said deceased, including for the avoidance of doubt, its own professional charges at their current published rate for the time of its own employees spent in dealing with the conduct of the litigation;*

3. *That provision be made for the costs of this application.*

Dated 20

_____

[Attorneys]

Attorneys-at-law for the Plaintiff

If the Defendant does not acknowledge service, judgment may be given or made against, or in relation to him or her, as the Court may think just and expedient.

NOTE: *This Originating Summons may be served not later than 4 calendar months (or if leave is required to effect notice out of the jurisdiction, 6 months) beginning with that date, unless renewed by order of the Court.*

IMPORTANT: *Directions for acknowledgment of service are given with the accompanying forms.*

THIS ORIGINATING SUMMONS *was issued by [firm] on behalf of the Plaintiff whose address for service is [address].*

Appendix C Doc.2: Application for an Account

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's Initials)]

IN THE MATTER OF *etc*

AND IN THE MATTER OF THE TRUSTS LAW (2009 REVISION)

B E T W E E N

[Plaintiff]

1;riffiti

-and-

[Defendant]

Defendant

ORIGINATING SUMMONS

TO: [insert Defendant's name and address]

LET THE DEFENDANT, within [14 days] after service of this Summons on him, counting the day of service, return the accompanying Acknowledgment of Service to the Courts the Registrar, Financial

Services Division, Court Office, P.O. Box 495 GT, George Town, Grand Cayman KY1-1106, Cayman Islands.

BY THIS ORIGINATING SUMMONS, which is issued on the application of [state the name and address of the Plaintiff(s)], the Plaintiff(s) seeks the following relief pursuant to GCR 0.85, r 2(3)(a) namely:

1. *that the Defendant, in its capacity as [executor of the Will dated [date] of [deceased's name] deceased or in its capacity as [trustee of the trusts of the settlement dated [date] known as the [name of trust/settlement] trust/settlement], be ordered to provide full and proper particulars and accounts of the [real and personal] estate of the deceased [and the investments thereof] or full and proper particulars and account of the trusts of the Settlement from [inception] to [ ];*

2. *that the Defendant account to the Plaintiff for any sums deducted by way of fees and expenses during the said period;*

3. *if necessary, that the administration of the estate of the Deceased [and/or the execution of the trusts of the Will and/or the trusts of the Settlement] may be carried out under the direction of the court and all necessary and proper accounts, directions and inquiries shall be provided;*

4. *that the Defendant be ordered to pay the costs of this application personally;*
5. *such further and/or other relief as the Court considers necessary.*

Dated [

_____

[Attorneys]

Attorneys-at-law for the Plaintiff

If the Defendant does not acknowledge service, judgment may be given or made against, or in relation to him or her, as the Court may think just and expedient.

NOTE: *This Originating Summons may be served not later than 4 calendar months (or* if *leave is required to effect notice out of the jurisdiction, 6 months) beginning with that date, unless renewed by order of the Court.*

IMPORTANT: *Directions for acknowledgment of service are given with the accompanying forms.*

THIS ORIGINATING SUMMONS *was issued by [firm] on behalf of the Plaintiff whose address for service is [address].*

Appendix C Doc.3: Order for pre-emptive costs

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's initials))

IN CHAMBERS

[Date]

BEFORE THE HONOURABLE JUSTICE etc

IN THE MATTER OF etc

AND IN THE MATTER OF THE TRUSTS LAW [2009 REVISION)

BETWEEN

[Plaintiff)

Plaintiff

-and-

[Defendant]

Defendant

ORDER

UPON THE APPLICATION *etc.*

AND UPON *reading the affidavit[s] of (j sworn on I j and the exhibit[s] thereto*

AND UPON *hearing etc*

AND UPON *counsel for the Defendant undertaking to make the repayments mentioned in paragraph 2 below in the circumstances there mentioned*

IT Is [BY CONSENT] ORDERED THAT:

1 The Plaintiff as trustee' of ("the [Settlement/Trust]") do:

(a) pay from the assets of the [Settlement/Trust] the costs of and incidental to these proceedings incurred by the Defendant such costs to be taxed, if not agreed, on the indemnity basis and (for the avoidance of doubt) to

(I) *include costs incurred by the Defendant from and after [date] in anticipation of being appointed to represent any class of persons presently or formerly beneficially interested under the trusts of the [Settlement/Trust] irrespective of whether [he/she] is in fact so appointed; and*

(ii) exclude (in the absence of any further order) costs incurred in prosecuting any counterclaim or any appeal;

(b) indemnify the Defendant in respect of any costs which he/she may be ordered to pay to any other party to these proceedings in connection therewith.

2 Until the outcome of the taxation (or the agreement regarding costs) contemplated in paragraph 1 above, the Plaintiff as trustee do pay from the assets of the [Settlement/Trust] to the Attorneys for the Defendant monthly (or at such other intervals as may be agreed) such sums on account of the costs referred to in paragraph 1(a) of this

[1] This form of order assumes that the trustees are the plaintiffs. If the plaintiff is a beneficiary and the trustees are defendants, references to the parties need to be adapted accordingly.

Order as the Attorneys for the Defendant shall certify:

(i) *to have been reasonably and properly incurred and not to exceed such amount as is likely in their opinion to be allowed on a taxation on the indemnity basis; and*

(ii) *to have accrued on account of the present proceedings in the period prior to the date of such certificate and not to have been previously provided for under this Order.*

PROVIDED ALWAYS that the Attorneys for the Defendant shall repay such sums (if any) as, having been paid to them on account, are disallowed on a taxation or are otherwise agreed to be repaid and any such sums shall be repaid together with interest at 1% above the base rate for the time being of [ ] Bank plc from and including the date of payment to those Attorneys up to and including the date of repayment, such interest to accrue daily.

3 *Any party may apply to vary or discharge paragraphs 1 and 2 of this Order but only in respect of costs to be incurred after the date of such application.*

Dated the [ ] day of [
Filed the [ ] day of [J

The Honourable Mr. Justice j J
Judge of the Grand Court
Financial Service Division

THIS ORDER is filed by [firm], attorneys-at-Law for the [insert party], whose address for service is [address].

APPROVED AS TO FORM AND CONTENT:

_____	_____
[Attorneys]	*[Attorneys]*
[Attorneys-at-Law for the Plaintiff]	*[Attorneys-at-Law for the Defendant]*

Appendix C Doc.4: Representation Order

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO: OF] [(Judge's Initials)]

IN THE MATTER OF

AND IN THE MATTER OF THE TRUSTS LAW (2009 REVISION]

BETWEEN

(Plaintiff]

Plainti

-and-

[Defendant]

Defendant

In Chambers

[Date]

Before The Honourable Mr. Justice [

ORDER

UPON THE APPLICATION *etc.*

AND UPON *reading the affidavit[s] of [sworn on [and the exhibit[s] thereto*

AND UPON *HEARING etc*

1T IS [BY CONSENT] ORDERED THAT[2]:

1 The [number of Defendant] [name], do represent the spouses, former spouses, widows and widowers (whether or not remarried) of the children and descendants of [name];

2 The [number of Defendant] [name], do represent the as yet unborn descendants of [name];

3 The [number of Defendant] [name], do represent:

(a) the children and remoter issue living on [date] or thereafter, born of [name];

(b) any person to whom any of such children or remoter issue may have been married whether or not the marriage be subsisting;

(c) the children and remoter issue living on [date] or thereafter born of [name]

4 The costs of the representative parties of and incidental to the Originating Summons dated [ ] be paid out of the assets subject to the above-mentioned [settlement/trust], such costs to be taxed, if not agreed, on the indemnity basis.

