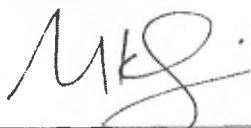


Tab 21

This is Exhibit "21" referred to in the Affidavit of Paul Robert
Appleton sworn August ..6....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

THE COMPANIES (WINDING-UP) RULES 1934

The following rules made by the Governor with the advice and assistance of the Judges of the High Court under the Companies Act, 1931, may be cited as 'The Companies (Winding-Up) Rules, 1934', and shall come into operation in the manner and at the time specified by section 35 of the Isle of Man Judicature Act, 1883.

Preliminary

1 Application of Rules

Subject to the limitation hereinafter mentioned, these rules shall apply to the proceedings in every winding-up under the Act of a company, which shall commence on and after the date on which these rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date, in the winding-up of a company which commenced on or before such date. Rules which from their nature and subject matter are, or which by the headlines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding-up by the Court, or only to such proceedings and proceedings in a creditors' voluntary winding-up shall not apply to the proceedings in a voluntary winding-up, or as the case may be in a members' voluntary winding-up, whether any such voluntary winding-up is or is not being continued under the supervision of the Court.

2 Interpretation of terms

In these rules, unless the context or subject-matter otherwise requires:-

'**The Act**' means the Companies Act, 1931.

'**The company**' means a company which is being wound-up, or against which proceedings to have it wound up have been commenced.

'**Court**' means the Chancery Division of the High Court of Justice.

'**Judge**' means any judge of the Court.

'**Proceedings**' means the proceedings in the winding-up of a company under the Act.

'**Chief clerk**' means the chief clerk in the Rolls Office, and shall include a deputy chief clerk.

'**Registrar**' means the registrar or other officer performing the duty of registration of companies, and shall include a deputy registrar.

'**The rules**' means these rules, and includes the prescribed forms.

'**Taxing officer**' means the First Deemster and Clerk of the Rolls, or other officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

3 Use of forms in Appendix

(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

(2) Provided that the Governor may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Governor alters any form, or substitutes any new form in lieu of a form prescribed by these rules, such altered or substituted form shall be published in two Insular newspapers.

Court and Chambers

4 Matters in High Court to be heard in Court and Chambers

(1) The following matters and applications to the Court shall be heard in open Court, unless a judge shall in any case otherwise order:-

- (a) Petitions.
 - (b) Public examinations.
 - (c) Applications under sub-section (1) of section 261 of the Act.
 - (d) Applications to rectify the register.
 - (e) Appeals from the official receiver.
 - (f) Appeals from any decision or act of the liquidator.
 - (g) Applications relating to the admission or rejection of proofs.
 - (h) Proceedings under section 260 of the Act.
 - (i) Applications under section 272 of the Act.
 - (j) Applications under section 268 of the Act.
 - (k) Applications under sub-sections (1) and (2) of section 259 of the Act and such applications under sub-section (4) of the said section as can be made to the Court.
 - (l) Applications under section 208 of the Act.
 - (m) Applications under sub-section (2) of section 337 of the Act.
 - (n) Applications for the committal of any person to prison for contempt.
 - (o) Such matters and applications as the judge may from time to time by any general or special orders direct to be heard in open Court.
- (2) Any other matter or application may be heard and determined in Chambers.

5 Petitions

Every application shall be made by petition or motion, notice of which shall be served on every person against whom an order is sought, not less than three clear days before the day named in the notice for hearing the petition or motion. [Form 1]

6 Times for holding Courts

Subject to the provisions of the Act, the times of the sitting of each Court shall be those which are appointed for the transaction of the general business of the Court, unless the judge of any such Court shall otherwise order.

Proceedings

7 Title of proceedings

(1) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions be intitled in the matter of the company to which it relates and in the matter of the Companies Act, 1931, and otherwise as in Form 2. Numbers and dates may be denoted in figures. [Form 2]

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the Rolls Office, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

8 Written or printed proceedings

All proceedings shall be written or printed, or partly written or partly printed on paper of the size of thirteen inches in length and eight inches in breadth, or thereabouts, and must have a stitching margin; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

9 Orders

Every order, whether made in Court or in Chambers in the winding-up of a company shall be drawn up by the chief clerk unless in any proceeding, or classes of proceedings, the judge who, makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the judge shall be sufficient evidence of the order having been made.

10 File of proceedings

All petitions, affidavits, orders, proofs, notices, depositions, bills of costs and other proceedings in the High Court in a winding-up matter shall be kept and remain in the Rolls Office, and, subject to the directions of the Court, shall be placed in one continuous file.

11 Office copies

All office copies of proceedings filed in the Rolls Office shall be provided by the chief clerk in like manner as office copies of other documents filed at the Rolls Office.

12 Inspection of File

Every person who has been a director or officer of a company which is being wound-up shall be entitled free of charge, and every contributory and every creditor whose claim or proof has been admitted shall be entitled on payment of a fee of one shilling for each hour or part of an hour occupied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or be furnished with such copies or extracts at a rate not exceeding fourpence per folio of eighty words.

Service and Execution of Process and Enforcement of Orders

13 Service

(1) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2) No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

14 Enforcement of Orders

Every order of a Court having jurisdiction to wind up a company, made in the exercise of the powers conferred by the Acts and Rules, may be enforced by such Court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

Petition

15 Forms of petition

Every petition for the winding-up of a company by the Court, or subject to the supervision of the Court, shall be in the Forms Nos. 4 and 5 in the Appendix, with such variations as circumstances may require. [Forms 4 and 5]

16 Presentation of petition

A petition shall be presented at the Rolls Office, and the chief clerk shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition.

17 Advertisement of petition

Every petition shall be advertised seven clear days before the hearing, as follows:-

- (1) At least once in two newspapers printed and circulating in this Isle;
- (2) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his advocate (if any), and shall contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his advocate within the time and manner prescribed by rule 22, and an advertisement of a petition for the winding-up of a company by the Court which does not contain such a note shall be deemed irregular. [Form 6]

And if the petitioner or his advocate does not within the time hereby prescribed or within such extended time as the judge may allow duly advertise the petition in the manner prescribed by this rule, the appointment of the time and place at which the petition is to be heard shall be cancelled, and the petition shall be removed from the file unless the judge shall otherwise direct.

18 Service of petition

Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, by leaving a copy with any member, officer, or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the Court may direct; and where the company is being wound-up voluntarily, the petition shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company. [Forms 7 and 8]

19 Verification of petition

Every petition for the winding-up of a company by the court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient prima facie evidence of the statements in the petition. [Forms 9 and 10]

20 Copy of petition to be furnished to creditor or contributory

Every contributory or creditor of the company shall be entitled to be furnished by the advocate of the petitioner with a copy of the petition, within 24 hours after requiring same, on paying at the rate of 4d. per folio, of 80 words for such copy.

Provisional Liquidator.

21 Appointment of provisional liquidator

(1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient ground for the appointment of a provisional liquidator, the Court, if it thinks fit and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.

(2) The order appointing the provisional liquidator shall bear the number of the petition, and shall state the nature and a short description of the property of which the provisional liquidator is ordered to take possession, and the duties to be performed by the provisional liquidator.

(3) Subject to any order of the court, if no order for the winding-up of the company is made upon the petition, or if an order for the winding-up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the company subject to the supervision of the Court, the provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges and expenses properly incurred by him as provisional liquidator, including such sum as is or would be payable under the scale of fees for the time being in force where the official receiver is appointed provisional liquidator, and may retain out of such property the amounts of such costs, charges and expenses.

(4) Where any person other than the official receiver has been appointed provisional liquidator and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty prescribed by these rules, the provisional liquidator shall pay the official receiver such sum, if any, as the Court directs.

Hearing of Petitions and Orders made thereon.

22 Notice by persons who intend to appear

Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his advocate, at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him or by his advocate, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice shall be in Form 12, with such variations as circumstances may require. A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition. [Form 12]

23 List of name and addresses of persons who appear on the petition

The petitioner, or his advocate, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective advocates, and shall be in Form 13. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his advocate, to the Court prior to the hearing of the petition. [Form 13]

24 Affidavits in opposition and reply

(1) Affidavits in opposition to a petition that a company may be wound-up by or subject to the supervision of the Court shall be filed within seven days of the date on which notice by advertisement was first published, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or the advocate of the petitioner, on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or advocate of the petitioner.

25 Substitution of creditor or contributory for withdrawing petitioner

When a petitioner is not entitled to present a petition, or whether so entitled or not, where he (1) fails to advertise his petition within the time by these rules prescribed or such extended time as the Court may allow, or (2) consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or (3) if appearing, does not apply for an order in the terms of the prayer of his petition, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition. An order to substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed by these rules or consents to withdraw his petition, be made in Chambers at any time.

Order to Wind-Up a Company.

26 Notice that winding-up order has been pronounced to be given to official receiver

When an order for the winding-up of a company or for the appointment of a provisional liquidator prior to the making of an order for the winding-up of the company, has been made, the chief clerk shall, forthwith, send to the official receiver a notice informing him that the order has been pronounced. The notice shall be in Forms 14 and 15 respectively, with such variations as circumstances may require. [Forms 14 and 15]

27 Contents of the winding-up order

An order to wind-up a company or for the appointment of a provisional liquidator shall contain at the foot thereof a notice stating that it will be the duty of such of the persons who are liable to make out or concur in making out the company's statement of affairs as the official receiver may require, to attend on the official receiver at such time and place as he may appoint, and to give him all information he may require. [Forms 11 and 16]

28 Transmission and advertisement of winding-up order

(1) When an order that a company be wound-up, or for the appointment of a provisional liquidator has been made-

- (a) The official receiver shall cause a certified copy of the order to be served upon the company by prepaid letter addressed to it at its registered office (if any), or, if there is no registered office, at its principal or last known principal place of business, or upon such other person or persons, or in such other manner as the Court may direct.
- (b) The official receiver shall forthwith advertise notice of the order in at least two local newspapers. [Form 17]

(2) An order for the winding-up of a company by or subject to the supervision of the Court, shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the London Gazette and shall be served on such persons (if any) and in such manner as the Court shall direct. [Form 18]

Transfers of Actions and Proceedings

29 Transfer of actions

Where an order has been made for the winding-up of a Company, then the judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against the Company, and any action or proceeding by a mortgagee or debenture holder of the company against the company, for the purpose of enforcing a claim against the Company's assets or property, which is pending in the Court, shall without further order be transferred to the Court. In the case of applications in Chambers in actions so transferred, where the practice in winding-up is different from the practice in the Chancery Division, the practice in winding-up shall prevail.

30 Notice of application to official receiver

In a winding-up by the Court, notice of an application for a Notice of an application for a transfer of proceedings shall before the hearing thereof, be lodged by the applicant at the Rolls Office.

Special Manager.

31 Appointment of a special manager

(1) An application by the official receiver for the appointment of a special manager shall be supported by a report of the official receiver, which shall be filed at the Rolls Office, and such report shall either state the amount of remuneration which, in the opinion of the official receiver, ought to be allowed to the special manager, or that it is, in the opinion of the official receiver, desirable that the fixing of such remuneration should be deferred.

No affidavit by the official receiver in support of the application shall be required.

(2) The remuneration of the special manager shall, unless the Court otherwise in any case directs, be stated in the order appointing him, but the Court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

32 Accounting by special manager

Every special manager shall account to the official receiver, and the special manager's accounts shall be verified by affidavit, and, when approved by the official receiver, the totals of the receipts and payments shall be added by the official receiver to his accounts. [Form 21]

Statement of Affairs.

