

## CAYMAN ISLANDS



Supplement No. 5 published with Extraordinary Gazette  
No. 5 dated 22 January, 2009.

### **FOREIGN BANKRUPTCY PROCEEDINGS (INTERNATIONAL COOPERATION) RULES 2008**

## **THE COMPANIES (AMENDMENT) LAW, 2008**

### **Foreign Bankruptcy Proceedings (International Co-Operation) Rules, 2008**

The following rules are made by the Insolvency Rules Committee in exercise of the powers conferred by Section 155(1) of the Companies (Amendment) Law 2007

#### **1. Citation, Application and Interpretation**

- (1) These Rules shall be cited as the Foreign Bankruptcy Proceedings (International Co-Operation) Rules, 2008.
- (2) These Rules shall come into operation on the 1st day of March 2009.
- (3) These Rules shall apply to every application made pursuant to Part XVI of the Companies Law (2007 Revision), as amended by the Companies (Amendment) Law 2007 ("the Law")
- (4) Words and expressions used in the Law shall have the same meaning when used in these Rules.
- (5) The forms contained in the Appendix to these Rules shall be used where applicable, with such variations as the circumstances of the particular case may require.

#### **2. Application for Declaratory Order**

- (1) An application by a foreign representative made under Section 253(1)(a) of the Law for a declaration that he is entitled to act on behalf of a debtor shall be made by petition in accordance with GCR Order 9.
- (2) A petition presented under this rule is required to be served only on such persons as the Court may direct.
- (3) A petition under this rule shall state :-
  - (a) particulars of the debtor's incorporation;
  - (b) the nature and place of the debtor's business;
  - (c) the court or other authority by which the foreign representative was appointed;
  - (d) the powers and duties of the foreign representative under the law of the place of his appointment; and
  - (e) the reasons for seeking a declaratory order.

- (4) A petition under this rule shall be verified by an affidavit sworn by the foreign representative.
- (5) A certified copy of the order of the court or other authority by which the foreign representative was appointed shall be exhibited to the verifying affidavit.
- (6) A petition under this rule shall be supported by an affidavit of foreign law which explains the powers and duties of the foreign representative under the law of the place of his appointment.
- (7) A declaratory order under this rule shall be in Form 1 and shall be gazetted.

### **3. Application for Ancillary Order**

- (1) An application by a foreign representative made under Section 235 (1)(b) – (e) of the Law shall be made by originating summons in GCR Form 3.
- (2) An originating summons under this rule is required to be served on each respondent.
- (3) An originating summons under this rule shall be supported by an affidavit which contains –
  - (a) an affidavit sworn by the foreign representative containing full particulars of –
    - (i) the facts and matters referred to in Rule 2(3);
    - (ii) the facts and matters relied upon in support of the allegation that the respondent is a "relevant person" within the meaning of the Law;
    - (iii) the reasons for seeking an ancillary order against the respondent; and.
  - (b) an affidavit of foreign law which explains the powers and duties of the foreign representative under the law of the place of his appointment and addresses the matters referred to in Section 254(1) of the Law.
- (4) An ancillary order under this rule shall be in Form 2 or 3 or 4 or 5 as may be appropriate.

### **4. Notice of Foreign Bankruptcy Proceedings**

- (1) Whenever a company which is incorporated under Part II of the Law or registered under Part IX of the Law is made the subject of a foreign bankruptcy proceeding, notice of this fact shall be filed with the Registrar and published in the Gazette.
- (2) The notice required to be filed with the Registrar shall be in Form 6 and shall have annexed to it a certified copy of the order, notice or other document which evidences the commencement and existence of the foreign bankruptcy proceeding and, if such document is in a language other than English, an English translation of it.

- (3) The notice in Form 6 shall be published without its annexures in the Gazette not later than 21 days after the date on which notice was filed with the Registrar.

Made by the Insolvency Rules Committee on the 15th day of December 2008.

The Honourable Anthony Smellie QC, Chief Justice

The Honourable Sam Bulgin QC, Attorney-General

Andrew J. Jones QC, Legal Practitioner

Graham Ritchie QC, Legal Practitioner

Simon Whicker FCA, Insolvency Practitioner

Jude Scott CPA, Public Accountant

**APPENDIX – PRESCRIBED FORMS**

**Form No. 1**

**Declaratory Order**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO:    OF 20\_\_

The Honourable Mr Justice [                      ]

IN THE MATTER OF Part XVI of the Companies Law

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

**DECLARATORY ORDER**

UPON hearing counsel for [*state name and address of foreign representative*] upon his petition dated [*state date*] for a declaration recognising his right to act in the Islands on behalf of or in the name of [*state name of debtor*] (the "Debtor").

AND UPON hearing counsel for [*any persons upon whom the petition was served*]

AND UPON reading [*set out details of all the relevant affidavits*]

IT IS ORDERED AND DECLARED that [*name of foreign representative is hereby recognised as the only person entitled to act in the Islands on behalf of [or in the name of] the Debtor.*]

Dated the                      day of                      20\_\_

Filed the                      day of                      20\_\_

\_\_\_\_\_  
The Honourable Mr Justice [*name of assigned Judge*]

JUDGE OF THE GRAND COURT

This Order was filed by [*state name, address and contact details of the attorneys acting on behalf of the petitioner*].

**Form No. 2**

**Injunction**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 20\_\_

The Honourable Mr Justice [ ]

IN THE MATTER OF Part XVI of the Companies Law

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

BETWEEN: [*State name of foreign representative*]

Plaintiff

AND: [ ]

Defendant

INJUNCTION

UPON hearing counsel for the parties upon the Plaintiff's originating summons dated [*state date*] for an injunction restraining the Defendant from commencing proceedings against [*state name of debtor*].