[2] The orders below are listed as examples of classes which might require representation in proceedings involving trust and estates.

5 The parties shall be at liberty to apply for further directions.

Dated the [ ] day of[ ]
Filed the [ ] day of [1

The Honourable Mr. Justice,]
Judge of the Grand Court
Financial Service Division

THIS ORDER is filed by [firm], attorneys-at-Law for the [insert party], whose address for service is [address].

APPROVED AS TO FORM AND CONTENT:

_____	_____
[Attorneys]	*[Attorneys]*
[Attorneys-at-Law for the Plaintiff]	*[Attorneys-at-Law for the Defendant]*

Appendix C Doc.5: Letter of consent from Guardian ad litem

[Insert letterhead]

[Date]

Grand Court

Edward Street

George Town

Grand Cayman

Cayman islands

Attention: The Registrar, Financial Services Division

Dear Sir

[Insert name of Cause]

[Insert Cause No.]

I refer to the above Cause in respect of which an Originating Summons was filed on [date].

By this letter, I confirm that I consent to my appointment as Guardian ad litem to act on behalf of the following [minor defendant(s)] or [defendant(s) under disability] in this Cause ("the Defendant(s)"):

1. *[Insert name], whose date of birth is [date] and who is currently [age];*

or

1. *[Insert name] who, pursuant to the attached [document], is a "person under disability" for the purposes of Grand Court Rules Order SO, rule 1]*

I hereby confirm that I am willing and able to represent the Defendant in this Cause competently and fairly, and that I have no interests adverse to the interests of the Defendant.

I have appointed ***[insert firm's name],*** *Attorneys-at-Law in the Cayman Islands, to represent me in this Cause. All documents in this Cause may be served on me care of my Attorneys at* ***[insert address],*** *Cayman Islands.*

Yours faithfully,
[Name]

Appendix C Doc.6: Attorney's Certification (Minor)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's Initials)]

IN THE MATTER OF [3

AND IN THE MATTER OF THE TRUSTS LAW [2009 REVISION]

BETWEEN

[Plaintiff]

Plaintiff

-and-

[Defendant]

Defendant

ATTORNEY'S CERTIFICATE

I, [name], of [firm] Grand Cayman, Cayman Islands, Attorneys-at-Law for the Guardian ad litem of the [insert number] Defendant in this Cause, hereby certify as follows:

1. *I believe that [insert name] ("the Minor Defendant") is a child and accordingly a "person under disability" as defined in Order 80, rule 1(c) of the Grand Court Rules. My belief in this regard is based upon my review of the birth certificate of the Minor Defendant, a*

certified copy of which is attached to this Certificate; and

2. *I believe that the Guardian ad litem appointed to act for the Minor Defendants, being [insert name] of [insert address], is suitable, willing, and able to act as Guardian ad !item and has no interest in this Cause or in the matters arising therein which are adverse to the interests of the Minor Defendant.*

I certify that the information given above is true and correct to the best of my knowledge and belief:

_____ _____

(Name) Date

THIS ATTORNEYS CERTIFICATE is filed by [firm], attorneys-at-law for the Guardian ad litem of the [insert number] Defendant, whose address for service is c/o [address] Cayman Islands

Appendix C Doc.7: Attorney's Certification (Disability)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: [OF] [(Judge's Initials)]

IN THE MATTER OF [.1

AND IN THE MATTER OF THE TRUSTS LAW [2009 REVISION]

B E T W E E N

[Plaintiff]

Plaintiff

-and-

[Defendant]

Defendant

ATTORNEY'S CERTIFICATE

I, [name], of [firm] Grand Cayman, Cayman Islands, Attorneys-at-Law for the Guardian ad litem of the [insert number] Defendant in this Cause, hereby certify as follows:

1. *I believe that [insert name] ("the Minor Defendant") is a patient within the meaning of section 2 of the Mental Health Law (1997 Revision). My belief in this regard is based*

upon [state reasons]; and

2. *There has been no appointment of a guardian ad litem of the patient pursuant to section 14 of the Grand Court Law (1995 Revision).*

3. *The consent of [insert name] of [insert address], to act as next friend or guardian ad litem is annexed hereto. [Insert name] is [state relationship of proposed guardian ad litem to the patient].*

4. *I believe that the Guardian ad litem appointed to act for the Minor Defendants, being [insert name] of [insert address], is suitable, willing, and able to act as Guardian ad litem and has no interest in this Cause or in the matters arising therein which are adverse to the interests of the Minor Defendants.*

I certify that the information given above is true and correct to the best of my knowledge and belief:

_____ _____

[Name] ***Date***

THIS ATTORNEY'S CERTIFICATE is filed by [firm], attorneys-at-law for the Guardian ad !item of the [insert number] Defendant, whose address for service is c/o [address] Cayman Islands

SCHEDULES TO FSD GUIDE

SCHEDULE 1

GRAND COURT RULE ORDER 72

FINANCIAL SERVICES PROCEEDINGS

Application and Interpretation (0.72, r.1)

1. (1) This Order applies to financial services proceedings and the other provisions of these Rules apply to those proceedings subject to the provisions of this Order.

(2) In these Rules "financial services proceeding" means -

(a) Any proceeding relating to a mutual fund, including an action by or against its directors (in the case of a corporate fund), its trustee (in the case of a unit trust), its general partner (in the case of a limited partnership), its investment manager or adviser, its administrator, its prime broker or its auditor;

(b) Any proceeding relating to an exempted insurer, including an action by or against its directors, insurance manager or auditor;

(c) Any action for breach of contract of insurance (Including an application for a declaration) where the amount claimed exceeds $1 million;

(d) Any application (including an appeal by a licensee) made to the Court under any of the regulatory laws;

(e) Any administration action or application under the Trusts Law (to which Order 85 applies) except those relating to the estates of deceased persons who dies domiciled in the Islands and the net asset value of the estate is less than $1 million;

(f) Any action against a trustee or protector of trust or the executor or administrator of an estate for breach of trust or breach of fiduciary duty, except those actions relating to a trust or estate whose net asset value is less than $1 million;

(g) Any application made to the Court under the Companies Law (to which Order 102 applies) including any application made in a winding up proceeding (to which the Companies Winding Up Rules 2009 apply);

(h) Any application for an order for the dissolution of a partnership which carries on business as a mutual fund, including any application made in the dissolution proceeding;

(i) Any action for breach of contract or breach of duty by or against a professional service provider, except for actions relating to the non-payment or over-payment of fees where the amount claimed is less than $250,000;

(j) Any application for an order for evidence pursuant to a letter of request to which Order 70 applies, including any related application for directions to which Order 103 applies;

(k) Any application to which the Grand Court (Bankruptcy) Rules, 1977 or the Foreign Bankruptcy Proceedings (International Co-operation) Rules 2008 apply;

(l) Any action for the enforcement of a foreign judgment, whether at common law or pursuant to the Foreign Judgments Reciprocal Enforcement Law; and

(m) Any action for the enforcement of a foreign arbitral award pursuant to the Foreign Arbitral Awards Enforcement Law.