33 Preparation of statement of affairs

(1) A person who under section 175 of the Act has been required by the official receiver to submit and verify a statement of affairs of a company, shall be furnished by the official receiver with such forms and instructions as the official receiver in his discretion shall consider necessary. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The official receiver shall cause to be filed at the Rolls Office the verified statement of affairs. [Form 22]

(2) The official receiver may from time to time hold personal interviews with any such person as is mentioned in paragraphs (a), (b), (c) or (d) of sub-section (2) of section 175 of the Act, for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the official receiver at such time and place as the official receiver may appoint and give the official receiver all information that he may require.

34 Extension of time for submitting statement of affairs

When any person requires any extension of time for submitting the statement of affairs, he shall apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding-up and shall render an application to the Court unnecessary.

35 Information subsequent to statement of affairs

After the statement of affairs of a company has been submitted to the official receiver, it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the official receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the official receiver in relation to the statement of affairs.

36 Default

Any default in complying with the requirements of section 175 of the Act may be reported by the official receiver to the Court.

37 Expenses of statement of affairs

A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver.

38 Dispensing with statement of affairs

(1) Any application to dispense with the requirements of section 175 of the Act shall be supported by a report of the official receiver showing the special circumstances which in his opinion render such a course desirable.

(2) When the Court has made an order dispensing with the requirements of the said section, it may give such consequential directions as it may see fit, and in particular it may give directions as to the sending of any notices which are by these rules required to be sent to any person mentioned in the statement of affairs.

Appointment of Liquidator in a Winding-Up by the Court.

39 Appointment of liquidator on report of meetings of creditors and contributories

(1) As soon as possible after the first meeting of creditors and contributories have been held, the official receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court. [Form 23]

(2) Upon the result of the meetings of creditors and contributories being reported to the Court, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall, on the application of the official receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences, and making such order as shall be necessary. In any other case the Court may upon the application of the official receiver forthwith make any appointment necessary for giving effect to any such resolutions or determinations.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and, place shall be advertised by the official receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings the Court shall hear the official receiver and any creditor or contributory.

(5) If a liquidator is appointed notice of the appointment shall be given in the London Gazette. The expense of gazetting the notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company. [Forms 24 and 103(6)]

(6) Every appointment of a liquidator or Committee of Inspection shall be advertised by the liquidator in such manner as the Court directs immediately after the appointment has been made, and the liquidator has given the required security. [Form 25]

(7) If a liquidator in a winding-up by the Court shall die, or resign, or be removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver shall, on the request of not less than one-tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the liquidator is released under section 190 of the Act, in which case the official receiver shall remain liquidator. [Form 103(7)]

Security by Liquidator or Special Manager in a winding-up by the Court.

40 Standing security

In the case of a special manager or a liquidator other than the official receiver, the following

provisions as to security shall have effect, namely:-

(1) The security shall be given to such officers or persons, and in such manner, as the Court may from time to time direct.

(2) It shall not be necessary that security shall be given in each separate winding-up; but security may be given either specially in a particular winding-up, or generally, to be available for any winding-up in which the person giving security may be appointed, either as liquidator or special manager.

(3) The Court shall fix the amount and nature of such security, and may from time to time, as it thinks fit, either increase or diminish the amount of special or general security which any person has given.

(4) The cost of furnishing the required security by a liquidator or special manager including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding-up.

41 Failure to give or keep up security

(1) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver shall report such failure to the Court, who may thereupon rescind the order appointing the liquidator or special manager.

(2) If a liquidator or special manager fails to keep up his security the official receiver shall report such failure to the Court, who may thereupon remove the liquidator or special manager and make such order as to costs as the Court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the Court may direct that meetings shall be held for the purpose of determining whether an application shall be made to the Court for another liquidator to be appointed, and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator.

Public Examinations.

42 Consideration of report

The consideration of a report made by the official receiver pursuant to subsection (2) of section 176 of the Act shall be before the Court personally in chambers, and the official receiver shall personally, or by an advocate, attend the consideration of the report, and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

43 Procedure consequent on order for public examination

Where the judge makes an order under section 207 of the Act, directing any person or persons to attend for public examination:-

- (a) The examination shall be held before the judge; Provided that the judge may direct that the whole or any part of the examination of any such person or persons, including any application as to costs, be held and heard and determined before the chief clerk. [Form 27]
- (b) The judge may, if he thinks fit, either in the order for examination, or by any subsequent order, give directions as to the special matters on which any such person is to be examined.
- (c) Where on an examination held before the chief clerk he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the judge.

44 Application for day for holding examination

Upon an order directing a person to attend for public examination being made the official receiver shall, unless the judge shall otherwise direct, without further order, take an appointment for the public examination to be held.

45 Appointment of time and place for public examination

A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the official receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address. [Form 28]

46 Notice of public examination to creditors and contributories

The official receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in two local newspapers. [Form 103(2)]

47 Default in attending

If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the official receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon it being proved to the satisfaction of the Court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just. [Form 29]

48 Notes of examination to be filed

The notes of every public examination shall, after being signed as required by section 307 (7) of the Act, be filed in the Rolls Office. [Forms 30 and 31]
Proceedings by or against Directors, Promoters and Officers

49 Application by or against delinquent directors, officers and promoters

(1) An application made to the Court under any of the following provisions of the Act:-

- (1) Section 260;
- (2) Subsections (1), (2) or (4) of section 259;
- (3) Section 208;
- (4) Subsection (2) of section 337;

shall be made by a petition in the first instance in chambers. The petition shall state the nature of the declaration or order for which application is made, and the grounds of the application, and, unless otherwise ordered, shall be served, in the manner in which a petition is required by the rules of Court to be served, on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application.

(2) On the hearing of the petition the Court may give such directions as it shall think fit as to whether points of claim and defence are to be delivered as to the taking of evidence wholly or in part by affidavit or orally, and the cross-examination either before the judge on the hearing in Court or in chambers of any deponents to affidavits in support of or in opposition to the application and as to any report it may require the official receiver or liquidator to make and generally as to the procedure on the petition and for the hearing thereof.

(3) Where any such order as is mentioned in paragraph (2) of this rule has directed that points of claim and defence shall be delivered, then if subsequently to such order and before the petition has been set down for trial or adjourned to the judge either party wishes to apply for any further direction as to any interlocutory matter or thing he shall apply by petition to the Court in chambers and shall give three clear days' notice in writing to the other party, stating the grounds of the application.

50 Use of depositions taken at public examinations

Where in the course of the proceedings in a winding-up by the Court an order has been made for the public examination of persons named in the order pursuant to section 207 of the Act, then in any proceedings subsequently instituted under any of the provisions of the Act mentioned in paragraph (1) of rule 49, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations be admissible in evidence against any of the persons against whom the applications is made, who, under section 207 of the Act, and the order for the public examination, was or had the opportunity of being present at and taking part in the examination:

Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than seven days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

Witnesses and Depositions.

51 Shorthand notes

If the Court or the officer of the Court before whom any examination under the Act and rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment. The person at whose instance the examination is taken shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding one guinea a day, and a sum not exceeding 8d per folio of 90 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the company as may be directed by the Court. [Forms 32 and 33]

52 Committal of contumacious witness

(1) If a person examined before the chief clerk or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the chief clerk or officer any question which he may allow to be put, the chief clerk or officer shall report such refusal to the judge, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the judge. [Form 34]

(2) The report shall be in writing, but without affidavit, and shall set forth the question put and the answer (if any) given by the person examined.

(3) The chief clerk or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report the judge may take such action thereon as he shall think fit. If the judge is sitting at the time when the default in answering is made, such report may be reported immediately.

53 Depositions at private examinations

(1) The official receiver may attend in person or by an advocate employed for the purpose any examination of a witness under section 206 of the Act on whosoever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the Court may allow.

(2) The notes of the depositions of a person examined under section 206 of the Act, or under any order of the Court before the Court, or before any officer of the Court (other than the notes of the depositions of a person examined at a public examination under section 207 of the Act) shall be forthwith lodged in the Rolls Office but shall not be filed or be open to the inspection of any creditor, contributory or other person except the official receiver or liquidator, or any provisional liquidator other than the official receiver while he is acting as provisional liquidator, unless and until the Court shall so direct, and the Court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

Disclaimer

54 Disclaimer

(1) Any application for leave to disclaim any part of the property of a company pursuant to subsection (1) of section 252 of the Act shall be by ex parte petition. Such petition shall be supported by an affidavit showing who are the parties interested and what their interests are. On the hearing of the petition the Court shall give such directions as it sees fit, and in particular directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.

(2) Where a liquidator disclaims a leasehold interest he shall forthwith file the disclaimer at the Rolls Office. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the liquidator the disclaimer shall be inoperative. A disclaimer shall be in the Form No. 35 and a notice of disclaimer in the Form No. 36 in the Appendix, with such variations as circumstances may require. [Forms 35 and 36]

(3) Where any person claims to be interested in any part of the property of a company which the liquidator wishes to disclaim he shall, at the request of the liquidator, furnish a statement of the interest so claimed by him.

Vesting of Disclaimed Property.

55 Vesting of disclaimed property

(1) Any application under subsection (6) of section 252 of the Act for an order for the vesting of any disclaimed property in or the delivery of any such property to any persons shall be supported by the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application as aforesaid relates to disclaimed property of a leasehold nature and it appears that there is any mortgagee by demise (including a charge by way of legal mortgage), or under-lessee of such property, the Court may direct that notice shall be given to such mortgagee or under-lessee that if he does not elect to accept and apply for such a vesting order as aforesaid upon the terms required by the above-mentioned sub-section and imposed by the Court within a time to be fixed by the Court and stated in the notice he will be excluded from all interest in and security upon the property and the Court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to and served with the application and, if he sees fit, to make such election and application as is mentioned in the notice. If at the expiration of the time so fixed by the Court such mortgagee or under-lessee fails to make such election and application the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

Arrangements with Creditors and Contributories in a Winding-up by the Court.

56 Report by official receiver on arrangements and compromises

In a winding-up by the Court, if application is made to the Court to sanction any compromise or arrangement, the Court may, before giving its sanction thereto, hear a report by the official receiver as to the terms of the scheme and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the official receiver, ought to be brought to the attention of the Court. The report shall not be placed upon the file unless and until the Court shall direct it to be filed.

Collection and Distribution of Assets in a Winding-up by the Court.

57 Collection and distribution of company's assets by liquidator

(1) The duties imposed on the Court by section 195(1) of the Act, in a winding-up by the Court, with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities, shall be discharged by the liquidator as an officer of the Court, subject to the control of the Court.

(2) For the purpose of the discharge by the liquidator of the duties imposed by section 195(1) of the Act, and paragraph (1) of this Rule, the liquidator, in a winding-up by the Court, shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

58 Power of liquidator to require delivery of property

The powers conferred on the Court by section 196 of the Act shall be exercised by the liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker, or agent or officer of a company which is being wound-up under order of the Court shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any money, property, books or papers which happen to be in his hands for the time being and to which the company is prima facie entitled. [Form 37]

List of Contributories in a Winding-up by the Court.

59 Liquidator to settle list of contributories

Unless the Court shall dispense with the settlement of a list of contributories the liquidator shall with all convenient speed after his appointment settle a list of contributories of the company, and shall appoint a time and place for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and the amount called up and the amount paid up in respect of such shares or interest and shall distinguish the several classes of contributories. As regards representative contributories the liquidator shall, so far as practicable, observe the requirements of section 195 (2) of the Act. [Form 38]

60 Appointment of time and place for settlement of list

The liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list and what amount has been called up and what amount paid up in respect of such shares or interest. [Forms 39 and 40]

61 Settlement of list of contributories

On the day appointed for settlement of the list of contributories the liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which, when so settled, shall be the list of contributories of the company. [Form 41]

62 Notice to contributories

The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories, stating in what character and for what number of shares or interest he has been placed on the list and what amount has been called up and what amount paid up in respect of such shares or interest, and in the notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by petition within 21 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories. [Forms 42 and 43]

63 Application to the Court to vary the list

(1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of 21 days from the date of the service on such person of notice of the settlement of the list. [Form 44]

(2) The official receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

64 Variation of, or addition to, list of contributories

The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list. [Form 45]

Calls.

