

CAYMAN ISLANDS



Supplement No. 4 published with Extraordinary No. 5, dated
22 January, 2009.

INSOLVENCY PRACTITIONER'S REGULATIONS 2008

PART I: INTRODUCTION.....	3
1. Citation.....	3
2. Commencement and Application.....	3
3. Definitions.....	3
PART II: APPOINTMENT OF OFFICIAL LIQUIDATORS.....	4
4. Professional Qualification.....	4
5. Residency Requirement	4
6. Independence Requirement.....	5
7. Insurance Requirement	5
8. Foreign practitioners	6
9. Commencement and Transitional Provisions	6
PART III: OFFICIAL LIQUIDATOR'S REMUNERATION.....	6
10. Introduction.....	6
11. Basis of Remuneration	6
12. Consideration of Remuneration by the Liquidation Committee.....	7
13. Application to the Court.....	7
PART IV: RATES OF REMUNERATION	8
14. Introduction.....	8
15. Terms of Remuneration Agreements	8
SCHEDULE.....	11
PRESCRIBED RATES OF REMUNERATION FOR OFFICIAL LIQUIDATORS.....	11

THE COMPANIES (AMENDMENT) LAW, 2007

INSOLVENCY PRACTITIONERS' REGULATIONS 2008

THESE RULES ARE MADE BY THE INSOLVENCY RULES COMMITTEE PURSUANT TO
SECTION 155 OF THE COMPANIES (AMENDMENT) LAW, 2007

PART I: INTRODUCTION

1. Citation

These regulations may be cited as the Insolvency Practitioners' Regulations.

2. Commencement and Application

- (1) These Regulations shall come into force on the same day appointed by the Governor in Cabinet for bringing the Companies (Amendment) Law 2007 into effect, referred to in these Regulations as the "commencement date".
- (2) Part II of these Regulations shall apply to every appointment of an official liquidator made by the Court on or after the commencement date (irrespective of the date on which the liquidation commenced).
- (3) Part III of these Regulations shall apply to every application made to the Court by an official liquidator on or after the commencement date for an order approving payment of his remuneration out of the assets of a company in provisional or compulsory liquidation (including a liquidation under the supervision of the Court).
- (4) Part IV of these Regulations shall apply to remuneration earned for work done on or after the commencement date.

3. Definitions

- (1) The words and expressions defined by Section 89(1) of the Companies Law (2007 Revision) as amended by the Companies Amendment Law 2008 and the Companies Winding Up Rules 2008 shall have the same meaning when used in these Regulations.
- (2) The expression "qualified insolvency practitioner" means a person who is qualified in accordance with Regulation 5 to accept appointment by the Court as an official liquidator of a company.

PART II: APPOINTMENT OF OFFICIAL LIQUIDATORS

4. Professional Qualification

- (1) A person shall be qualified to accept appointment by the Court as official liquidator of any company only if –
 - (a) he is licensed to act as an insolvency practitioner in a relevant country; or
 - (b) he is qualified as a professional accountant by a relevant institute, is in good standing with such institute, has a minimum of five (5) years' relevant experience and is credited with not less than 2,500 chargeable hours of relevant work; or
 - (c) he has been appointed by the Court as an official liquidator of a company at any time within the five (5) years immediately preceding the commencement date.
- (2) For the purposes of paragraph (1)(a) of this Regulation the relevant countries are –
 - (a) England and Wales;
 - (b) Scotland;
 - (c) Northern Ireland;
 - (d) The Republic of Ireland;
 - (e) Australia;
 - (f) New Zealand; and
 - (g) Canada.
- (3) For the purposes of paragraph (1)(b) of this Regulation the relevant institutes are those specified from time to time in the Schedule 2 to The Public Accountants Law, 2004.
- (4) The expressions "relevant experience" and "relevant work" shall have the same meaning as in Part A of the Schedule to these Regulations.

5. Residency Requirement

- (1) A qualified insolvency practitioner shall not be appointed by the Court as official liquidator of any company unless –
 - (a) he is resident in the Islands; and

- (b) he, or the firm of which he is a partner or employee, holds a trade and business licence which authorises him or his firm to carry on business as professional insolvency practitioners.

6. Independence Requirement

- (1) A qualified insolvency practitioner shall not be appointed by the Court as official liquidator of a company unless he can be properly regarded as independent as regards that company.
- (2) A qualified insolvency practitioner shall not be regarded as independent if, within a period of 3 years immediately preceding the commencement of the liquidation, he, or the firm of which he is a partner or employee, has acted in relation to the company as its auditor.

7. Insurance Requirement

- (1) A qualified insolvency practitioner shall not be appointed by the Court as official liquidator of any company unless he and the firm of which he is a partner or employee or the company of which he is an employee, has professional indemnity insurance (up to a limit of at least US\$10 million in respect of each and every claim and at least US\$20 million in the aggregate, with a deductible of not more than US\$100,000) applicable to the negligent performance or non-performance of his duties as an official liquidator generally.
- (2) Nothing in these Regulations shall prevent the Court from making an order in respect of a particular company that its official liquidator shall –
 - (a) procure professional indemnity insurance covering him in respect of the negligent performance or non performance of his duties to the company with a limit of coverage in excess of US\$10 million in respect of each and every claim or with an aggregate limit in excess of US\$20 million; or
 - (b) procure the issue of a security bond to cover acts of fraud or dishonesty committed by the official liquidator or any of his staff,

in which case the premium shall be paid out of the assets of the company as an expense of the liquidation.