(3) In this Order -

(a) "the Registrar" means the Registrar of the Financial Services Division of the Court;

(b) "mutual fund" has the meaning ascribed to it in Section 2 of the Mutual Funds Law (2007 Revision);

(c) "exempted insurer" has the meaning ascribed to it in Section 2 of the Insurance Law (2008 Revision);

(d) "the regulatory laws" has the meaning ascribed to it in Section 2 of the Monetary Authority Law (2008 Revision); and

(e) "professional services provider" has the meaning ascribed to it in Section 89(1) of the Companies Law (2009 Revision).

Commencement of Financial Service Proceedings (0.72, r.2)

2. **(1)** Every financial services proceeding shall be commenced in the Financial Services Division.

(2) Every financial services proceeding shall be commenced by writ, originating summons, originating motion or petition in accordance with Order 5 and entered into the Register of Writs and other Originating Process in accordance with Order 63, rule 8.

(3) The title of every proceeding commenced in or transferred to the Financial Services Division shall include the words *In the Grand Court of the Cayman Islands, Financial Services Division.*

(4) In addition to establishing and maintaining a Court file in accordance with Order 63, rule 2, the Registrar shall create and maintain a computerised record for each financial services proceeding which shall comprise the following documents and/or produce reports comprising the following information: -

(a) A chronological index of all the pleadings, affidavit and orders;

(b) A copy of each pleading, affidavit (without its exhibits) and order;

(c) A copy of each skeleton argument (without copy authorities); and

(d) A schedule containing details of —

(i) The fixed court fee paid;
(ii) The date and length of each hearing;

(iii) The court hearing fees paid (if any); and

(iv) The identity of the party or parties by whom the fixed fee and any court hearing fees have been paid.

(5) The computerised record (created and maintained in accordance with paragraph (4) above) shall enable the Registrar to produce reports in respect of each proceeding which is commenced in or transferred to the Financial Services Division containing the following information —

(a) The date on which the proceeding was commenced or transferred to the Financial Services Division;

(b) The title of the proceeding;

(c) The name of the Commercial Judge to which it has been assigned;

(d) Particulars of the parties' attorneys and any foreign lawyers;

(e) The date and a brief description of each hearing;

(f) The date and estimated length of future hearings;

(g) Particulars of the date and manner in which the proceeding was concluded.

(6) The Registrar, acting in consultation with the Chief Justice, shall assign every financial services proceeding to one of the Commercial Judges and the cause number assigned to it in accordance with Order 5, rule 1(4)(a) shall include the judge's initials.

(7) The trial of every financial services proceeding shall be heard by the Commercial Judge assigned to it.

(8) Every interlocutory application made in a financial services proceeding (including every application made in a winding up proceeding) shall be heard or determined by the Commercial Judge assigned to it, except that another

Commercial Judge may hear or determine an urgent application if the Judge assigned to the proceeding is not available.

Transfer of Proceedings (0.72, r.3)

3. (1) Any cause or matter pending in the Court, including matters commenced prior to the Commencement Date, may be transferred to the Financial Services Division on the ground that —

(a) It is a financial services proceeding which ought properly to have been commenced in the Financial Services Division; or

(b) The Court is satisfied upon the application of any party that it would be appropriate in **all** the circumstances for the casue or matter to be tried by a Commercial Judge.

Case management and summonses for directions (0.72, r.4)

4. (1) Order 25 shall apply to proceedings pending in the Financial Services Division subject to the following modifications.

(2) The Registrar shall issue an initial summons for direction in Form No.71 in every financial services proceeding within 3 months of the date on which it was commenced or transferred to the Financial Services Division unless in the meantime: -

(a) the cause or matter has been finally determined;

(b) the Registrar has received notice that the cause or matter has been discontinued or settled;

(c) the Court has already made an order for directions; or

(d) one or other of the parties has taken out a summons for directions.

(3) In order that the Court may be informed of the general nature of the case and the issues which are expected to arise, the attorneys for each party shall prepare

and file an agreed case memorandum (within such period as the Registrar shall direct) which should contain —

(a) A short and uncontroversial description of what the case is about;

(b) A list of issues, including both issues of fact and law, to the extent that it is practical to do so having regard to the state of the pleadings; and

(c) A procedural history

(4) The attorneys for the plaintiff shall be responsible for filing the agree case memorandum.

(5) The Registrar may at any time issue a notice in Form No.72 requiring that the parties' attorneys and their foreign lawyers (if any) attend before the Judge for the purposes of a case management conference.

(6) If a party has instructed or intends to instruct a foreign lawyer to appear at the trial or any interlocutory hearing the Registrar shall be so informed and such foreign lawyer may be required to appear on any summons for directions or case management conference.

(7) If one or more of the parties have instructed a foreign lawyer, the Registrar may require that the hearing of any summons for directions or any case management conference be conducted via a video link, in which case the parties shall provide suitable conference room facilities for the use of the Judge.

Listing interlocutory hearings and trials (0.72, r.5)

5. (1) The Registrar shall be responsible for listing the hearing of all case management conferences, interlocutory applications and trials.

(2) Order 34 shall not apply to proceedings pending in the Financial Services Division.

(3) The Registrar shall maintain -

(a) A composite court diary for the Financial Services Division; and

(b) An individual court diary for each Commercial Judge.

Transitional Provisions (0.72, r.6)

6. (1) The Financial Services Division Court shall be established with effect from the first day of November 2009 (referred to in this Rule as "the Commencement Date") and this Rule shall apply to every financial services proceeding commenced prior to the Commencement Date.

(2) Any party or parties to a cause or matter commenced prior to the Commencement Date may apply to the Registrar in Form No.73 for an order that it be transferred to the Financial Services Division and the Registrar shall make a transfer order if he is satisfied that the cause or matter is a financial services proceeding within the meaning of Rule 1 (2).

(3) Whenever a party seeks to issue an interlocutory summons or an application is made to fix a hearing date for a trial and it appears to the Registrar that the cause or matter is a financial services proceeding, he shall —

(a) Invite the parties to apply in Form No.73 for a transfer order; or

(b) If the parties or any of them fail to apply in Form No.73 within 14 days, the Registrar shall make a transfer order on his own motion.

(4) Every transfer order made by the Registrar under this rule shall be in Form No.74 and shall specify —

(a) The Commercial Judge to whom the proceeding has been assigned;

(b) The amount of the transfer fee payable in accordance with Rule 3 (5) of the Court Fees Rules 2009; and

(c) The party or parties liable to pay the transfer fee.

(5) The liability for payment of the transfer fee shall be determined as follows

(a) The parties may agree that any one of them shall be liable or that liability be divided amongst them in agreed proportions; and in default of agreement —

(b) The party by whom the transfer application is made under paragraph (2) of this Rule shall be liable to pay the transfer fee; or

(c) In the case of a transfer order made under paragraph (3) (b) of this Rule, the party seeking to issue the summons or fix the hearing date shall be liable to pay the transfer fee; or

(d) In the case of an application made in a winding up proceeding (to which the Companies Winding Up Rules 2009 apply), the official liquidator shall be liable to pay the transfer fee as an expense of the liquidation.

(6) Every transfer order made by the Registrar shall be served by him upon the attorneys for all the parties by facsimile or e-mail and by placing an office copy in the attorneys' Court post office box.

(7) Any party who is dissatisfied with the decision to make a transfer order may apply within 7 days to the Chief Justice who shall review the matter de novo and may substitute his own decision for that of the Registrar.