65 Calls by liquidator

The powers and duties of the Court in relation to making calls upon contributories conferred by section 198 of the Act shall and may be exercised, in a winding-up by the Court, by the liquidator as an officer of the Court, subject to the proviso to section 211 of the Act and to the following regulations:-

(1) Where the liquidator desires to make any call on the contributories, or any of them, for any purpose authorised by the Act, if there is a Committee of Inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call.

(2) The notice of the meeting shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call and the purpose for which it is intended. Notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised once at least in a local newspaper. The advertisement shall state the time and place of the intended meeting of the Committee of Inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the Committee of Inspection to be laid before the meeting in reference to the said intended call. [Forms 46 and 47]

(3) At the meeting of the Committee of Inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned.

(4) The sanction of the Committee shall be given by resolution, which shall be passed by a majority of the members present. [Form 48]

(5) Where there is no Committee of Inspection, the liquidator shall not make a call without obtaining the leave of the Court.

66 Application to Court for leave to make a call

In a winding-up by the Court, an application to the Court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Acts, shall be made by petition stating the proposed amount of such call, which petition shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory. [Forms 49-52]

67 Document making the call

When the liquidator is authorised by resolution or order to make a call on the contributories, he shall file at the Rolls Office a document in the Form 53, with such variations as circumstances may require making the call. [Form 53]

68 Service of notice of a call

When a call has been made by the liquidator in a winding-up by the Court, a copy of the resolution of the Committee of Inspection or order of the Court (if any), as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs. [Forms 48, 52, 54 and 55]

69 Enforcement of call

The payment of the amount due from each contributory or a call may be enforced by order of the Court to be made in chambers on the application by the liquidator. [Forms 56-58]

*Proofs.***70 Proof of debt**

In a winding-up by the Court every creditor shall, subject as hereinafter provided, prove his debt, unless the judge in any particular winding-up, shall give directions that any creditors or class of creditors shall be admitted without proof. [Form 59]

71 Mode of proof

A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the Court the affidavit shall be so sent to the official receiver or, if a liquidator has been appointed, to the liquidator; and in any other winding-up the affidavit may be so sent to the liquidator. [Form 59]

72 Verification of proof

An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge. [Form 59]

73 Contents of proof

An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The official receiver or liquidator to whom the proof is sent may at any time call for the production of the vouchers. [Form 59]

74 Statement of security

An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

75 Costs of proof

A creditor shall bear the cost of proving his debt unless the Court otherwise orders.

76 Discount

A creditor proving his debt shall deduct therefrom (a) any discount which he may have agreed to allow for payment in cash in excess of five per centum on the net amount of his claim and (b) all trade discounts.

77 Periodical payments

When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company or the liquidator of rent during the period of the company's or the liquidator's occupation.

78 Interest

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding four per cent. per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until the time of payment.

79 Proof for debt payable at a future time

A creditor may prove for a debt not payable at the time of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors deducting only thereout a rebate of interest at the rate of five per centum per annum, computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

80 Workmen's wages

In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made, either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof a schedule setting forth the names of the workmen and others and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others. [Form 60]

81 Production of bills of exchange and promissory notes

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security, must, subject to any special order of the Court made to the contrary, be produced to the official receiver, chairman of a meeting or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

82 Transmission of proofs to liquidator

Where a liquidator is appointed in a winding-up by the Court, all proofs of debts that have been received by the official receiver, shall be handed over to the liquidator, and the official receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

Admission and Rejection of Proofs and Preferential Claims and Appeal to the Court.

83 Notice to creditors to prove

(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the liquidator in any winding-up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, and to establish any title they may have to priority under section 249 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved, or, as the case may be from objecting to such distribution.

(2) The liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the Court to every person mentioned in the statement of affairs as a creditor, and who has not proved his debt, and to every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted.

(3) All the rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variations to any such claim to priority as aforesaid.

84 Examination of proof

The liquidator shall examine every proof of debt lodged with him, and the grounds of the debt, and in writing admit or reject it, in whole or in part or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection. [Form 61]

85 Appeal by creditor

If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the Court may, on the application of the creditor or contributory reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the liquidator in a winding-up by the Court rejecting a proof sent to him by a creditor or person claiming to be a creditor shall be entertained unless notice of the application is given before the expiration of twenty one days from the date of the service of the notice of rejection.

86 Expunging at instance of liquidator

If the liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

87 Expunging at instance of creditor

The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter.

88 Oaths

For the purpose of any of his duties in relation to proofs, the liquidator, in a winding-up by the Court, may administer oaths and take affidavits.

89 Official receiver's powers

In a winding-up by the Court the official receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

90 Filing proofs by official receiver

In a winding-up by the Court, the official receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted and the proofs which were wholly or partly rejected.

91 Proofs to be filed

Every liquidator in a winding-up by the Court other than the official receiver shall, on the first day of every month, or at such other times as the Court may direct, file at the Rolls Office a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed at the Rolls Office. [Form 62]

92 Procedure where creditor appeals

The liquidator, in a winding-up by the Court, including the official receiver when he is liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof at the Rolls Office with a memorandum thereon of his disallowance thereof.

93 Time for dealing with proofs by official receiver

Subject to the power of the Court to extend the time in a winding-up by the Court, the official receiver as liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall, in writing, either admit or reject wholly or in part every proof lodged with him, or require further evidence in support of it.

94 Time for dealing with proofs by liquidator

Subject to the power of the Court to extend the time, the liquidator in a winding-up by the Court, other than the official receiver, within twenty-eight days after receiving a proof which has not previously been dealt with, shall, in writing, either admit or reject it wholly or in part, or require further evidence in support of it: Provided that where the liquidator has given notice of his intention to declare a dividend he shall, within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine and, in writing, admit or reject, or require further evidence in support of every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

95 Costs of appeals from decisions as to proofs

The official receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Dividends in a Winding-up by the Court.

96 Dividends to creditors

(1) Not more than two months before declaring a dividend the liquidator, in a winding-up by the Court, shall give notice of his intention to do so to the chief clerk, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts and shall publish such notice in two local newspapers. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice. [Forms 63, 64 and 103(3)]

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which he appeal is made, and the liquidator may in such case make provision for the dividend upon such proof and the probable cost of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this rule, the liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the liquidator he shall proceed to declare a dividend, and shall give notice to the chief clerk and shall also send a notice of dividend to each creditor whose proof has been admitted. [Forms 65 and 103(4)]

(4) If it becomes necessary, in the opinion of the liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator shall give a fresh notice of his intention to declare a dividend to the chief clerk, but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend the liquidator shall forthwith transmit to the chief clerk a list of the proofs filed under rule 91, which list shall be in the Form 66 or 67 in the Appendix, as the case may be. [Forms 66 and 67]

(6) Dividends may, at the request and risk of the person to whom they are payable, be transmitted to him by post.

(7) If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the liquidator a document in the Form 68, which shall be a sufficient authority for payment of the dividend to the person therein named. [Form 68]

97 Return of capital to contributories

Every order by which the liquidator, in a winding-up by the Court is authorised to make a return to contributories of the company shall, unless the Court shall otherwise direct, contain or have appended thereto a schedule or list (which the liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be requisite to enable the return to be made. The schedule or list shall be in the Form 70 with such variations as circumstances shall require, and the liquidator shall send a notice of return to each contributory. [Forms 69, 70 and 103(5)]

General Meetings of Creditors and Contributories in relation to a Winding-up by the Court.

98 First meetings of creditors and contributories

Unless the Court otherwise directs, the meetings of creditors and contributories under section 179 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month, or if a special manager has been appointed, then within six weeks after the date of the winding-up order. The dates of such meetings shall be fixed and they shall be summoned by the official receiver.

99 Notice of first meetings to chief clerk

The official receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the chief clerk, and shall give notice thereof in the London Gazette. [Form 103(1)]

100 Summoning of first meetings

The first meetings of creditors and contributories shall be summoned as hereinafter provided.

101 Forms of notices of first meetings

The notices of first meetings of creditors and contributories may be in Forms 71 and 72 appended thereto, and the notices creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting. [Forms 71 and 72]

102 Notice of first meeting to officers of company

The official receiver shall also give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver, and if any such director or officer fails to attend the official receiver shall report such failure to the Court. [Form 73]

103 Summary of statement of affairs

(1) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing, from the company's books or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(2) Where prior to the winding-up order the company has commenced to be wound-up voluntarily, the official receiver may, if in his absolute discretion he sees fit so to do, send to the persons aforesaid or any of them an account of such voluntary winding-up showing how such winding-up has been conducted and how the property of the company has been disposed of and any observations which the official receiver may think fit to make on such account or, on the voluntary winding-up.

General Meetings of Creditors and Contributories in relation to Winding-up by the Court and of Creditors in relation to a Creditors' Voluntary Winding-up.

104 Liquidator's meetings of creditors and contributories

(1) In addition to the first meetings of creditors and contributories, and in addition also to meetings of creditors and contributories directed to be held by the Court under section 270 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the liquidator in any winding-up by the Court may himself, from time to time, subject to the provisions of the Act and the control of the Court, summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up.

(2) In any creditors' voluntary winding-up the liquidator may himself, from time to time, summon, hold and conduct meetings of creditor's for the purpose of ascertaining their wishes in all matters relating to the winding-up (such meetings and all meetings of creditors which a liquidator or a company is by the Act required to convene in or immediately before such a voluntary winding-up and all meetings convened by a creditor in a voluntary winding-up under these rules are hereinafter called voluntary liquidation meetings).

105 Application of rules as to meetings

Except where and so far as the nature of the subject matter or the context may otherwise require the rules as to meetings hereinafter set out shall apply to first meetings, court meetings, liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so nevertheless that the said rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings subject and without prejudice to any express directions of the Court.

106 Summoning of meetings

(1) The official receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories. [Form 75]

(2) The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under section 230 of the Act the continuing liquidator, or if there is no continuing liquidator, any creditor may summon the meeting.

(4) This rule shall not apply to meetings under section 226 or section 233 of the Act.

107 Proof of Notice

A certificate by the official receiver or other officer of the court, or by the clerk of any such person, or an affidavit by the liquidator or creditor or his advocate, or the clerk of either of such persons, or as the case may be by some officer of the company or its advocate or the clerk of such company or advocate, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed. [Forms 76 and 77]

108 Place of meetings

Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

109 Costs of calling meeting

The costs of summoning a meeting of creditors or contributories at the instance of any person other than the official receiver or liquidator shall be paid by the person at whose instance it is summoned, who shall, before the meeting is summoned, deposit with the official receiver or liquidator (as the case may be) such sum as maybe required by the official receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first twenty creditors or contributories, one shilling per creditor or contributory for the next thirty creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first fifty. The said costs shall be repaid out of the assets of the company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This rule shall not apply to meetings under sections 226 or 230 of the Act.

110 Chairman of meeting

Where a meeting is summoned by the Official Receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors or contributories the chairman shall be such person as the meeting by resolution shall appoint. This rule shall not apply to meetings under section 226 of the Act. [Form 78]

111 Ordinary resolution of creditors and contributories

At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

112 Copy of resolution to be filed

The official receiver or, as the case may be, the liquidator shall file at the Rolls Office a copy certified by him of every resolution of a meeting of creditors or contributories in a winding up by the Court.

113 Non-reception of notice by a creditor

Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall, unless the court otherwise orders, be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

114 Adjournments

The chairman may, with the consent of the meeting, adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders. [Form 79]

115 Quorum

(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting, unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote, or the contributories as the case may be, shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day or time or place as the chairman may appoint, but so that the day appointed shall not be less than seven or more than twenty-one days from the day from which the meeting was adjourned.