AND UPON reading [*set out details of all the relevant affidavits*]

IT IS ORDERED that:

- 1 The Defendant, whether by its directors, officers, agents or otherwise, is hereby restrained from commencing any proceedings against the Defendant for [*state nature of threatened proceedings*] without the prior leave of the Court.
- 2 [*Further or other directions.*]

Dated the            day of            20\_\_

Filed the            day of            20\_\_

---

The Honourable Mr Justice [*name of assigned Judge*]

JUDGE OF THE GRAND COURT

This Order was filed by [*state name, address and contact details of the attorneys acting on behalf of the petitioner*].

**Form No. 3**

**Order for A Stay of Enforcement**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 20\_\_

The Honourable Mr Justice [ ]

IN THE MATTER OF Part XVI of the Companies Law

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

BETWEEN: [*State name of foreign representative*]

Plaintiff

AND: [ ]

Defendant

ORDER FOR A STAY OF ENFORCEMENT

UPON hearing counsel for the parties upon the Plaintiff's originating summons dated [*state date*] for a stay of enforcement in respect of the judgement dated [*state date*] and given against the debtor in cause number [ ].

AND UPON reading [*set out details of all the relevant affidavits*]

IT IS ORDERED that:

- 1 No enforcement proceedings shall be commenced [*or no further steps shall be taken in respect of enforcement proceedings already commenced*] in respect of the judgement dated [*state date*] made against the debtor in cause number [ ] without the prior leave of the Court.
- 2 [*Further or other directions.*]

Dated the            day of            20\_\_

Filed the            day of            20\_\_

---

The Honourable Mr Justice [*name of assigned Judge*]

JUDGE OF THE GRAND COURT

This Order was filed by [*state name, address and contact details of the attorneys acting on behalf of the petitioner*].

**Form No. 4**

**Order for Examination**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 20\_\_

The Honourable Mr Justice [ ]

IN THE MATTER OF Part XVI of the Companies Law

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

BETWEEN: [*State name of foreign representative*]

Plaintiff

AND: [*State name of examinee*]

Respondent

**ORDER FOR EXAMINATION**

UPON hearing counsel for the parties upon the Plaintiff's originating summons dated [*state date*] for an order that the Respondent be examined about the business or affairs of [*state name of debtor*].

AND UPON reading [*set out details of all the relevant affidavits*]

IT IS ORDERED that:

1. The Respondent shall deliver up to the Plaintiff all of the documents specified in Schedule One to this order on or before [*state date*].
2. The Respondent shall attend at [*state address*] on [*state date*] at [*state time*] (or at such other place and on such other date and time as may be agreed with the Plaintiff) to be examined orally by or on behalf of the Plaintiff about the business and affairs of the Debtor more particularly described in Schedule Two to this order.
3. The examination may be adjourned from time to time. Each session of the examination shall last no more than four (4) hours and the examination shall not last longer than [*state time*] in total without a further order of the Court.
4. [*further or other directions*]

Dated the            day of            20\_\_  
Filed the            day of            20\_\_

---

The Honourable Mr Justice [*name of assigned Judge*]  
JUDGE OF THE GRAND COURT

This Order was filed by [*state name, address and contact details of the attorneys acting on behalf of the petitioner*].



**Form No. 5**

**Order for Delivery Up of Property**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 20\_\_

The Honourable Mr Justice [ ]

IN THE MATTER OF Part XVI of the Companies Law

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

BETWEEN: [*State name of foreign representative*]

Plaintiff

AND: [ ]

Respondent

**ORDER FOR DELIVERY UP OF PROPERTY**

UPON hearing counsel for the parties upon the Plaintiff's originating summons dated [*state date*] for an order that the Respondent deliver up to the Plaintiff property belonging to [*state name of debtor*].

AND UPON reading [*set out details of all the relevant affidavits*]

IT IS ORDERED that:

1. The Respondent shall deliver up to the Plaintiff all of the property belonging to [*state name of debtor*] specified in this Schedule to this order on or before [*state date*].
2. [*Further or other directions about the method by which the property is to be delivered or title to the property transferred*].

Dated the            day of            20\_\_

Filed the            day of            20\_\_

---

The Honourable Mr Justice [*name of assigned Judge*]

JUDGE OF THE GRAND COURT

This Order was filed by [*state name, address and contact details of the attorneys acting on behalf of the petitioner*].

**Form No. 6**

**Notice of Foreign Bankruptcy Proceedings**

THE COMPANIES LAW

NOTICE OF FOREIGN BANKRUPTCY PROCEEDINGS

[Name of company]

Registration No \_\_\_\_

To: The Registrar of Companies

TAKE NOTICE that the above-named Company was made the subject of [*describe the foreign bankruptcy proceeding*] on [*state commencement date*] by order of [*identify the court or other authority*]. Certified copies of [*the relevant orders, notices or other documents evidencing the commencement and existence of the foreign bankruptcy proceedings*].

AND FURTHER TAKE NOTICE that [*state name of foreign representative*] of [*state address and contact details*] has been appointed [*identify the nature of any appointment such as a trustee in bankruptcy, official liquidator or receiver*].

Dated this                day of                20\_\_.

\_\_\_\_\_  
[Signature of Foreign Representative or Director as the case may be]

[Full name, address and contact details of the person filing this form]

(Price \$3.00)