(8) Any party who is dissatisfied with the terms of the transfer order may apply within 7 days to the Chief Justice who shall review the matter de novo and may vary the transfer order by assigning the matter to a different Commercial Judge and/or reducing the amount of the transfer fee and/or varying the paying party or parties.

(9) An application under paragraphs (7) or (8) of this Rule shall be made in writing in Form No.75 upon notice to the other parties who may submit their own reply or submission in writing within 3 days after receiving notice of the application.

(10) No step may be taken in any proceeding, which has been transferred to the Financial Services Division under this Rule, except for any application under paragraphs (7) and (8) for a review of the transfer order, unless and until the transfer fee has been paid in full.

SCHEDULE 2

GCR ORDER 73

ARBITRATION PROCEEDINGS

Interpretation (0.73, r.1)

1. In this Order —

(a) "the 1974 Law" means the Arbitration Law 1974 (2001 Revision);

(b) "the 1975 Law" means the Foreign Arbitral Awards Enforcement Law 1975 (1997 Revision);

(c) "the 1998 Order" means The Multilateral Investment Guarantee Agency (Overseas Territories) Order 1988 (SI 1988/791);

(d) "the Convention" means the Convention establishing the Multilateral investment Guarantee Agency signed on behalf of the United Kingdom on 9 April 1986.

Applications by originating motion (0.73, r.2)

2. (1) Every application to the Court —

(a) to remit an award under Section 18 of the 1974 Law;

(b) to remove an arbitrator or umpire under Section 19(1) of the 1974 Law;

(c) to set aside an award under Section 19(2) of the 1974 Law; or

(d) for relief under Section 20 of the 1974 Law,

must be made by originating motion.

(2) A notice of motion to which subparagraph (1)(a), (b) or (c) relates must be issued within 28 days after the award has been made and published to the parties.

Applications by originating summons (0.73, r.3)

3. (1) Every application to the Court —

(a) for the appointment of an arbitrator, umpire or third arbitrator under Section 11 of the 1974 Law;

(b) for an enlargement of time under Section 12(2) of the 1974 Law;

(c) for the removal of an arbitrator or umpire under Section 12 (3) of the 1974 Law;

(d) for an order under Section 17 of the 1974 Law requiring an arbitrator or umpire to state a special case; or

(e) for an order under Section 29 of the 1974 Law extending time for the commencement of arbitration proceedings

must be made by originating summons.

(2) An application for a declaration that an award made by an arbitrator or an umpire is not binding on a party to the award on the ground that it was made without jurisdiction must be made by originating summons.

Enforcement of arbitral awards (0.73, r.4)

4. (1) An application for leave under Section 22 of the 1974 Law; Section 5 of the 1975 Law; or Section 4 of Schedule 1 of the 1988 Order to enforce an arbitral award shall be made by ex parte originating summons.

(2) An application for leave under paragraph (1) must be supported by an affidavit -

(a) where the application is under Section 22 of the 1974 Law , exhibiting the arbitration agreement and the original award or, in either case, a copy thereof; or

(b) where the application is made under Section 5 of the 1975 Law, exhibiting the documents specified in Section 6 of the 1975 Law; or

(c) where the application is made under Section 4 of Schedule 1 of the 1988 Order, exhibiting a copy of the award certified pursuant to the Convention and stating whether at the date of the application the enforcement of the award has been stayed (either provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention which, if granted, might result in a stay of the award;

and in any case

(d) stating the name and usual last place of abode or business of the applicant (hereinafter referred to as "the creditor") and the person against whom it is sought to enforce the award (hereinafter referred to as "the debtor") respectively; and

(e) as the case may require, either that the award ahs not been complied with or the extent to which it has not been complied with at the date of the application.

(3) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(4) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such period as the Court may think fit, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor applies within the 14 day period to set aside the Order, until after the application is finally disposed of.

(5) The copy of the order served on the debtor shall state the effect of paragraph (4).

(6) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered office of the body corporate, provided that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

Application to stay enforcement of award under 1988 Order (0.73, r.4A)

4A. (1) Where it appears to the Court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered —

(a) That the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention; or

(b) That an application has been made pursuant to the Convention, which, if granted, might result in a stay of an enforcement of the award,

The Court shall, or, in the case referred to in subparagraph (b) may, stay execution of the award for such time as it considers appropriate in the circumstances.

(2) An application by the judgment debtor under paragraph (1) shall be made by summons and supported by affidavit.

Service out of the jurisdiction of summons, notice, etc. (0.73, r.5)

5. (1) Subject to paragraph (2), service out of the jurisdiction of —

(a) An originating summons or notice of originating motion issued pursuant to rule 2 or 3 of this Order; or

(b) Any order made on such a summons or motion as aforesaid, is permissible without the leave of the Court provided that the arbitration

to which the summons, motion or order relates is governed by Islands law or has been, or is to be held within the jurisdiction.

(2) service out of the jurisdiction of an originating summons under rule 4 for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by Islands law.

(3) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(4) Order 11, rules 5, 6 and 8 shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to a writ.

SCHEDULE 3

PD No.1/2010

(GCR 0. 1, r.12)

FINANCIAL SERVICES DIVISION

PROCEDURE RELATING TO THE COMMENCEMENT

AND MANAGEMENT OF FINANCIAL SERVICES PROCEEDINGS

1. Appointment of Registrar of the FSD

7. Ms Audrey Bodden has been appointed Registrar of the FSD, pursuant to Rule 2(1) of the Grand Court (Amendment) Rules 2009 with effect from Monday 27th September 2010.
8. All communications with the Registrar should be —
   (a) by hand delivery at the FSD Registry, 3rd Floor (Room #101), Kirk House; or
   (b) by e-mail addressed to Audrev.bodden@gov.ky; or
   (c) by telephone on 244 3808.

2. Assignment of proceedings to a Judge of the FSD

1. It is the responsibility of the Registrar, acting in consultation with the Chief Justice, to assign every financial services proceeding, as defined in GCR 0.72, r.1(2), to a named judge of the FSD at the time the proceeding is commenced.
2. It is the responsibility of the petitioner/plaintiffs attorney to provide the Registrar with any and all information which appears to him to be relevant in determining which judge should be assigned to the matter. For example —

(iv) If the plaintiff's attorney considers that it would be appropriate for two or more related matters to be assigned to the same judge, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process ; or

(v) If the plaintiff's attorney considers that it would be inappropriate for a matter to be assigned to a particular judge, for whatever reason, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process.

3. As soon as a judge has been assigned, the Registrar will —
   (c) notify the parties' attorneys; and
   (d) deliver the Court file to the assigned judge.
4. Attorneys can expect to be notified about the name of the assigned judge on the next business following the day on which the originating process is filed at the FSD Registry.
5. The docket of the financial services proceedings assigned to each Judge of the FSD will be updated by the judge's secretary and circulated weekly to the Chief Justice, the Registrar and the Listing Officer.
6. Attorneys are reminded that GCR 0.5, r.1(7) requires that the initials of the assigned judge be included in the title of the proceeding as part of the cause number. it follows that the assigned judge's initials must be included as part of the cause number as it appears in all pleadings, affidavits and orders,

3. Procedure for listing hearings

1. Ms Yasmin Ebanks has been appointed Listing Officer of the FSD with effect from Monday 27th September 2010.
2. All communications with the Listing Officer should be —
   (c) by hand delivery at the FSD Registry, 3td Floor (Room #105), Kirk House; or
   (d) by e-mail addressed to Yasmin.ebanks@gov.ky, with a copy to the assigned judge's secretary.
3. For the purposes of this Practice Direction the expression "hearing" shall include summonses for directions, case management conferences ("CMCs") (which may take the form of video or telephone conference calls), interlocutory applications and trials.
4. No matter can be listed for hearing unless and until the proceeding has been assigned to a judge of the FSD who has had an opportunity to review the Court file.
5. Practice Direction #1/2000 (Listing Forms) does not apply to the FSD.
6. Notwithstanding that a primary objective of the FSD is to ensure the availability of judges, the Listing Officer is not authorized to fix any hearing date without the prior approval of the assigned judge. If the assigned judge is not already familiar with the issues or cannot readily ascertain the issues relevant to the

proposed hearing by reviewing the Court file, the parties may be required to produce an agreed case memorandum in accordance with GCR 0.72, r.4(3).