116 Creditors entitled to vote

In the case of a first meeting of creditors or of an adjournment thereof, a person shall not be entitled to vote as a creditor unless he has duly lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or liquidator's meeting of creditors, a person shall not be entitled to vote as a creditor unless he has lodged with the official receiver or liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors. This rule shall not apply to any creditors or class of creditors who by virtue of the rules or any directions given thereunder are not required to prove their debts or to any voluntary liquidation meeting.

117 Cases in which creditors may not vote

A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

118 Votes of secured creditors

For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

119 Creditor required to give up security

The official receiver or liquidator may, within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

120 Admission and rejection of proofs for purpose of voting

The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

121 Statement of security

For the purpose of voting at any voluntary liquidation meetings a secured creditor shall, unless he surrender his security, lodge with the liquidator, or, where there is no liquidator, at the registered office of the company, before the meeting, a statement giving the particulars of his security the date when it was given, and the value at which he assesses it.

122 Minutes of meeting

(1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 74.

Proxies in relation to a Winding-up by the Court and to Meetings of Creditors in a Creditors' Voluntary Winding-up.

123 Proxies

A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by section 115 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the official receiver or liquidator or other the chairman of the meeting a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

124 Form of proxies

Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a commissioner to administer oaths. [Forms 80 and 81]

125 Forms of proxy to be sent with notices

General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting and neither the name nor description of the official receiver or liquidator, or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

126 General proxies

A creditor or a contributory may give a general proxy to any person.

127 Special proxies

A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof:-

- (a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection; and
- (b) on all questions relating, to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

128 Solicitation by liquidator to obtain proxies

Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories, the Court, if it thinks fit, may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

129 Proxies to official receiver or liquidator

A creditor or a contributory in a winding-up by the Court may appoint the official receiver or liquidator and in a voluntary winding-up the liquidator, or if there is no liquidator the chairman of a meeting to act as his general or special proxy.

130 Holder of proxy not to vote on matter in which he is financially interested

No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

131 Proxies

(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs. [Forms 80 and 81]

(2) In every other case a proxy shall be lodged with the official receiver or liquidator in a winding-up by the Court, with the company, at its registered office, for a meeting under section 226 of the Act, and with the liquidator, or if there is no liquidator with the person named in the notice convening the meeting, to receive the same in a voluntary winding-up not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

132 Use of proxies by deputy

Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

133 Filling in where creditor blind or incapable

The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the creditor before he attached his signature or mark.

Attendance and Appearance of Parties.

134 Attendance at proceedings

(1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted, shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

(2) The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. If more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same advocate to represent them.

(3) No creditor contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the chief clerk for that purpose, his name and address and the name and address of his advocate (if any), and, upon any change of his address, or of his advocate, his new address and the name and address of his new advocate.

135 Attendance of liquidator's advocate

Where the attendance of the Liquidator's advocate is required on any proceeding in Court or Chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his advocate or the Court directs him to attend..

Liquidator and Committee of Inspection.

136 Remuneration of liquidator

(1) The remuneration of a liquidator, unless the Court shall otherwise order, shall be fixed by the Committee of Inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If the chief clerk is of opinion that the remuneration of a liquidator as fixed by the Committee of Inspection is unnecessarily large, the chief clerk may report to the Court, and thereupon the Court shall fix the amount of the remuneration of the liquidator.

(3) If there is no Committee of Inspection the remuneration of the liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the official receiver as liquidator.

(4) This rule shall only apply to a liquidator appointed in a winding-up by the Court.

137 Limit of remuneration

Except as provided by the Act or the rules, a liquidator shall not under any circumstances whatever make any arrangement for, or accept from any advocate, auctioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding-up of the company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and the rules he is entitled as liquidator, nor shall he make any arrangement for giving up or give up any part of such remuneration to any such advocate, auctioneer, or other person.

138 Dealings with assets

Neither the liquidator nor any member of the Committee of inspection of a company shall, while acting as liquidator or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase, made contrary to the provisions of this rule may be set aside by the Court on the application of any creditor or contributory, and the Court may make such order as to costs as the Court shall think fit.

139 Restriction on purchase of goods by liquidator

Where the liquidator carries on the business of the company, he shall not, without the express sanction of the Court purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

140 Committee of inspection not to make profit

No member of a Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. In a winding-up by the Court, if it appears to the chief clerk, or in a voluntary winding-up, if it appears to the Committee of Inspection or to any meeting of creditors or contributories, that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or recover such profit as the case may be on the audit of the liquidator's accounts or otherwise.

141 Costs of obtaining sanction of Court

In any case in which the sanction of the Court is obtained under the two last preceding rules, the cost of obtaining such sanction, shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets.

142 Sanction of payments to Committee

Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the Court no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

143 Discharge of costs before assets handed to liquidator

(1) Where a liquidator is appointed by the Court, and has notified his appointment and given security, the official receiver shall forthwith put the liquidator into possession of all property of the company of which the official receiver may have custody; provided that such liquidator shall have, before the assets are handed over to him by the official receiver, discharged any balance due to the official receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of four pounds per centum per annum; and the liquidator shall pay all fees, costs, and charges of the official receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

(2) The official receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the official receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

(4) This and the next following rule shall only apply in a winding-up by the Court.

144 Resignation of liquidator

A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he shall file at the Rolls Office a memorandum of his resignation; and shall send notice thereof to the official receiver, and the resignation shall thereupon take effect. In any other case the liquidator shall report to the Court the result of the meetings and shall send a report to the official receiver, and thereupon the Court may, upon the application of the liquidator or the official receiver, determine whether or not the resignation of the liquidator shall, be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

145 Office of liquidator vacated by his insolvency

If a receiving order in bankruptcy is made against a liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and rules shall be deemed to have been removed.

*Payments Into and Out of a Bank.***146 Payments out of court**

All payments of monies in and out of Court shall be in Payments out accordance with the rules of Court governing such matters.

147 Special bank account

(1) Where the liquidator in a winding-up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint.

(2) Where application is made to authorise the liquidator, in a winding-up by the Court, to make his payments into and out of a special bank account, the Court may grant such authorisation for such time and on such terms as it may think fit, and may at any time order the account to be closed if it is of opinion that the account is no longer required for the purposes mentioned in the application.

148 Record book

In a winding-up by the Court the official receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the 'Record Book,' in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such, matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the record book any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, the official receiver, or the chief clerk.

149 Cash book

(1) In a winding-up by the Court the official receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the 'Cash Book' (which shall be in such form as the chief clerk may from time to time direct), in which he shall (subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made by him.

(2) In a winding-up by the Court a liquidator other than the official receiver shall submit the record book and cash book, together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

(3) In a creditors' voluntary winding-up the liquidator shall keep such books as the Committee of Inspection or, if there is no such committee, as the creditors direct, and all books kept by the liquidator shall be submitted to the Committee of Inspection, or if there is no such committee, to the creditors, with any other books, documents, papers and accounts in his possession relating to his office as liquidator, or to the company as and when the Committee of Inspection, or if there is no such committee, the creditors, direct.

*Investment of Funds.***150 Investment of assets in securities and realisation of securities**

(1) Where in a winding-up by the Court or in a creditors' voluntary winding-up, the Committee of Inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the chief clerk. [Forms 84 and 85]

(2) Where the Committee of Inspection in any such winding-up are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the chief clerk.

(3) Where there is no Committee of Inspection in any such winding-up as is mentioned in paragraphs (1) and (2) of this rule and in every member's voluntary winding-up, whether under the supervision of the Court or not, if a case has in the opinion of the liquidator arisen for an investment of the funds of the company or a sale of securities in which the company's funds have been invested, the liquidator shall sign and transmit to the chief clerk a certificate of the facts on which his opinion is founded, and a request to the chief clerk to make the investment or sale mentioned in the certificate, and the chief clerk may thereupon, if he think fit, invest or sell the whole or any part of the said funds and securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the chief clerk for the said investment or sale.

*Accounts and Audit in a Winding-up by the Court.***151 Audit of cash book**

The Committee of Inspection shall not less than once every three months audit the liquidator's cash book and certify therein under their hands the day on which the book was audited. [Form 86]

152 Chief clerk audit of liquidator's accounts

(1) The liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the chief clerk a copy of the cash book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, showing thereon the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The liquidator shall also at the end of every six months forward to the chief clerk with his accounts a report upon the position of the liquidation of the company in such form as the chief clerk may direct.

(2) When the assets of the company have been fully realised and distributed, the liquidator shall forthwith send in his accounts to the chief clerk, although the six months may not have expired.

(3) The accounts sent in by the liquidator shall be verified by him by affidavit. [Form 87]

153 Liquidator carrying on business

(1) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total, weekly amounts of the receipts and payments on such trading account.

(2) The trading account shall, from time to time, and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the Committee of Inspection (if any) or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same. [Forms 88 and 89]

154 Copy of accounts to be filed

When the liquidator's account has been audited, the chief clerk shall certify the fact upon the account, and thereupon the duplicate copy bearing a like certificate, shall be filed at the Rolls Office.

155 Summary of accounts

(1) The liquidator shall transmit to the chief clerk with his accounts a summary of such accounts in such form as the chief clerk may from time to time direct, and, on the approval of such summary by the chief clerk, shall forthwith obtain, prepare, and transmit to the chief clerk so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory.

(2) The cost of printing and posting such copies shall be a charge upon the assets of the company.

156 Affidavit of no receipts

Where a liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the chief clerk, forward to the chief clerk an affidavit of no receipts or payments.

157 Proceedings on resignation, etc, of liquidator and disposal of books

(1) Upon a liquidator resigning or being released or removed from his office, he shall deliver over to the official receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of liquidator. The release of a liquidator shall not take effect unless and until he has delivered over to the official receiver, or, as the case may be, to the new liquidator, all the books, papers, documents and accounts which he is by this rule required to deliver on his release.

(2) The chief clerk may, at any time during the progress of the liquidation, on the application of the liquidator or the official receiver, direct that such of the books, papers, and documents of the company or of the liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of.

158 Expenses of sales

Where property forming part of a company's assets is sold of by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer or agent is employed shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

*Taxation of Costs***159 Taxation of costs payable by or to official receiver or liquidator or by company**

Every advocate, manager, accountant, auctioneer, broker or other person employed by an official receiver or liquidator in a winding-up by the Court shall, on request by the official receiver or liquidator (to be made a sufficient time before the declaration of a dividend), deliver his bill of costs or charges to the official receiver or liquidator for the purpose of taxation; and if he fails to do so within the time stated in the request, or such extended time as the Court may allow, the liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the Court the claim shall be forfeited. The request by the official receiver or liquidator shall be in Form No. 90.

160 Notice of appointment

Where a bill of costs or charges in any winding-up has been lodged with the taxing officer, he shall give notice of an appointment to tax the same, in a winding-up by the Court to the official receiver, and in every winding-up to the liquidator, and to the person to, or by whom the bill or charges is or are to be paid (as the case may be).

161 Lodgment of bill

The bill or charges, if incurred in a winding-up by the Court prior to the appointment of a liquidator, shall be lodged with the official receiver, and if incurred after the appointment of a liquidator shall be lodged with the liquidator. The official receiver or the liquidator, as the case may be, shall lodge the bill or charges with the proper taxing officer.

162 Copy of the bill to be furnished

Every person whose bill or charges in a winding-up by the Court is or are to be taxed shall, on application either of the official receiver or the liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 4d. per folio, which payment shall be charged on the assets of the company. The official receiver shall call the attention of the liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

163 Applications for costs

Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding:-

(1) Such party or person shall serve notice of his intended application on the official receiver or on the liquidator as the case may be.

