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INSOLVENCY PRACTITIONERS' RULES, 2012

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**OFFICE OF THE ATTORNEY GENERAL
AND MINISTRY OF LEGAL AFFAIRS**

S.I. No. 82 of 2012

**COMPANIES ACT
(Chapter 308)**

INSOLVENCY PRACTITIONERS' RULES, 2012

In exercise of the powers conferred by section 252 of the Companies Act, *Ch. 308*, the Liquidation Rules Committee makes the following Rules—

PART I—INTRODUCTION

1. Citation.

These Rules may be cited as the Insolvency Practitioners' Rules, 2012.

2. Interpretation.

- (1) The words and expressions defined by section 183 of the Companies Act, *Ch. 308* as amended by the Companies (Winding up Amendment) Act, 2011¹ and the Companies Liquidation Rules, 2012² shall have the same meaning when used in these Rules.
- (2) The expression “qualified insolvency practitioner” means a person who is qualified in accordance with rule 4 to accept appointment by the court as an official liquidator of a company.
- (3) An individual rule may be cited using the abbreviation “IPR” (Insolvency Practitioners' Rules).

3. Application of Rules.

- (1) Part II of these Rules 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.
- (2) Part III of these Rules 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.

¹No. 53 of 2011.

²S.I. No. of 2012.

- (3) Part IV of these Rules shall apply to remuneration earned for work done on or after the commencement date.

PART II—APPOINTMENT OF OFFICIAL LIQUIDATORS

4. Professional qualification.

- (1) The court shall take into account the following guidelines when considering whether a person has the necessary qualifications and experience to accept appointment by the court as a official liquidator of any company—
- (a) he is licensed or has passed the professional examinations required to be licensed to act as an insolvency practitioner in a relevant country prescribed in sub-rule (4);
 - (b) he is licensed as a professional accountant by an approved institute, is in good standing with such institute, maintaining twenty hours of continuing professional education in restructuring or insolvency each year;
 - (c) he has been appointed by the court as an official liquidator of a company at any time within the five years immediately preceding the commencement date;
 - (d) he is admitted to practice as a counsel and attorney of The Bahamas Bar and is of five or more years standing and has relevant experience;
 - (e) he is a current member in good standing with the relevant professional body; and
 - (f) the court is of the opinion that he is a fit and proper person to be appointed an official liquidator.
- (2) The expression “relevant experience” shall mean work experience in connection with—
- (a) the restructuring or liquidation of businesses, whether solvent or insolvent;
 - (b) the investigation of the affairs of any business;
 - (c) a forensic accounting exercise, including in each case work done outside The Bahamas; or
 - (d) acting as counsel and attorney to liquidators respecting company liquidations.
- (3) The court in determining whether any person is fit and proper to act as an insolvency practitioner, shall take into account (*inter alia*);
- (a) whether the person is solvent and in good financial standing;

- (b) whether the person is in good standing with his or her professional bodies;
 - (c) whether the person has adequate office facilities, staff and systems in place to enable insolvency work to be delivered to a high standard;
 - (d) any previous disciplinary findings or pending investigations by a professional body, regulator or similar body; and
 - (e) any conviction, decision, sentence or judgment (including criminal and civil court decisions) involving such person.
- (4) For the purposes of paragraph (a) of sub-rule (1), 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.
- (5) For the purposes of paragraph (b) of sub-rule (1), “approved institute” means an institute, society, association or other body approved by the Council of the Institute established pursuant to section 5 of the Public Accountants Act, *Ch. 364*.

5. Residency requirement.

A qualified insolvency practitioner shall not be appointed by the court as official liquidator of any company unless—

- (a) he is resident in The Bahamas; 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 three years immediately preceding the commencement of the liquidation —
 - (a) his;

- (b) his partner; or
 - (c) the firm of which he is a partner or employee,
has acted in relation to the company as its auditor.
- (3) Before acting as an official liquidator, the insolvency practitioner must be satisfied that any relationship referred to in paragraph (2) would not impair his objectivity as insolvency practitioner.

7. Insurance requirement.

- (1) Nothing in these Rules 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 \$500,000 in respect of each and every claim or with an aggregate limit in excess of \$1 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.
- (2) An insolvency practitioner who has professional indemnity insurance complying with the policy limit specified by the approved institute shall continue to be treated as being compliant with this rule until its expiration, notwithstanding that the aggregate limit under such policy is less than \$1 million.

8. Foreign practitioners.

- (1) A foreign practitioner who meets the independence and insurance requirements of rules 6 and 7 may, where the court considers appropriate, 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 rule 5.

9. Transitional provision.

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 Rules.

PART III—OFFICIAL LIQUIDATOR'S REMUNERATION

10. Introduction.

- (1) Subject to sub-rule (2), an official liquidator and his agents are not entitled to receive any remuneration out of the assets of the 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 rule 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.

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;
- (b) a percentage of the amount distributed to creditors and/or members of the company;
- (c) a percentage of the amount realised upon the sale of the company's assets (net after deduction of the direct costs of sale);
- (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 rule 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;
 - (b) if there is no liquidation committee, convening a meeting of creditors and/or contributories in accordance with CLR 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 CLR Form 16 and shall be served on —
 - (a) each member of the liquidation committee; or
 - (b) counsel to the liquidation committee, if a counsel and attorney has been appointed by the liquidation committee with authority to act generally.
- (2) An application under this rule may be made *ex parte* if there is no duly constituted liquidation committee in existence.
- (3) An application under this rule 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);
 - (b) an affidavit stating the the outcome of the liquidation committee's consideration or the outcome of the creditors and/or contributories' meeting; and
 - (c) a copy of the remuneration agreement or a copy of the document which evidence the terms of the remuneration agreement.

PART IV—RATES OF REMUNERATION

14. Remuneration.

- (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 Rules as a "remuneration agreement").

- (2) Subject to paragraph (3), the terms of every remuneration agreement shall comply with the requirements of these Rules.
- (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 Rules, unless and until the court orders or approves its replacement or amendment.
- (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) there is no liquidation committee, in the absence of a resolution approving the official liquidator's remuneration agreement passed at a creditors' meeting or a contributories' meeting (as relevant),the official liquidator shall apply to the court pursuant to rule 13 for an order approving his proposed remuneration agreement.

Dated the 31st day of July, 2012.

Signed
MICHAEL BARNETT
Chairman of Liquidation Rules Committee