7. In the case of trials or other potentially lengthy hearings, the assigned judge will normally fix the hearing date at the hearing of a summons for directions or at a CMC in which all the parties' attorneys (and their leading counsel) will be required to participate.
8. The Registrar will publish a monthly list (on the 1^{5t} of each month) of hearings scheduled in the FSD for the ensuing month.

4. **Listing procedure in respect of Capital Reductions**

1. When presenting a petition for an order confirming a resolution for reducing the share capital of a company (under s.15 of the Companies Law) the petitioner's attorney is required (pursuant to GCR 0.102, r.6) to issue a summons for directions at the same time as presenting the petition.
2. The petitioner's attorney must provide the Registrar with a draft of the proposed order for directions including the timetable for the company meeting(s) and court hearing(s), together with a covering letter which explains whether and, if so, why the matter is particularly time sensitive.
3. If upon reading the petition, affidavit and written submissions, the assigned judge is satisfied that settling a list of creditors should be dispensed with under s.15(3) or that the reduction is not an exceptional case where settlement of a list of creditors is required under s.15(2), and the materials filed do not disclose any other reason for the assigned judge to require additional evidence or submissions, then he may make an order for directions without the need for a hearing. In all other cases he will direct the Listing Officer to fix a hearing in chambers.

5. **Listing procedure in respect of petitions for supervision orders under s.124**

1. Attorneys should anticipate that supervision orders pursuant to s.124 of the Companies Law will normally be made without the need for any hearing (pursuant to CWR 0.15, r.5(1).)
2. in the event that the petition gives rise to any issue in respect of which further evidence or submissions are required, the assigned judge may convene a CMC or direct the Listing Officer to fix a date for hearing the petition in open court.

6. **Applications for an order that a company be restored to the register**

1. With effect from Monday 27th September 2010 applications made by a company or one of its members, which are governed by GCR 0.102, r.17, will be determined by the Registrar of the FSD rather than the Clerk of the Court and Form Nos. 66 and 67 should be amended accordingly.

2. if the Registrar decides, pursuant to GCR 0.102, r.17(6)(c), that an application ought to be referred to a judge for an oral hearing, the Registrar will —
   (a) assign the application to a judge of the FSD;
   (b) fix a hearing date; and
   (c) give notice of the hearing to the applicant by e-mail,

3. Applications made by creditors, which are governed by GCR 0.102, r.18, will continue to be heard in open court by a judge of the FSD.

4. At the same time as assigning a creditor's application to a judge of the FSD, the Registrar will fix a hearing date. To enable the petitioner to advertise the petition and give other creditors an opportunity to be heard, the hearing will be fixed on a date not less than 21 days nor more that 28 days after the date on which the petition is presented.

7. Applications for a direction that payment of court fees be deferred

1. An application by an official liquidator or officeholder for a direction, pursuant to Rule 6(4) of the Court Fees Rules 2009 (as amended), that payment of court fees be deferred must be made to the assigned judge.

2. Such applications should be made by letter addressed to the assigned judge (with a copy to the Registrar) and signed by the officeholder personally.

3. The application will be determined by the assigned judge and his decision will be communicated to the applicant and the Registrar by the judge's secretary.

4. In the event that the application is refused, the officeholder shall have the right to ask the judge to reconsider his decision, for which purpose the applicant may ask the judge's secretary to fix an appointment for him to appear before the judge in person.

5. The purpose of Rule 6(4) is to ensure that an officeholder who is required or entitled to make an application to the Court in the performance of a legal duty in circumstances where the court fees will be payable out of a fund under his control, should not be deterred from performing his duty by being put in the position of having to pay the court fees out of his own pocket.

6. For the purposes of determining whether an official liquidator has under his control "sufficient money with which to pay the fees immediately" within the

meaning of Rule 6(4), the judge will have regard to the general rules as to priority contained in CWR Order 20, the effect of which is that court fees rank ahead of an official liquidator's remuneration.

7. If the officeholder does have some cash or cash equivalent assets under his control, his application letter must state (a) the amount which is immediately available; (b) the amount which is likely to become available to him within the next 90 days; (c) the purposes for which he intends to spend such cash over the next 90 days; and (d) whether he has received any remuneration or holds funds in trust for that purpose.

8. Applications for a direction that multiple proceedings be treated as "consolidated" for the purposes of assessing court fees

1. An application by a petitioner/plaintiff for a direction that two or more separate proceedings governed by the Companies Winding Up Rules or GCR 0.102 be treated as consolidated into one for the purposes of calculating the amount of fixed fees and/or court hearing fees payable pursuant to Rules 3 and/or 5 of the Court Fees Rules 2009 (as amended) must be made to the Registrar.
2. Such applications should be made by letter addressed to the Registrar at the time of filing the originating process.
3. The application will be determined by the assigned judge and the provisions of paragraphs 7.3 and 7.4 above shall apply.

9. Case Management Conferences

1. Without prejudice to the requirements of 0.72, r.4(2), the assigned judge may convene a CMC whenever he thinks fit.
2. A CMC may take the form of a telephone conference call, especially if foreign lawyers and leading counsel have been retained by any of the parties or the assigned judge is likely to be off the Island.
3. When a CMC takes the form of a telephone conference call, the Registrar will direct one of the parties to set up the call and circulate the dial-in instructions and codes to the judge and all the parties.
4. The etiquette for telephonic CMCs requires that all participating attorneys must be on line before the appointed time, so that the judge will be the last person to join the conference, whereupon he will ask all the participants to identify themselves.

5. Telephonic CMC's may not be tape recorded without the consent of the Judge. If the Judge permits or directs that the CMC be tape recorded, he will direct that a written transcript be prepared, sent to the judge and circulated amongst the parties. Whenever a CMC is not tape recorded, the note taken or approved by the judge will constitute the official record.
6. Hearing dates may be fixed by the assigned judge during the course of a CMC and, in appropriate cases, CMCs may be convened for the principal purpose of fixing the date for the trial or further hearings.

10. Availability of the judges of the FSD

1. Judges of the FSD may conduct CMCs and, in appropriate cases, hear summonses for directions and interlocutory applications by means of telephone or video conferences when they are off the Island,
2. Paragraphs 9.4 and 9.5 above shall apply to any hearing which takes place by telephone or video conference.

17 September 2010

SCHEDULE 4

OTHER RELEVANT PRACTICE DIRECTIONS

Schedule 4 Doc. 1

PD 2/96 (GCR 0.1, r.12)

TRIAL BUNDLES (GCR 0.34, r.10)

1. Order 34, rule 10 is intended to ensure that:

   (a) The trial judge is able to read the core documents prior to the commencement of the trial; and

   (b) The Court has available all necessary documents, properly organised into bundles, at the commencement of every trial.