(2) The official receiver or liquidator may appear on such application and object thereto.

(3) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

164 Certificate of taxation

Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges and expenses, together with the allowance or certificate, shall be filed at the Rolls Office. [Form 91]

165 Certificate of employment

Where the bill or charges of any advocate, manager, accountant, auctioneer, broker, or other person employed by an official receiver or liquidator, is or are payable out of the assets, of the company, a certificate in writing, signed by the official receiver or liquidator as the case may be, shall on the taxation be produced to the taxing officer, setting forth whether any, and if so what special terms of remuneration have been agreed to, and in the case of the bill of costs of an advocate, a copy of the resolution or other authority sanctioning the appointment of an advocate to assist the liquidator in the performance of his duties and the instructions given to such advocate by the liquidator.

166 Coroner's costs

In any case in which, pursuant to section 254 (1) of the Act, a coroner is required to deliver goods or money to a liquidator, such coroner shall without delay bring in his bill of costs for taxation and they shall be taxed by the taxing officer, and unless such bill of costs is brought in for taxation within one month from the date when the coroner makes such delivery the liquidator may decline to pay the same.

167 Taxation of coroner's costs after deduction

If a liquidator shall in writing require any costs which a coroner has deducted, under section 254 (2) of the Act, to be taxed the coroner shall within seven days from the date of the request bring in such costs for taxation, and they shall be taxed by the taxing officer and any amount disallowed on such taxation shall forthwith be paid over by the coroner to the liquidator.

Costs and Expenses payable out of the Assets of the Company.

168 Liquidator's charges

(1) Where a liquidator or special manager in a winding-up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2) Where a liquidator is an advocate he may contract that the remuneration for his services as liquidator shall include all professional services.

169 Costs payable out of assets

(1) The assets of a company, in a winding-up by the Court, remaining after payment of the fees and expenses properly incurred in preserving, realising, or getting in the assets, including where the Company had previously commenced to be wound-up voluntarily, such remuneration costs, and expenses as the Court may allow to a liquidator appointed in such voluntary winding-up shall, subject to, any order of the Court, be liable to the following payments, which shall be made in the following order of priority, namely:-

- First - The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.
- Next - The remuneration of the special manager (if any).
- Next - The costs and expenses of any person who makes or concurs in making the company's statement of affairs.

- Next - The taxed charges of any shorthand writer appointed to take an examination: Provided that where the shorthand writer is appointed at the instance of the official receiver, the cost of the shorthand notes shall be deemed to be an expense incurred by the official receiver in getting in and realising the assets of the company.
- Next - The necessary disbursements of any liquidator appointed in the winding-up by the Court, other than expenses properly incurred in preserving, realising or getting in the assets heretofore provided for.
- Next - The costs of any person properly employed by any such liquidator.
- Next - The remuneration of any such liquidator.
- Next - The actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the chief clerk.

(2) No payments in respect of bills or charges of advocates, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 37, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the registrar. The taxing officer shall, before passing the bills or charges of an advocate, satisfy himself that the appointment of an advocate to assist the liquidator in the performance of his duties has been duly sanctioned: Provided that the official receiver when acting as liquidator may, without taxation, pay and allow the costs and charges of any person other than an advocate employed by him where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of £2: Provided always that the chief clerk may require such costs or charges to be taxed by the taxing officer.

(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound-up by the Court, are ordered by the Court in which such proceedings are pending or a judge thereof to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.

Statements by Liquidator to the Registrar of Companies.

170 Conclusion of winding-up

The winding-up of a company shall, for the purposes of section 267 of the Act, be deemed to be concluded:-

- (a) In the case of a company wound-up by order of the Court, at the date on which the order dissolving the company has been reported by the liquidator to the registrar of companies, or at the date of the order releasing the liquidator pursuant to section 190 of the Act.
- (b) In the case of a company wound-up voluntarily, or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into Court,

171 Times for sending liquidator's statements and regulations applicable thereto

In a voluntary winding-up or a winding-up under the supervision of the Court the statements with respect to the proceedings in and position of a liquidation of a company, the winding-up of which is not concluded within a year after its commencement, shall be sent to the registrar of companies twice in every year as follows:-

(1) The first statement, commencing at the date when a liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, or within such extended period as the chief clerk may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half-year for which it is sent. In cases in which the assets of the company have been fully realised and distributed before the expiration of a half-yearly interval a final statement shall be sent forthwith.

(2) Subject to the next succeeding rule, Form No. 92, and where applicable, Forms 94, 95, and 96, with such variations as circumstances may require, shall be used, and the directions specified in the form shall (unless the chief clerk otherwise direct) be observed in reference to every statement.

(3) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require.

172 Affidavit of no receipts or payments

Where in a voluntary winding-up or a winding-up under the supervision of the Court a liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall, at the period when he is required to transmit his statement, send to the registrar of companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93.

Unclaimed Funds and Undistributed Assets in the hands of a Liquidator.

173 Payment of undistributed and unclaimed money into court

(1) All money in the hands or under the control of a liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the six months, be paid into Court.

(2) In a voluntary winding-up or a winding-up under the supervision of the Court all other money in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under subsection (1) of section 268 of the Act, the liquidator is to pay into Court, shall be ascertained as on the date to which the statement of receipts and payments sent in to the registrar of companies is brought down, and the amount to be paid into Court shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the chief clerk may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into Court within fourteen days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date of the dissolution of the company shall forthwith be paid by him into Court.

(4) A liquidator whose duty it is to pay into court money representing unclaimed or undistributed assets of the company shall apply in such manner as the chief clerk shall direct to the chief clerk for a paying-in order, which paying-in order shall be an authority to the bank to receive the payment.

(5) In a voluntary winding-up or a winding-up under the supervision of the Court money invested or deposited at interest by a liquidator shall be deemed to be money under his control and when such money forms part of the minimum balance payable into Court pursuant to paragraph (2) of this rule, the liquidator shall realise the investment or withdraw the deposit, and shall pay if he proceeds into Court, provided that where the money is invested in Government securities, such securities may, with the permission of the chief clerk, be transferred to the control of the chief clerk instead of being forthwith realised and the proceeds thereof paid into Court. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the chief clerk may realise the securities wholly or in part and pay the proceeds of realisation into Court and deal with the same in the same way as other monies paid into the said account may be dealt with.

174 Liquidator to furnish information to chief clerk

In a voluntary winding-up or a winding-up under the supervision of the Court every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the chief clerk particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company and such other particulars as the chief clerk may require for the purpose of ascertaining or getting in any money payable into Court. The chief clerk may require such particulars to be verified by affidavit. [Form 97]

175 Chief clerk may call for verified accounts

(1) In a voluntary winding-up or a winding-up under the supervision of the Court, the chief clerk may at any time order any such person to submit to him an account verified by affidavit of the sums received and paid by him as liquidator of the company and may direct and enforce an audit of the account. [Forms 92-96]

(2) For the purposes of section 268 of the Act, and the rules, the Court has and may exercise all the powers conferred by the Bankruptcy Acts with respect to the discovery and realisation of the property of a debtor, and the provisions of those Acts with respect thereto shall, with any necessary modification, apply to proceedings under section 268 of the Act.

176 Application to the Court for enforcing an account, and getting in money

An application by the chief clerk for the purpose of ascertaining and getting in money payable into Court, pursuant to section 268 of the Act, shall be made by motion, and where the winding-up is by or under the supervision of the Court, shall be made to and dealt with by the judge.

177 Application for payment out by person entitled

An application by a person claiming to be entitled to any money paid into Court in pursuance of section 268 of the Act shall be made in such form and manner as the chief clerk may from time to time direct, and shall, unless the chief clerk otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled and such further evidence as the chief clerk may direct.

178 Application by liquidator for payment out

A liquidator who requires to make payments out of money paid into Court in pursuance of section 268 of the Act, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the chief clerk may direct, and the chief clerk may thereupon either make an order for payment to the liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the liquidator for transmission to the persons to whom the payments are to be made.

Release of Liquidator in a Winding-up by the Court.

179 Proceedings for release of liquidator

(1) A liquidator in a winding-up by the Court, before making application to the Court for his release, shall give notice of his intention so to do, to all the creditors who have proved their debts, and to all the contributories, and shall send with the notice a summary of all receipts and payments in the winding-up. [Forms 98-100]

(2) When the Court has granted to a liquidator his release a notice of the order granting the release shall be published in the London Gazette. The liquidator shall provide the requisite stamp fee for the Gazette, which he may charge against the company's assets. [Form 103(8)]

180 Disposal of books and papers

(1) The Court may order that the books and papers of a books and company which has been wound-up shall not be destroyed for such period (not exceeding five years from the dissolution of the company) as the Court thinks proper.

(2) Any creditor or contributory may make representations to the Court with regard to the destruction of such books and papers.

(3) The Court may by a further order vary or rescind any order made by it under this rule.

(4) A resolution for the destruction of the books and papers of such a company within the said period of five years or any shorter period fixed by an order of the Court in force at the date of such resolution shall not take effect until the expiration of such period of five years or of such shorter period unless the Court shall otherwise direct

Official Receiver

181 Personal performance of duties

The Court may, by general or special directions, determine what acts or duties of the Official Receiver in relation to the winding-up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ or under his official control.

182 Assistant official receivers

An assistant official receiver shall be an officer of the Court as fully as the official receiver to whom he is assistant, and subject to the directions of the Court he may represent the official receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant official receiver, and he may be removed in the same manner as is provided in the case of an official receiver.

183 Powers of clerks in certain cases to act for official receiver

In the absence of the official receiver any clerk of the official receiver duly authorised by him in writing may, by leave of the Court, act on behalf of the official receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

184 Duties where no assets

Where a company against which a winding-up order has been made has no available assets, the official receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Court.

185 Accounting by official receiver

(1) Where a liquidator is appointed by the Court in a winding-up by the Court, the official receiver shall account to the liquidator.

(2) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the chief clerk, who shall take such action (if any) thereon as he may deem expedient.

(3) The provisions of these rules as to liquidators and their accounts shall not apply to the official receiver when he is liquidator, but he shall account in such manner as the Court may from time to time direct.

186 Official receiver to act where no committee of inspection

Where there is no Committee of Inspection in a winding-up by the Court any functions of the Committee of Inspection which devolve on the chief clerk may, subject to the directions of the Court, be exercised by the official receiver.

187 Appeals from chief clerk and official receiver

An appeal in the High Court against a decision of the chief clerk, or an appeal to the Court from an act or decision of the official receiver acting otherwise than as liquidator of a company, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made.

188 Application under Act

(1) An application by the chief clerk to the Court to examine on oath the liquidator or any other person pursuant to section 189 of the Act, or to confer on the chief clerk or any person designated by the chief clerk for the purpose with respect to the company concerned, the powers of investigating the affairs of the company mentioned in subsection (3) of section 261 of the Act, shall be made ex parte, and shall be supported by a report to the Court filed at the Rolls Office, stating the circumstances in which the application is made.

(2) The report may be signed by the chief clerk and shall, for the purposes of such application, be prima facie evidence of the statements therein contained.

Books to be Kept and Returns made by Officers of Courts.

189 Books to be kept by officers of courts

In the High Court the chief clerk shall keep books according to the Forms 101 and 102 in the Appendix, and the particulars, given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

190 Filing memorandum of Gazette notices

(1) Whenever the London Gazette contains any advertisement relating to any winding-up proceedings the official receiver or liquidator, as the case may be, shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2) In the case of an advertisement in a local paper, the official receiver or liquidator, as the case may be, shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted shall be left with the official receiver or liquidator, as the case may be, by the person who inserts the advertisement.

(4) A memorandum under this rule shall be prima facie evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette or newspaper mentioned in it.

Arrests and Commitments.

191 To whom warrants may be addressed

A warrant of arrest or any other warrant issued under the provisions of the Act and rules may be addressed to such officer of the Court as the Court may in each case direct.