- (3) An insolvency practitioner who has professional indemnity insurance complying with the policy limit specified in Practice Direction No.1/2003 shall continue to be treated as being compliant with this Regulation until 31st March 2009, notwithstanding that the aggregate limit under such policy is less than \$20 million.

8. Foreign practitioners

- (1) A foreign practitioner who meets the independence and insurance requirements of Regulations 6 and 7 may be appointed by the Court as an official liquidator of a company jointly with a qualified insolvency practitioner (but not as sole official liquidator).
- (2) A foreign practitioner need not meet the residency requirement of Regulation 5.

9. Commencement and Transitional Provisions

- (1) The appointment by the Court of any person as official liquidator of a company made prior to the commencement date shall not be invalidated by reason of the fact that the appointee is not a qualified insolvency practitioner and does not meet the residency, independence or insurance requirements contained in these Regulations.

PART III: OFFICIAL LIQUIDATOR'S REMUNERATION

10. Introduction

- (1) Subject to paragraph (2), an official liquidator is not entitled to receive any remuneration out of the assets of a company in provisional or official liquidation (including a liquidation under the supervision of the Court) without the prior approval of the Court.
- (2) An official liquidator may receive a payment on account, the amount of which shall not exceed eighty percent of the remuneration sought in the report and accounts prepared in accordance with Regulation 12(2).
- (3) In the event that the amount of remuneration approved by the Court is less than the amount paid on account, the official liquidator shall forthwith repay the balance to the company.

11. Basis of Remuneration

- (1) An official liquidator may be remunerated on the basis of –
 - (a) the time spent by him and his staff upon the affairs of the liquidation; or
 - (b) a percentage of the amount distributed to creditors and members of the company; or
 - (c) a percentage of the amount realised upon the sale of the company's assets (net after deduction of the direct costs of sale); or

- (d) a fixed fee; or
- (e) a combination of some or all of the above.

12. Consideration of Remuneration by the Liquidation Committee

- (1) An official liquidator may not make an application to the Court under Regulation 13 without first –
 - (a) seeking the liquidation committee's approval of the basis of his remuneration and the amount of the remuneration for which he intends to seek the Court's approval; or, if there is no liquidation committee
 - (b) convening a meeting of creditors and/or contributories in accordance with CWR Order 8 at which the official liquidator proposes a resolution approving the basis of his remuneration and the amount of the remuneration for which he intends to seek the Court's approval; or
 - (c) complying with the requirements of any international protocol (in so far as it relates to the official liquidator's remuneration) which has been approved by both the Court and a foreign court.
- (2) The official liquidator shall prepare a report and accounts containing all the information reasonably required to enable a creditor or contributory to make an informed decision about the reasonableness of the proposed basis of remuneration and amount for which the official liquidator intends to seek the Court's approval.
- (3) If the official liquidator seeks to be remunerated on a time spent basis, his report and accounts shall provide full particulars of the work done; the staff engaged; and the hourly rates applicable to each grade of staff.
- (4) The official liquidator's report and accounts shall be provided to the liquidation committee or, if there is no committee, sent to the creditors and/or contributories with notice of the meeting.

13. Application to the Court

- (1) An application by an official liquidator for approval of his remuneration shall be made by summons in CWR Form No. 16 and shall be served on –
 - (a) each member of the liquidation committee; or
 - (b) counsel to the liquidation committee, if an attorney has been appointed by the liquidation committee with authority to act generally.

- (2) An application under this Regulation may be made *ex parte* if there is no duly constituted liquidation committee in existence.
- (3) An application under this Regulation shall be supported by –
 - (a) the report and accounts provided to the liquidation committee or meeting of creditors and/or contributories (as the case may be); and
 - (b) an affidavit stating the outcome of the liquidation committee's consideration or the outcome of the creditors and/or contributories' meetings.

PART IV: RATES OF REMUNERATION

14. Introduction

- (1) It is the responsibility of the liquidation committee and the official liquidator to negotiate and agree the basis upon which he and his firm will be remunerated and the applicable scale of hourly rates, percentage rates or fixed fees, as may be the case (referred to in these Regulations as a "remuneration agreement").
- (2) Subject to paragraph (3) of this Regulation, the terms of every remuneration agreement shall comply with the requirements of these Regulations.
- (3) Any remuneration agreement made and approved by the Court prior to the commencement date shall continue to be valid and enforceable notwithstanding any non-compliance with these Regulations, unless and until the Court orders or approves its replacement or amendment.