   The rule requires the plaintiff to deliver bundles of documents to the Clerk of the Court for these purposes.

2. Order 34, rule 10 does not specify how, when or by whom the bundles of documents shall be prepared. This is a matter left to the parties to determine by agreement having regards to the circumstances of each individual case.

3. In cases involving a small number of documents (such as personal injury claim) it will normally be appropriate for all the documents to be included in the core bundles; for those bundles to be created by the plaintiff; and for them to be delivered to the defendant at the same time as they are delivered to the Clerk of the Court in accordance with rule 10(1).

4. In cases involving large numbers of documents, it would normally be appropriate for the parties' attorneys to make arrangements for those documents to be indexed, paginated and put into bundles long before the plaintiff is required to deliver them to the Clerk of the Court.

5. It is the duty of the parties and their attorneys to make all such arrangements for the preparation and exchange of bundles of documents as may be appropriate, having regard to the circumstances of the case. The objective is to ensure that both parties have avialble to them bundles of all the documents (indexed, paginated and organised in the way in which they will be used at the trial) at such time as may be necessary to

enable them to properly prepare their respective cases in time for the commencement of the trial.

Dated 7 March 1996.

Schedule 4 Doc.2

GCR PD NO. 3/97

CONFIDENTIALITY AND PUBLICATION OF CHAMBERS' PROCEEDINGS

In the absence of local rules, the Cayman Islands practice for the reporting of proceedings heard in chambers is to be found in the English Administration of Justice Act 1960, s.12, with the addition of the provisions of this direction. Section 12 reads:

"(1) The publication of information relating to proceedings before any court sitting in private shall not itself be contempt of court except in the following cases, that is to say:

(a) where the proceedings relate to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

(b) where the proceedings are brought under Part VIII of the Mental Health Act, 1959, or under any provision of that Act authorizing an application or reference to be made to a Mental Health Tribunal or to a county court;

(c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(9) Without prejudice to the foregoing subsection, the publication of the text or of a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.

(10) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references

to a court sitting in private include references to a court sitting in camera or in chambers.

(11) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section."

In view of the sensitivity o many proceedings now routinely being brought in the commercial or civil jurisdiction of the Grand Court, the parties involved in any matters taken in chambers about which information might be published but for an express prohibition, are to be at liberty to apply for an order against or delimiting publication.

Once the publication is made, it will then be in the discretion of the judge in the particular case to determine the ambit of publication. The publication of information relating to proceedings taken in chambers will not then of itself be a contempt of court unless it is contrary to the guidelines set out herein or contrary to a direction made by the judge in the case.

The form below should be submitted by counsel prior to and certainly no later than the occasion of the delivery of the written ruling or judgment in any case in which the issue arises. It is preferable that the application be submitted in advance, particularly when a matter is pending decision, so that it may be reflected in the order, ruling or judgment.

The use of the form will avoid the need for any separate application by way of summons in the case. Notice of the submission of the form is to be given to all sides. Unless it is necessary that counsel be heard in person (e.g. if any other party objects) the application may be submitted with written reasons, to be considered by the judge administratively and the decision notified in writing.

11 August 1997

APPLICATION TO RESTRICT THE PUBLICATION OF A RULING, ORDER OR JUDGMENT GIVEN *IN CAMERA*

1. Full title of cause or matter:

.....

2. Name of party on whose behalf the issue of confidentiality is to be raised:

.....

3. Name of counsel or attorney:

.....

4. Order, ruling or judgment to be considered (already given or to be given — describe by reference to the instant pleading):

.....

5. Suggested restrictions, changes or redactions:

.....

(Signature of counsel)

.....

Dated: .....

File by: .....

NOTE: Brief written reasons for the proposed restrictions on publication are to be submitted with this form.

Schedule 4 Doc.3

GCR PD NO. 1/99
(GCR 0.1, R.12)

FILING DOCUMENTS IN COURT

1. Application and Commencement

1.1 This practice direction applies to all proceedings to which the Grand Court Rules have general application by virtue of 0.1, r.2 and to all winding up proceedings.

1.2 It does not apply to —

1.2.1 Proceedings governed by the Matrimonial Causes Rules 1986 as amended;

1.2.2 Proceedings governed by the Grand Court (Bankruptcy) Rules 1977 as amended; and

1.2.3 Appeals from civil proceedings in the Summary Court.

1.3 This practice direction shall come into force on 1 March 1999 ("the Commencement Date")

2. Introduction

2.1 The Grand Court (Civil Procedure) Rules 1976 specifically required that all pleadings be filed. Although there was no similar requirement for affidavits and other documents to be filed, it became the established practice for all pleadings, affidavits, notices, lists and other documents to be filed whether or not they were actually used by the Court.

2.2 The rules relating to filing were materially changed with effect from 1 June 1995, but the pre-existing practice has continued with the result that the Court office is accumulating a large volume of documents unnecessarily. The Grand Court Rules

1995 required that the following documents shall be issued by or filed with the Court —

2.2.1 Writs, originating summonses, originating motions and petitions (0.5, r.1);

2.2.2 Third party notices (0.5, r.1 and 0.16, r.3);

2.2.3 Acknowledgements of service (0.12, r.4);

2.2.4 Interlocutory summonses and notices of motion (0.32, r.2);

2.2.5 Affidavits (including the exhibits) which are actually used in court (0.41, r.9)

2.2.6 Judgments and orders (0.42, r.5);

2.2.7 Applications for default judgments (0.42, r.6);

2.2.8 Writs of execution (0.46, r.6);

2.2.9 Notices of change, appointment, etc. of attorney (0.67, r.8).

2.3 No other documents are required to be filed, although it is the established practice to file **all** pleadings. GCR 0.18 has been amended to require pleadings to be filed within 14 days after service.

2.4 The procedure for issuing writs (including writs of execution) and other forms of originating and interlocutory process involving filing an original document signed by or on behalf of the plaintiff or applicant. The procedure for drawing up and perfecting judgments and orders also involves filing an original document signed by the judge or stamped with a facsimile of the judge's signature. Acknowledgments of service and notices of change, etc. are required to be filed because they constitute notice both to the Court and to the parties. Affidavits only require to be filed if and when they are *used* in a cause or matter.

25 With effect from the Commencement Date, the practice relating to filing will be brought into line with the Rules as follows.

3. New Practice

3.1 **Pleadings.** The new GCR 0.18 now requires that all pleadings be filed within 14 days after service. Pleadings are defined to mean statements of claim, defences, replies, counterclaims, defences to counterclaims, pleadings subsequent to reply (which may only be served with leave) and particulars of pleadings (but not the

requests for particulars). It should be noted that the term "pleadings" does not include generally endorsed writs, summonses, motions or petitions, all of which do require to be filed as part of the procedure whereby they are issued. A writ which is specifically endorsed with a statement of claim doers constitute a pleading and requires to be filed as part of the procedure for issuing the writ.