192 Prison to which person arrested on warrant is to be taken

Where the Court issues a warrant for the arrest of a person under any of the provisions of the Act or rules, the prison (to be named on the warrant of arrest) to which the person shall be committed shall, unless the Court shall otherwise order, be the prison used by the Court in cases or orders of commitment made in the exercise by the Court of its ordinary jurisdiction.

Miscellaneous Matters.

193 Court orders

The Court may, from time to time, issue general orders or regulations for the purpose of regulating any matters under the Act or the rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which purport to be issued under the authority of the Court.

194 Enlargement or abridgement of time

The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the rules or fixed by any order of the Court for doing any act or taking any proceeding

195 Formal defect not to invalidate proceedings

(1) No proceedings under the Act or the rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment or election of an official receiver, liquidator, or member of a Committee of Inspection shall vitiate any act done by him in good faith.

196 Application of existing procedure

In all proceedings in or before the Court, or any judge, registrar, or officer thereof, or over which the Court has jurisdiction under the Act and rules, where no other provision is made by the Act or rules, the practice, procedure and regulations shall, unless the Court otherwise in any special case directs, in the High Court be in accordance with the rules and practice of the High Court.

197 Annulment

The Companies (Winding-up) Rules, 1869, and all rules amending or supplementing the same and the forms thereby prescribed are hereby revoked and annulled, provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which these rules come into operation under any rule or order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the said rules and orders shall be revived by reason of the revocation and annulment hereby effected.

Given under my hand this 16th day of May, 1934.

MONTAGU BUTLER
Lieutenant-Governor

F. M. LAMOTHE
First Deemster and Clerk of the Rolls.

R. D. FARRANT
Second Deemster.

Tab 22

This is Exhibit "22" referred to in the Affidavit of Paul Robert
Appleton sworn August ..6....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

THE INTERNATIONAL INSOLVENCY REVIEW

EDITOR
DONALD S BERNSTEIN

LAW BUSINESS RESEARCH

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THE INTERNATIONAL INSOLVENCY REVIEW

Editor
DONALD S BERNSTEIN

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EDITOR'S PREFACE

The International Insolvency Review differs from the typical global review of insolvency law. It focuses on current economic conditions and case developments on the ground in key jurisdictions instead of merely on the basic principles of local insolvency law.

The number of commercial insolvencies commenced worldwide has steadily fallen from its peak in 2009 and, while the continued struggles of the eurozone have caused many companies to seek insolvency relief in the past 12 months, this downward trend in new failures has continued in most jurisdictions during the first half of 2013. The ebb of commercial insolvencies seems, however, to be a reflection of historically low prevailing interest rates and strong refinancing markets rather than the robustness of any economic recovery. There continues to be a global environment of sluggish growth, heightened regulation and steep unemployment, and the ability of companies to avoid insolvency may be nothing more than 'kicking the can down the road'. Illustrative of the fragility of the global recovery – what some are calling the 'new normal' – is the fact that the mere suggestion by the US Federal Reserve of a possible slowdown in its bond-buying programme could cause capital to rush out of emerging economies, leaving currency crises in its wake. The outlook is nothing if not uncertain.

This book is intended to serve as a practical guide for the insolvency practitioner, judge, student or scholar as he or she navigates the current international insolvency landscape. As the chapters of this book indicate, there are a wide variety of approaches to the fundamental problem of what to do with an insolvent business. The reader will notice local differences in the treatment of the matters that lie at the heart of any insolvency system, such as: Can an insolvent debtor reorganise or liquidate? Will the court appoint a trustee or administrator, or leave the debtor in possession? Which claims have priority? Do foreign creditors have the same procedural and substantive rights as local creditors? Will secured creditors be stayed from proceeding against the debtor or its property? What type of pre-failure transactions can be avoided?

When confronted with such an assortment of systems, one must ask whether the international markets are hindered by the myriad of substantive differences among the world's insolvency regimes. It must be the case that, because markets are global, a

single set of global rules for insolvency would obviously be the most efficient system. Yet, it is impractical to think that this universalist ideal can be achieved anytime soon: local commercial cultures, differences in due process expectations and practice, and local vested interests make it difficult to see how there could be global legal symmetry in the realm of insolvency, despite the globalisation of markets.

Modified universalism, which would allow the law of the centre of main interests to apply except where the local jurisdiction has a compelling interest in applying local law, seems to have won the hearts and minds of many scholars and legislatures as the next best option to pure universalism. Still, the contours of this approach – being etched daily in countries that have adopted legislation based on UNCITRAL's Model Law on Cross-Border Insolvency – are far from settled, and how they are defined is likely to differ from country to country. So, even if modified universalism eventually prevails, a clear understanding of other nations' insolvency law and practices will continue to be essential for the insolvency practitioner to be effective in a flattened, globalised world.

I would like to thank each of the contributors to this book for their incredible effort in making *The International Insolvency Review* a reality. As each of the authors knows, this book was a difficult undertaking because of the up-to-the-minute coverage of major developments we seek to provide. With the publication of this volume, we should take satisfaction in the fruits of our collective efforts, and wish each other happy reading as we better educate ourselves to continue our dialogue regarding how to improve the international insolvency system.

Donald S Bernstein

Davis Polk & Wardwell LLP

New York

October 2013

Chapter 16

ISLE OF MAN

Miles Benham and James Peterson¹

I INSOLVENCY LAW, POLICY AND PROCEDURE

i Statutory framework and substantive law

Insolvency law on the Isle of Man is governed primarily by the following legislation:

- a* the Fraudulent Assignments Act 1736;
- b* the Preferential Payments Act 1908;
- c* the Preferential Payments and Other Acts (Financial Adjustments) Act 1973;
- d* the Companies Act 1931–2004; and
- e* the Companies Act 2006.

The primary legislation governing insolvent companies can be found in Sections 155–276 of the Companies Act 1931. This is supported by the Companies (Winding-up) Rules 1934.

The regime in the Isle of Man, perhaps unsurprisingly due to its proximity, shares many similarities with the regime in England and Wales and, indeed, with many common law jurisdictions. This is due in part to the fact that the Isle of Man Companies Act 1931 was based on the English Companies Act 1929. Nevertheless, there are certain idiosyncrasies and features unique to Isle of Man insolvency law and procedure that have developed over time.

The Fraudulent Assignments Act 1736 states that ‘... all fraudulent Assignments of Transfers of the Debtor’s Goods or Effects shall be void and of no Effect against his just Creditors, any Custome or Practice to the contrary notwithstanding’.

A transaction will be void under the 1736 Act if, and only if, it is entered into dishonestly (i.e., if the debtor enters into the transaction with the intention to defraud

¹ Miles Benham is a director and James Peterson is an associate at MannBenham Advocates Limited.

his or her creditors). The 1736 Act applies to present and ascertained future debts at the time of the transaction in question. It does not, however, apply to claims filed after the transaction.² Further, assignment or transfer of debtors' goods is only void against existing creditors; it is not illegal to protect property against future creditors. Accordingly, one may enter transactions with a view to and for the purpose of protecting property against potential future creditors that do not presently exist.³

ii Policy

In *Donnell v. Siboney*,⁴ Deemster Doyle, then Second Deemster of the Isle of Man, stated that:

To present a petition to wind up a company is a very serious step to take. It can result in the death of the company.

To present a petition to wind up a company is therefore considered to be a serious step and not to be done lightly. It might be argued therefore that there is some reluctance for the Isle of Man courts to wind up a company; however, the fact that presentation of a winding-up petition is considered a last resort will not generally prevent the court from winding up a company where there are good grounds for doing so and the debt is not in dispute.

*Lehman Brothers Inc v. Navigator Gas Management Limited*⁵ states that:

It is well settled law that if a creditor with standing makes application to have a company wound-up, and if the court is satisfied that such company is unable to pay its debts, a winding-up order will follow unless there is some special reason to the contrary. Further, in such circumstances and being so satisfied, the court would assume that a winding-up order should be made. The burden rests with any objector to show special reasons why such an order should not be made.

It follows that if a company is considered to be unable to pay its debts the Isle of Man courts will not hesitate to wind it up unless that company or other objectors can show special reasons not to, and the burden is on them to do so.

The practicality is that if a winding-up petition is presented and a company is deemed unable to pay its debts the chances of its survival are minimal. There are certain mechanisms that allow schemes of arrangement or receivership but if a company is in financial difficulty and finds itself unable to pay its debts as they fall due, and a creditor in receipt of an undisputed debt wishes to wind up the company, there is a very good chance that the creditor will succeed.

2 *In Re Heginbotham* 1999-01 MLR 53.

3 *Jefferies v. Henderson Walker* 1522-1920 MLR 296. The case itself relates to an individual who was adjudged bankrupt but the principle is equally applicable to companies.

4 10 December 2008, Chancery Division.

5 31 May 2005, Chancery Division.

iii Insolvency procedures

There are a variety of options open in respect of an insolvent company on the Isle of Man:

- a* it can be wound up either voluntarily by its creditors⁶ or by the court⁷ or subject to the supervision of the court;⁸
- b* it can appoint a receiver by way of application to the court⁹ or a charge holder can appoint a receiver in accordance with the terms of the security document; and
- c* a liquidator may make an application to the court to sanction a compromise or a scheme of arrangement.¹⁰

Winding-up proceedings by the court are discussed in Section I.iv, *infra*.

There is no provision for the appointment of an administrator in the Isle of Man, nor is there a position of administrative receiver under Isle of Man law. However, foreign administrators are recognised and are likely to be assisted by the Isle of Man courts if such request is made.

The Manx legal position on the appointment of receivers is by and large the same as the pre-1986 position in England and Wales. There is no requirement that a receiver should have any qualification as long as he or she has reached full age, although practically it would be difficult to envisage a situation where a receiver would not be an experienced or appropriately qualified insolvency practitioner.

Unless the power to appoint a receiver has been granted by way of debenture or other appropriate agreement, it will be necessary to apply to the court in order for a receiver to be appointed. The court's jurisdiction to appoint a receiver in the Isle of Man follows the common law position and will only be exercised in order to aid some legal or equitable right.¹¹ The appointment must of course be of some advantage to the applicant and the property in question must have some value.

Appointment of a receiver by debenture or under a charge will be in accordance with the terms of the security document. Subject to any terms to the contract, the appointor may remove or replace the receiver at any point he or she chooses.

The jurisdiction of the Manx court to affect schemes of arrangement has been described as being 'extremely wide'.¹² A liquidator has power¹³ to apply to the court for the summoning of a meeting of the creditors and contributories for a vote to be held

6 Section 214 of the Companies Act 1931.

7 Ibid, Section 162.

8 Ibid, Section 243.

9 Section 42 of the High Court Act 1991.

10 Sections 152 and 184(1)(e) of the Companies Act 1931.

11 See *Siskina v. Distos Compania* [1979] AC 210. For the case law on the persuasive nature of certain English or other foreign judgments in the Isle of Man, see *Frankland v. R* (PC) 1987-89 MLR 65.

12 Per Lord Hoffmann in *Cambridge Gas Transport Corporation v. Official Committee of Unsecured Creditors (of Navigator Holdings PLC and others)* [2006] UKPC 26.

13 Sections 152 and 184(1)(e) of the Companies Act 1931.

upon the scheme. If three-quarters in value of the creditors or members present and voting agree to the scheme of arrangement or compromise then, if this is sanctioned by the court, it is binding on the creditors, members and the liquidator.

The Manx courts have a history of proactively assisting overseas courts in respect of insolvency matters. The First Deemster (High Court judge) recently stated¹⁴ in a case involving US Chapter 11 proceedings of an Isle of Man company that '[t]he substantive insolvency proceedings should be confined to one jurisdiction with other courts worldwide, where necessary, acting in an ancillary capacity and recognising and assisting the jurisdiction of the primary court...' In this case the Manx court was content for the US court to be the primary court.