15. Terms of Remuneration Agreements

- (1) In the event that an official liquidator agrees to be remunerated upon a time spent basis, it shall be a term of the remuneration agreement that –
 - (a) the official liquidator and his firm shall not be obliged to accept less than the minimum hourly rates prescribed in Part A of the Schedule; and
 - (b) the liquidation committee shall not be authorised to agree to pay more than the maximum hourly rates prescribed in Part A of the Schedule; and
 - (c) the agreed scale of hourly rates shall apply, in the first instance, to the period from the date of the winding up order until 31st December and, thereafter, the scale of hourly rates shall be reviewed and re-negotiated annually with effect from 1st January each year.

- (2) In the event that the official liquidator agrees to be remunerated on the basis of a percentage of distributions, it shall be a term of the remuneration agreement that the official liquidator and his firm shall be paid –
- (a) a percentage of the net amount available for distribution to creditors after payment of the expenses of the liquidation (other than the official liquidator's remuneration) if the company is insolvent;
 - (b) if the company is solvent, an additional percentage of the net amount available for distribution to members after payment of the expenses of the liquidation (other than the official liquidator's remuneration); and
 - (c) the percentage rate shall not exceed the maximum prescribed in Part B of the Schedule.
- (3) In the event that the official liquidator agrees to be remunerated on the basis of a percentage of realisations, it shall be a term of the remuneration agreement that the official liquidator and his firm shall be paid –
- (a) a percentage of the amount realised upon sale of the company's assets, net after deduction of the direct costs of sale; and
 - (b) a percentage of the gross amounts recovered from the company's debtor's and contingent debtors; and
 - (c) the percentage rate shall not exceed the maximum prescribed in Part C of the Schedule.
- (4) In the event that –
- (a) the official liquidator and the liquidation committee fail to agree upon the terms of a remuneration agreement; or
 - (b) in the absence of any liquidation committee, a resolution approving the official liquidator's proposed remuneration agreement is not passed at a creditors' meeting and/or contributories' meeting,

the official liquidator shall apply to the Court pursuant to Regulation 13 for an order approving his proposed remuneration agreement.

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

SCHEDULE

PRESCRIBED RATES OF REMUNERATION FOR OFFICIAL LIQUIDATORS

With effect from 1st January 2009

Part A: Scale of hourly rates (expressed in US\$)

Grade of Staff	Minimum	Maximum
1. Official Liquidator and any Partner	\$500	\$775
2. Consultant	\$275	\$775
2. Director or Principal	\$425	\$650
2. Senior Manager	\$350	\$550
3. Manager or Assistant Manager	\$275	\$425
4. Senior or Senior Accountant	\$200	\$300
5. Staff Accountant	\$150	\$225
6. Administrator	\$80	\$125

For the purposes of this scale of hourly rates, the grades of staff shall be defined as follows –

"Partner" means a qualified insolvency practitioner who is or is held out as a partner of a firm or shareholder and director of a company carrying on business as professional insolvency practitioners;

"Consultant" means a person having professional qualifications (other than qualification as an insolvency practitioner) and/or technical expertise and/or particular experience relevant to matters arising in a liquidation;

"Director" or "Principal" means a qualified insolvency practitioner, having a minimum of seven (7) years' relevant experience who is credited with not less than 3,500 chargeable hours of relevant work over this period;

"Senior Manager" means either (i) a qualified insolvency practitioner, having a minimum of five (5) years' relevant experience who is credited with not less than 2,500 chargeable hours of relevant work over this period or (ii) an unqualified practitioner,

having a minimum of ten (10) years' relevant experience who is credited with not less than 5,000 hours of relevant work over this period;

"Manager" or "Assistant Manager" means either (i) a professional accountant, having a minimum of three (3) years' relevant experience who is credited with not less than 1,500 chargeable hours of relevant work over this period or (ii) an unqualified practitioner, having not less than six (6) years' relevant experience who is credited with not less than 3,000 chargeable hours of relevant work over this period;

"Senior" or "Senior Accountant" means a professional accountant, having minimum of two (2) years' post qualification experience;

"Staff Accountant" means a person who is registered as a trainee accountant, having a minimum of one (1) year's experience;

"Administrator" means an unqualified person, having a minimum of one (1) years' relevant experience who is credited with not less than 500 chargeable hours of relevant work;

and the expressions "relevant experience" and "relevant work" shall mean work done in connection with the restructuring or liquidation of businesses, whether solvent or insolvent, including work done outside the Islands.

Part B: Scale of Percentage Rates of Distributions or Realisations and Recoveries

Distribution to unsecured creditors (US\$)	Maximum Percentage Rate
1. Up to \$1 million	10%
2. \$1 - \$10 million	7½%
3. \$10 – 100 million	5%
4. Excess of \$100 million	2½%

Distribution to members (US\$)

1. Up to \$1 million	10%
2. \$1 - \$10 million	7½%
3. Excess of \$10 million	5%

Part C: Scale of Percentage Rates of Realisations and Recoveries

Realisations and Recoveries (US\$)	Maximum Percentage Rate
1. Up to \$1 million	10%
2. \$1 - \$10 million	7½%
3. \$10 – 100 million	5%
4. Excess of \$100 million	2½%