3.2 **Discovery.** GCR 0.24 requires that lists of documents, notices to produce documents, affidavits verifying lists, etc. shall be served. It does not require that any such documents shall be filed,

3.3 **Interrogatories.** Interrogatories and affidavits containing answers to interrogatories served in accordance with GCR 0.26 shall not be filed,

3.4 **Evidence for trial.** The parties to actions commenced by writ are required or permitted by various rules to prepare and exchange written evidence in advance of the trial. GCR 0.38 provides for the exchange of witness statements, expert reports and affidavits. GCR 0.38 Part II comprises a code relating to the admission of hearsay evidence which involves the service of notices and counter-notices. GCR 0.39 makes provision for evidence to be taken by deposition. No witness statements, affidavits, reports, depositions or notices served pursuant to these rules are required to be filed.

3.5 **Affidavits.**

3.5.1 Whether or not affidavits are required to be filed depends upon the purpose for which they are served. GCR 0.41, r.9 provides that every affidavit *used* in a cause or matter must be filed. An affidavit is only *used* within the meaning of this rule when it is read by a judge and constitutes part of the evidential basis upon which a judgment is given or an order is made. Affidavits which are sworn in compliance with orders (e.g. affidavits verifying lists of documents and affidavits made in compliance with asset disclosure orders) are required to be served but should not be filed because they are not intended to be used by the Court.

3.5.2 Whilst copies of affidavits sworn in connection with interlocutory applications are required to be served, the original affidavits are only required to be filed in accordance with GCR 0.41, r.9 if the application is in fact contested with the result that such affidavits are read by the judge

and constitute part of the evidential basis upon which the order is made. It follows that original affidavits need not be filed in advance of the hearing.

3.5.3 Written statements of evidence, whether in the form of affidavits, witness statements or depositions, intended to be used in evidence at trial are only required to be filed in the event that a trial takes place and such documents are in fact admitted in evidence. Since the vast majority of actions are settled, such documents should not be filed in anticipation of a trial taking place.

3.5.4 GCR 0.41, r.9(2) requires that the exhibits to affidavits should *not* be filed. Copy exhibits need to be served and made available to the Judge in advance of the hearing but the original exhibits should be kept by the party's attorney and are not required to be filed.

3.6 **Originating Summons Procedure.** Affidavits sworn in compliance with GCR 0.28 are required to be filed.

3.7 **Petition and Originating Notice of Motion Procedure.** Affidavits sworn in connection with petitions and originating (but not interlocutory) notices of motion require to be filed.

3.8 **Payment into Court.** Notices relating to payment into court and acceptance of funds into court served pursuant to GCR 0.22, rr,3 and 4 shall not be filed. Lodgment and payment schedules require to be delivered to the Court Funds Office but are not required to be filed on the Court file.

3.9 **Voluntary Filing is not Permitted.** With effect from the Commencement Date, the Clerk of the Court will not accept for filing any document which is not required to be filed under the Rules.

4. Preparing Interlocutory Applications and Trials

4.1 When preparing an interlocutory application, it shall be the duty of the applicant's attorney, after consultation with the attorneys for the other parties, to prepare and deliver to the relevant judge's secretary a bundle containing

copies of all those pleadings, affidavits, etc. which are relevant to the application. Unless the application is both short and straightforward, such bundles should normally be delivered in advance of the hearing, preferably by the Thursday of the previous week. In the event that the hearing is vacated for whatever reason, the judge's bundle will be returned to the applicant's attorney after the judge has made his order, but it shall be the duty of the parties' attorneys to file the originals of those affidavits read by the judge.

S. Correspondence Between Attorneys.

5.1 Correspondence between the parties' attorneys should never be copied to the Court and will not be placed on court files.

5.2 Any such correspondence received by the Clerk of the Court will be destroyed.

6. Authorities

6.1 Lists of authorities and/or bundles of copy authorities should be agreed between the parties' attorneys and sent to the Judge's secretary in advance of the hearing.

6.2 Neither lists of authorities nor bundles of copy authorities should be filed.

28 January 1999

Schedule 4 Doc.4

GCR PD NO. 2/99

(GCR 0.1, r.12)

DRAWING UP AND FILING OF JUDGMENTS AND ORDERS
(GCR 0.42, r.5(4) and (5))

1. Every judgment or order should be *dated* with the due date upon which it was made. A judgment or order is made when the judge pronounces it.

2. The attorney responsible for drawing up a judgment or order should include the date upon which it was made in the draft which is presented for signature. Unsigned draft orders must not be sealed.

3. The date upon which a judgment or order is *filed* is the date upon which it is signed. After having been signed the judgment or order will be sealed with the Court seal and the date of filing will be inserted either by the judge himself or a court official,

28 January 1999

Schedule 4 Doc.5

GCR PD NO. 1/2004 (GCR 0.1, r.12}

CORRECTIONS TO JUDGMENTS

1. Unless the judge otherwise sees fit, copies of written judgments will now be made available before being released as finally approved to facilitate the following:

   1.3 To enable the attorneys of the parties to consider the judgments and decide what consequential orders they should seek. In appropriate cases the judge may impose conditions of confidentiality until the judgment is finally released or until the formal order is finally issued.

   1.4 To enable the attorneys of the parties to submit any written suggestions to the judge about typing errors, wrong references of fact or citation of authority or other minor corrections of that kind in good time, so that, if the judge thinks fit, the judgment can be corrected before it is finally handed down in open Court or Chambers.

2. The same will apply to reasons for judgments.

3. Written suggestions for chambers must be submitted within 72 hours of the release of the judgment or reasons for judgment; unless the judge otherwise directs in writing.

4. Judgments or reasons for judgments release on the foregoing basis will on every page be stamped: "Unapproved version: No permission is granted to publicise, copy or use in Court".

S. None of the foregoing is intended to affect the discretion of the judge to issue errata in respect of written judgments or reasons for judgments for errors which later come to the judge's attention but within a reasonable time after the formal delivery (for example, errors which may be identified by the editors of the Law Reports). The intention is that any such errata will be given within 4 weeks of the formal release of the judgment or reasons for judgments and will immediately be notified to the attorneys and publishers of the Law Reports upon being given.

17 March 2004

Schedule 4 Doc.6

GCR PD 2/2006 (GCR 0.42)

ORDERS

Orders that are not encompassed by GCR 0.42, r.5(5) or 5A should be in the following format:

Under the style of cause:

IN CHAMBERS/IN GRAND COURT
DATE OF ORDER
BEFORE HON. JUSTICE

ORDER

UPON hearing counsel for the applicant etc.

IT IS HEREBY ORDERED THAT:

DATED the
FILED the

_____
JUDGE OF **THE** GRAND COURT"

And on a separate page, not forming part of the order:

Approved as to form and content: etc."

Orders that are encompassed by GCR 0.42, r.5(5) or 5A should include the indorsement "Approved as to form and content" after the signature line of the Clerk of the Court as the indorsement forms part of the order.

24 October 2006

Schedule 4 Doc.7

GCR PD NO. 2/2010 (GCR 0.1, r.12)

SCHEMES OF ARRANGEMENT AND COMPROMISE UNDER SECTION 86 OF THE COMPANIES LAW (GCR 0.102, r.20)

1. Introduction

1.1 This practice direction supersedes Practice Direction No. 1 of 2002 (issued on 4 July 2002) which is hereby revoked.

1.2 The sole purpose of replacing Practice Direction No.1 of 2002 is to provide more detailed directions and guidance about matters which will be considered by the Court at the first hearing of a petition for an order sanctioning a scheme of arrangement. Practitioners are referred in particular to paragraphs 3.1 to 3.5 below.