The Island's court system is modern and efficient and ancillary insolvency proceedings can be dealt with in a timely manner.

iv Starting proceedings

The language of the Companies Act 1931 is that insolvency proceedings before the court are commenced in the Isle of Man by way of a winding-up petition.¹⁵ The following parties may commence an application to wind up an Isle of Man company:¹⁶

- a* the company;
- b* the Isle of Man Treasury (in respect of public companies in limited circumstances);
- c* any creditor or creditors (including contingent or prospective creditors);
- d* any contributory or contributories; and
- e* 10 or more policyholders in the case of an insurance company.

An application to wind up an Isle of Man company may be made by any or all of the above listed parties either together or separately.

Notwithstanding the foregoing, there are further limitations on when a contributory or a contingent or prospective creditor may bring a winding-up petition. In respect of contributories they are only entitled to present a winding-up petition if their shares were allotted at least six months before the commencement of the winding-up petition (or they have devolved to the contributory through the death of the original holder).¹⁷ Contributories may present a petition if the members of the company have been reduced below two.

14 Deemster Doyle in *Interdevelco Limited v. Waste2energy Group Holdings plc*; see in Section III. iv, *infra*.

15 The new court rules brought in by the Isle of Man Courts of Justice in 2009 now refer to 'claims' rather than 'petitions', so – more accurately – a winding-up petition should now be a winding-up claim, but for ease of reference and consistency this chapter will make reference to winding-up petitions.

16 Section 164(1) of the Companies Act 1931.

17 Ibid at Section 164(1)(a)(i) and (ii).

Before an application for winding up by prospective or contingent creditors can be heard by the court they must establish a *prima facie* case for winding up and provide security for costs.¹⁸

In addition to the above, the Financial Supervision Commission may present a winding-up petition where it is expedient in the public interest that the company is wound up.¹⁹

The Isle of Man courts have discretion on hearing a winding-up petition to make such orders that it sees fit and may dismiss, adjourn, make any interim order or any other order that it deems appropriate in the circumstances.²⁰ The only limitation on the court's discretion is that it may not refuse to make a winding-up order on the ground that the only assets of the company have been mortgaged to or beyond their value or that the company has no assets. Indeed, those will ordinarily be reasons to wind up a company.

Once a winding up petition has been presented the company or any creditor or contributory may apply for a stay of the winding up proceedings²¹ or oppose the winding up proceedings.²²

v Control of insolvency proceedings

Once the court has appointed a liquidator it is, for all intents and purposes, the liquidator that controls the insolvency proceedings subject to his compliance with statute and the Companies (Winding up Rules) 1934. The court is required to 'take cognizance'²³ of the liquidator's conduct, and must enquire into any failings by the liquidator and take such action as it may think expedient. The court has power to require a liquidator to attend before it and be examined on oath in respect of the winding up.

The directors of the company must provide the liquidator with a statement of the company's affairs within 14 days of the winding-up order or the appointment of a provisional liquidator. As soon as is practicable after receipt of the statement of affairs, the liquidator must submit a preliminary report to the court giving, *inter alia*, the reasons for the failure of the company and whether, in his or her opinion, further enquiry is desirable into the promotion, formation or failure of the company or the conduct of its business.

vi Special regimes

There are no special insolvency rules.

18 Ibid at Section 164(1)(c).

19 See Section III.iii, *infra*.

20 Ibid at Section 165(1).

21 Section 166 of the Companies Act 1931.

22 Petition of Colombo Investments & Others, 21 June 2005, Staff of Government (Appeal court).

23 Section 189 of the Companies Act 1931.

vii Cross-border issues

Due to its size, location and its role as an international business centre most Isle of Man company liquidations involve cross-border issues.

The approach of the Manx court has been to provide assistance to foreign courts. The Manx court has been prepared to extend the scope of Manx common law to assist overseas liquidators when there was no statutory power to provide such assistance.²⁴

The principle of (modified) universalism is a principle recognised by Manx common law and provides that personal and corporate insolvency should be unitary and universal²⁵ a principle that was applied by the Privy Council in the case of *Cambridge Gas*.²⁶

As the island's insolvency case law develops there is a clear trend towards assisting overseas courts and claimants rather than putting hurdles in their way. The Manx court of appeal, known as the Staff of Government Division, in the case of *Obertor v. Gaetano*,²⁷ interpreted the Judgments (Reciprocal Enforcement)(Isle of Man) Act 1968 (the 1968 Act) in a purposeful way so as to not require an English judgment creditor to have to register that judgment under the 1968 Act before being able to serve a statutory demand on the judgment.

In *Interdevelco v. Waste2energy Group*²⁸ the Manx court took matters one stage further and refused the application of a creditor to wind up an Isle of Man company as the company was already in Chapter 11 proceedings before the United States Bankruptcy Court for the District of Delaware. The court stated that the fact that the company was incorporated in the Isle of Man was not a sufficient ground and held that there was no need for 'additional substantive winding-up proceedings to take place in the Isle of Man'.

II INSOLVENCY METRICS

As Isle of Man companies are predominantly used for international trade or asset holding, it is the state of the global economy rather than the local economy that determines the number of insolvencies. Despite the Isle of Man avoiding entering into recession, there were a number of high-profile insolvencies involving the companies in the banking and property sector. While there are no publicly available statistics, the number of insolvencies in the public domain do not appear to be grossly excessive for what has been a deep global recession.

24 *In re Impex Services Worldwide Ltd* 2003-05 MLR 115.

25 *Interdevelco Limited v. Waste2energy Group Holdings plc*; see Section III.iv, *infra*.

26 *Cambridge Gas Transport Corporation v. Official Committee of Unsecured Creditors (of Navigator Holdings PLC and others)* [2006] UKPC 26.

27 *Obertor Limited v. Gaetano Limited*; see Section III.ii, *infra*.

28 See footnote 24.

III PLENARY AND ANCILLARY INSOLVENCY PROCEEDINGS

i Kaupthing Singer & Friedlander (Isle of Man) Limited²⁹

This case concerned the winding up of a bank known as Kaupthing Singer & Friedlander (Isle of Man) Limited (the Bank) and the application of the rules of statutory set-off in respect of a deposit held with the bank by the supermodel Elle Macpherson.

The rules of statutory set-off are to be found at Section 22 of the Bankruptcy Code 1892, as applied to company windings up by Section 248 of the Companies Act 1931; Section 22 is in substantially the same form as its equivalent United Kingdom predecessor and successor provisions.

The relevant parts of Section 22 provide that:

Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom an order of adjudication shall be made under this Act, and any other person proving or claiming to prove a debt under such order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

At the date of the winding up of the Bank Miss Macpherson had deposits of US\$4,075,327.86, then equivalent to £2,541,680.09, at the Bank, and Light House Living Limited (LHL) owed the Bank £7,801,727.19 in respect of a mortgage loan that had been used for the purchase of a London property and refinancing of a New York apartment.

LHL was a newly formed Isle of Man company that was beneficially owned by Miss Macpherson. LHL acted as the borrower and purchased the London property in its name but by way of an agreement held it as nominee for Miss Macpherson.

Miss Macpherson and LHL contended that Section 22 applied to their dealings with the Bank and that the sum due to Miss Macpherson from the Bank in respect of the deposits of £2,541,680.09 was automatically set off against the sum due from LHL to the Bank in respect of the mortgage loan of £7,801,727.19 so that only the net balance of £5,289,125.52 was due from LHL to the Bank. The liquidator disagreed with this contention and sought a declaration that Miss Macpherson's deposits with the Bank had not been set off against LHL's debt to the Bank.

As Section 22 is mandatory, automatic and self-executing on the making of a winding-up order, it was the task of the court to decide whether Section 22 had operated so as to set off the Bank's liability to Miss Macpherson against the liability of LHL to repay the loans.

²⁹ *Michael Simpson and Peter Norman Spratt as Joint Liquidators and Deemed Official Receivers of Kaupthing Singer & Friedlander (Isle of Man) Limited (In Liquidation) and Kaupthing Singer & Friedlander (Isle of Man) Limited (In Liquidation) v. Light House Living Limited and Elle Macpherson*, judgment of the Staff of Government (Appeal Court) dated 31 October 2011.

The lower court found in favour of Miss Macpherson and concluded that she was under a 'beneficial liability' to the Bank in respect of the loan taken out by LHL and that the 'beneficial liability' was a debt due from Miss Macpherson to the Bank for the purposes of Section 22. The court held that Section 22 operated by setting off the deposits held in Miss Macpherson's name against the 'beneficial liability' owed by Miss Macpherson to the Bank.

This finding was derived from the judges reasoning that the proceeds of the loans, the London property and the proceeds of sale of the London property, were all held by LHL on trust for Miss Macpherson and that the parties envisaged that repayment of the loans would be made from that property or proceeds of sale. As a result LHL's liability was merely a 'legal' liability to repay the Bank on Miss Macpherson's behalf and Miss Macpherson was under a 'beneficial liability' to the Bank.

The court of appeal rejected the finding that Miss Macpherson was under a 'beneficial liability' to the Bank and determined that she had no immediate personal liability to the Bank.

The Appeal court held that Section 22 only operates 'where on the making of a winding up order a sum is due from the insolvent to a person, and a sum is due from that same person to the insolvent', and that the judge 'was required to look at the debts which were the outcome of the transactions between the parties, and then to decide whether they were mutual debts within the meaning of section 22'.

ii Obertor Limited v. Gaetano Limited Staff of Government³⁰

Gaetano Limited applied for a winding-up order against Obertor Limited. The grounds for the winding up order were that Obertor was unable to pay its debts. Obertor had been served with a statutory demand for the payment of €3.95 million plus £50,000 on account of costs and VAT pursuant to an order of the Chancery Division of the English High Court (the English judgment). The English judgment had not been registered under the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 (the 1968 Act).

The 1968 Act provides a system whereby certain judgments including judgments of the High Court of England and Wales can be enforced in the Isle of Man by way of registration under the Act. Once the foreign judgment is registered under the 1968 Act it may be enforced in the same way as if the judgment had been a judgment originally given in the High Court of the Isle of Man and entered on the date of registration.

Section 6 of the 1968 Act provides as follows:

No proceedings for the recovery of a sum payable under a judgment to which this part of the Act applies, other than proceedings by way of registration of the judgment shall be entertained by any court in the Isle of Man.

The issue before the Court of Appeal was whether Section 6 of the 1968 Act prevented the continuation of winding-up proceedings based on a statutory demand served pursuant

³⁰ *Obertor Limited v. Gaetano Limited*, Staff of Government (Appeal Court), dated 25 November 2010.

to Section 163 of the Companies Act 1931 (the 1931 Act) and which in turn relies upon an unregistered English judgment.

The court took a purposive approach to the interpretation of Section 6 and determined that ‘the purpose of section 6 of the 1968 Act was not to prevent creditors relying on unregistered English judgments in their statutory demands under the 1931 Act. The purpose of section 6 of the 1968 Act was simply to prevent relevant foreign judgments being enforced by a fresh action on the judgment rather than proceeding by way of the simple and speedy registration process provided under the 1968 Act’.

To allow the winding-up proceedings to continue based on the unregistered English judgment would not prevent Obertor from arguing in the winding-up proceedings that the English judgment was obtained by fraud or that to have regard to it would be contrary to public policy. It was confirmed that if Obertor genuinely disputed the debt it could raise the issue in the winding-up proceedings.

iii **Louis Group**³¹

This case involved the winding up in the public interest of a number of companies within the Louis Group and is of interest as it sets out the Isle of Man law and the procedure to be followed on winding up in the public interest.

The Isle of Man Financial Supervision Commission (the Commission) in March 2012 had applied for and obtained an order for the appointment of inspectors to investigate and report on the affairs of the fund and report on six sums or groups of funds totalling about £5 million.