1.3 This practice direction will apply to proceedings commenced and/or hearings taking place on or after 1 October 2010.

2. Commencing proceedings

2.1 The previous practice of the Court, whereby the applications for an order convening the Court meeting and the sanction of the scheme of arrangement were treated as two entirely separate proceedings, was abolished by Practice Direction No. 1/2002. These applications will continue to be made in the same proceeding, thus resulting in the creation of a single Court file.

2.2 The proceeding will be commenced by petition seeking the Court's sanction of a proposed scheme of arrangement or compromise. At the same time as filing a petition, the applicant must file an interlocutory summons for an order convening the Court meeting(s). As part of the directions given on this application, the Court will fix a date for the substantive hearing of the petition, notice of which will be given to the shareholders/creditors as part of the scheme documentation.

23 Within seven days after the Court meeting(s) has or have been held, the applicant must file an affidavit sworn by the Chairman of the meeting(s) verifying that notice was duly sent in accordance with the order for directions; that the meeting(s) was or were duly held; and giving particulars of the result. In the event that the scheme was not approved, the applicant will also formally ask for the petition to be dismissed. In the event that the scheme was approved, the substantive hearing of the petition will take place on the pre-determined date. **In** most cases it should be unnecessary to file any further evidence.

3. Matters to be determined at the first Hearing

3.1 The first hearing (on the interlocutory summons for an order to convene the Court meeting) will normally be heard ex parte, but practitioners should consider giving notice to persons affected by the scheme in cases where class or other issues as referred to in paragraph 3.3 below arise, and where it is practical to do so. Such notice should include a statement of the intention to promote the scheme and of its purpose, and also of the proposed composition of classes and of the intention to raise any issue as referred to in paragraph 3.3 below.

3.2 In every case the Court will consider whether it is appropriate to convene class meetings and. If so, the composition of the classes so as to ensure that each meeting consists of shareholders or creditors who rights against the company which are to be released or varied under the scheme, or the new rights which the scheme gives in their place, are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. It follows that the supporting affidavit must contain all such information as may be necessary to enable the Court to make this determination. The applicant should also raise at the first hearing any other matter which may affect the conduct of the meeting(s).

3.3 At the first hearing, the Court will also consider any other issue which is relevant to the jurisdiction of the Court to sanction the scheme, and any other issue which, although not strictly going to jurisdiction, is such that it would unquestionably lead the Court to refuse to sanction the scheme.

3.4 It is the responsibility of the applicant by evidence in support of the application or otherwise to draw the attention of the Court to any issue in relation to the meeting(s) or any issue in paragraph 3.3 above. Unless the applicant's case in relation to the meeting(s) or any issue in paragraph 3.3 above is a plain and obvious one, the applicant's counsel should provide the Court with a skeleton argument addressing the relevant issues.

3.5 The Court will, if necessary, give directions for the resolution of any such issues including, if necessary, directions for the postponement of meeting(s) until that resolution has been achieved, and will hear interested parties. The Court will expect any person who raises any such issue at the hearing to sanction the scheme to show good cause why they did not raise it at an earlier stage.

3.6 The Court will consider whether the proposed time and place of the Court meeting(s) and the method of giving notice is appropriate in all the circumstances. The test is whether the parties having the economic interest, which is typically not the registered holder of the shares or debt instruments, will have sufficient time in which to consider the scheme documentation and make an informed decision. Where necessary, the Court should be provided with evidence of the "shareholder/creditor profile". In cases where the relevant shares or debt instruments are listed on a stock exchange, the Court must be provided with all necessary evidence upon which to satisfy itself that the proposed notice period and method of giving notice will comply with the applicable rules,

3.7 The applicant must satisfy the Court that the scheme documentation will provide the shareholder/creditor (which for this purpose means the person having the ultimate economic interest) with all the information reasonably necessary to enable them to make an informed decision about the merits of them proposed scheme. Since this application will typically be made ex parte, the applicant's counsel must draw the Court's attention to any aspects of the explanatory memorandum or proxy statement which might arguably depart from best practice.

3.8 If the proposed scheme relates to shares or debt instruments which are listed on a stock exchange, the applicant must file evidence which sets out the relevant listing rules and practice and explains the steps which have been or will be taken to comply with such listing rules or practice. The Court will always require to

know whether the proposed explanatory memorandum or proxy statement requires the approval of the relevant stock exchange and, if so, whether such approval has been obtained.

3.9 If one of the proposed class meetings consist of a small number of persons who are all willing to be bound by the terms of the scheme, the Court may, in its discretion, waive the requirement for a formal class meeting to be held of that particular class if the evidence before it at the first hearing shows that all of the particular members in question consent to be bound by the terms of the scheme.

4. "Looking through the Register"

4.1 **GCR 0.102,** r.20(6) confirms the existing practice of the Court which is to "look through the Register" in appropriate cases **for** the purpose of determining whether or not the statutory majorities have been achieved.

4.2 In the past there has been some uncertainty about the way in which the Court will interpret and apply the statutory provision in cases where the whole or substantially the whole of the relevant shares are registered with custodians or clearing houses such as Euroclear and Clearstream Luxembourg (previously known as Cedel). In the case of schemes involving creditors, similar uncertainty has arisen in cases where the scheme relates to a global note and where the whole of the debt instruments are registered with a single trustee. In such cases the Court will "look through the register" for the purpose of determining whether or not the statutory majorities have been achieved and any necessary directions for this purpose will be given at the hearing of the interlocutory summons.

4.3 For example, the Court may direct that the custodian be permitted to vote both for and against the scheme in accordance with the instructions received from its clients and the proxy forms should be prepared accordingly. In such cases the scheme documentation should include a form of voting instructions for use by custodians.

4.4 Custodians and clearing houses may be required to specify both the number of clients or members from whom they have received instructions in addition to the number of shares voted. The majority in number will be calculated on the basis

of the number of clients or members giving instructions to the custodian or clearing house. The Court understands that both Euroclear and Clearstream Luxembourg are content to proceed in this way. In cases involving other custodians or clearing houses, the Court will require evidence that the custodian or clearing house is willing and able to give effect to the Court's directions.

5. Hearing the Petition

5.1 The substantive hearing of the petition will take place in open court.

5.2 The date for the substantive hearing of the petition will be fixed at or before the hearing of the interlocutory summons for a direction convening the Court meeting(s).

5.3 Notice of the hearing date should be included in the scheme documentation, thus avoiding any subsequent need to publish advertisements. The explanatory memorandum or proxy statement should draw attention to the fact that shareholders or creditors will have the right to attend and be heard on the hearing of the petition.

5.4 GCR 0.102, r.20(10) provides that any person who voted at the Court meeting and any person who gave voting instructions to a custodian or clearing house who voted at the Court meeting, shall be entitled to be heard on the petition. In addition, the Court may be prepared to hear any other person whom it is satisfied has a substantial economic interest in the shares or debt instruments to which the scheme relates.

6. Miscellaneous

6.1 The Court is prepared in appropriate cases to direct that Court meetings be held outside the Cayman Islands,

6,2 Relevant extracts from the company's memorandum and articles of association should be exhibited to the supporting affidavit. It is not necessary to exhibit the whole of the memorandum and articles of association in every case,

SCHEDULE 5

GENERAL PRESCRIBED & DRAFT FORMS

1 PRESCRIBED FORMS OF INJUNCTIONS PROHIBITING DISPOSAL OF ASSETS IN THE CAYMAN ISLANDS AND WORLDWIDE.