In October 2012 the Commission presented winding-up claims against the six defendant companies and also applied, without notice, for the appointment of provisional liquidators of Structured Capital, LG SP and LG Europe and orders were made appointing the inspectors as provisional liquidators of those companies. The winding-up hearing took place in January 2013.

Under Section 164(1)(d) of the Companies Act 1931, if it appears to the Commission that it is expedient in the public interest that a company should be wound up by the court it may present a claim for it to be ‘so wound up if the court thinks it proper for it to be so wound up’.

The court confirmed that the first stage is for the Commission to form a view that it is expedient in the public interest that a company should be wound up and that this was a prerequisite to the presentation of the winding-up claim.

At the hearing of the claim the court’s task is to carry out the balancing exercise of the reasons for and against winding up the company, having regard to all the circumstances as disclosed by the evidence before the court. The court has to weigh the factors that point to the conclusion that it would be proper to wind up the company against those that point to the opposite conclusion. The court should have regard to all of

31 *Financial Supervision Commission v. Louis Group Structured Capital Limited (Structured Capital) and LG SP Investments Ltd (LG SP) and Louis Group International (Europe) Limited and Louis Group SLN Limited (LG SLN) and Louis Group Structured Fund plc (the Fund) and Louis Group (IOM) Limited (LG IOM) and others*, judgment 1 February 2013.

the circumstances of the case including the interests of all parties, members and creditors of the company, as well as the interests of the public.

The court must identify for itself the aspects of the public interest that would be promoted by making a winding-up order in any particular case.

In this case, the court set out the following as grounds for winding up in the public interest:

- a* a need to investigate the company;
- b* in a case involving fraud or its proceeds, the only way of establishing if the company has been used in such a way is by winding it up (*Law Investments Limited* 2005-06 MLR 73);
- c* the existence of a risk to legitimate third-party creditors;
- d* lack of confidence in the conduct and management of the company's affairs;
- e* the need to stop the activities of companies that fall below generally accepted minimum standards of commercial behaviour;
- f* the lack of adequate record keeping and failure to keep proper books of account; and
- g* matters of grave concern require further investigation by independent liquidators.

It was confirmed by the court that the basis for the exercise of the court's jurisdiction in such a claim is whether winding up is proper in the public interest, and insolvency or failure of substratum alone are unlikely to suffice.

iv **Interdevelco Limited v. Waste2Energy Group Holdings plc**³²

This was an application by Interdevelco Limited for the winding up of Waste2energy Group Holdings PLC (W2E) an Isle of Man company.

W2E was within a corporate group with considerable connections with and activity in the United States. W2E and other companies within the group were subject to the jurisdiction of the US Bankruptcy Court and in Chapter 11 insolvency proceedings with an American trustee appointed to administer them.

The winding-up claim was opposed by W2E and W2E sought a declaration that the Isle of Man court should not exercise its jurisdiction. The court granted the application and declared that it should not exercise its jurisdiction to try the winding-up claim and set aside the claim form.

His Honour Deemster Doyle stated that:

[...] the principle of universalism in Manx law provides that personal and corporate insolvency should be unitary and universal. There should be a unitary insolvency proceeding in the appropriate lead jurisdiction which receives worldwide recognition and applies universally to all of the insolvent's assets. The assets of the insolvent entity should be distributed to creditors under a single universally applicable system of distribution. In simple terms, forum non conveniens in Manx law provides that legal proceedings should be conducted in the most convenient or natural forum i.e. that with which the proceedings have the most real and substantial connection.

³² Judgment 10 October 2012.

An unnecessary duplication of substantive insolvency proceedings in more than one jurisdiction is undesirable. It inevitably involves further delay, expense and inconvenience. The substantive insolvency proceedings should be confined to one jurisdiction with other courts worldwide, where necessary, acting in an ancillary capacity and recognising and assisting the jurisdiction of the primary court in an orderly progression and conclusion of the substantive insolvency proceedings [paragraphs 1 and 2].

[...]

There should in the circumstances of this case be one unitary and universal insolvency based in the US, the jurisdiction with which the group of companies including the Defendant have close connections or to put it in other words 'the centre of their main interests' or their 'nerve centre'. The Defendant and the other companies do not have any real substantive connection with the Isle of Man. They are simply incorporated here. That simple formal fact should not prevent the well advanced insolvency proceedings in the US from proceeding to their conclusion without additional substantive insolvency proceedings being commenced in the Isle of Man. There is nothing in Manx law or Manx public policy that requires this court to disregard the proceedings before the US Bankruptcy Court. This court should not seek to unravel or duplicate all the good work done by the US Bankruptcy Court. Substantial justice is not best served by starting fresh substantive insolvency proceedings in the Isle of Man. Substantial justice is best served by permitting the proceedings before the US Bankruptcy Court, involving companies and creditors with substantial connections with the US, to progress to their conclusion [paragraph 101].

v **Cambridge Gas Transportation Corporation v. Unsecured Creditors of Navigator Holdings plc³³ and Rubin and another v. Eurofinance SA and others³⁴**

It is necessary to briefly consider the potential impact, from an Isle of Man perspective, of the Supreme Court decision of *Rubin* upon the Privy Council case of *Cambridge Gas*.

In Cambridge Gas investors in a shipping business borrowed US\$300 million on the New York Bond market and purchased five gas transport vessels. The venture failed and ended with Chapter 11 proceedings in the US Bankruptcy Court in New York. Cambridge Gas, a Cayman company, directly or indirectly owned around 70 per cent of the shares of Navigator Holdings plc, an Isle of Man company. Navigator owned all the shares of an Isle of Man company, which, in turn, owned companies that each owned one ship. The US court approved a plan to vest the shares of Navigator in its creditors. The committee of creditors petitioned the Manx court for an order vesting the shares in their representatives. Cambridge Gas argued that the US court had lacked jurisdiction as its order in respect of the Isle of Man shares was an order *in rem* and not within the jurisdiction of the US courts, or alternatively, if it was an order *in personam* against Cambridge Gas, then as the company had not submitted to the jurisdiction of the US court the Manx court had no jurisdiction to recognise the US order.

33 *Cambridge Gas Transportation Corporation v. Official Committee of Unsecured Creditors of Navigator Holdings PLC and others* [2006] UKPC 26.

34 *Rubin and another v. Eurofinance SA and others* [2012] UKSC 46.

The question for the Privy Council on appeal from the Isle of Man was whether an order of the New York court was entitled to implementation in the Isle of Man.

The Privy Council held that the plan could be carried into effect in the Isle of Man based on the following reasoning:

- a* Insolvency proceedings do not fall into the category of a judgment *in personam* or *in rem* as they are judicial determinations of the existence of rights whereas insolvency proceedings are collective proceedings to enforce rights and not to establish them.
- b* The principle of universality underlies the common law principles of judicial assistance in international insolvency, and that principle was sufficient to give the Manx court jurisdiction to assist by 'doing whatever it could do in the case of a domestic insolvency'.³⁵
- c* The same result could have been achieved using a scheme of arrangement under Section 152 of the Companies Act 1931.
- d* It did not matter that the shares in Navigator belonged to Cambridge Gas and that company was not a party to the bankruptcy proceedings as shares were simply 'a bundle of rights against the company and the other shareholders' and the shareholders' rights can be extinguished by a scheme of arrangement under Section 152 of the Companies Act 1931.

The decision in *Rubin* raises doubt as to whether *Cambridge Gas* is still good law. The Supreme Court determined that the recognition and enforcement of foreign insolvency judgments is subject to the same common law rules that apply to the enforcement of any other foreign judgment. The court rejected the approach taken in *Cambridge Gas* that, in effect, enabled foreign judgments in insolvency proceedings to be enforced without applying normal common law restrictions.

The leading judgment in *Rubin* was given by Lord Collins who said *obiter* that *Cambridge Gas* was wrongly decided and that there was no basis for the recognition of the order of the US Bankruptcy Court in the Isle of Man as the shares in Navigator were situated in the Isle of Man and not subject to the *in rem* jurisdiction of the US Bankruptcy Court.

As it is the Judicial Committee of the Privy Council rather than the Supreme Court that is the Isle of Man's highest court, arguably *Cambridge Gas* remains good law in the Isle of Man. It will remain to be seen how the Isle of Man courts will deal with *Cambridge Gas* in the light of *Rubin*.

IV TRENDS

The island's company and insolvency legislation is in the process of being reviewed and updated with the aim of creating a more modern and efficient system. The proposed changes to the insolvency regime have not yet been made public.

35 Paragraph 44 of *Rubin*.

Appendix 1

ABOUT THE AUTHORS

MILES BENHAM

MannBenham Advocates Limited

Miles Benham is a director of MannBenham Advocates Limited. He was admitted to the Manx Bar in 1996 and is a commissioner for oaths and a notary public.

He heads up the practice's litigation department, which deals with commercial and trust litigation, general civil litigation, and insolvency-related work.

Mr Benham has considerable insolvency-related experience and provides advice to liquidators, creditors, investors and directors in respect of all aspects of insolvency-related work.

JAMES PETERSON

MannBenham Advocates Limited

James Peterson was admitted to the Manx Bar in 2011 and has a master of laws from the University of Durham. He is a litigator within MannBenham's litigation department and deals with all aspects of civil litigation.

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Tab 23

This is Exhibit "23" referred to in the Affidavit of Paul Robert
Appleton sworn August ..6....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

For court use only

Claim No.

Issue date

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN**CIVIL DIVISION****CHANCERY PROCEDURE**

SEAL

Nature of Proceedings: Proceedings under the Companies Act 1931 relating to Banners
Broker Investments Limited

Parties

Targus Investments Limited
303 Aarti Chambers
Victoria,
Mahe
Republic of Seychelles

Claimant(s)
(Full name(s) & address(es))

Banners Broker International Limited
Kissack Court
29 Parliament Street
Ramsey
Isle of Man
IM8 1AT

Defendant(s)
(Full name(s) & address(es))

Details of claim

(use numbered paragraphs)

See attached

If you need to continue on a separate sheet please use the prescribed form – 'HCC CONTINUATION SHEET'

Name and address (including postcode) of defendant on whom copy of the claim form is to be served

Banners Broker International Limited
Kissack Court
29 Parliament Street
Ramsey
Isle of Man
IM8 1AT

£

Court fee

£200.00

Coroner's fee

£12.50

Advocate's costs

£0.00

Total

£212.50

Statement of truth

[I believe ☐] [The Claimant believes ☒] that the facts stated in this claim form are true.

[I am duly authorised by the claimant to sign this statement]

Full name of [claimant ☐] ['s advocate ☒]*

*indicate as appropriate

Kathryn Louise Clough

Name of claimant's advocate's firm

Callin Wild LLC

Signed



[Claimant ☐] ['s advocate ☒] [Litigation friend ☐] indicate as appropriate

Date 10th January 2014

Claimant's or claimant's advocate's address in the Isle of Man (including

Telephone no.

01624 623195

postcode) to which documents or payments should be sent: Callin Wild LLC Bank Chambers 15 - 19 Athol Street Douglas Isle of Man IM1 1JB	Fax no. (if appropriate) 01624 676763
	E-mail (if appropriate) kclough@callinwild.com
	Reference (if any) O1139013/kc/tc

Details of Claim

1. The Claimant is a company incorporated in the Republic of the Seychelles and having its registered office situate at 303 Aarti Chambers, Victoria, Mahe, Republic of Seychelles.
2. The Defendant Banners Broker International Limited ("**BBIL**") is a company incorporated in the Isle of Man with company number 124375C. Until 16 January 2013 it had its registered office situate at Kissack Court, 29 Parliament Street, Ramsey, Isle of Man, IM8 1AT . Such address is an address of OCRA (Isle of Man) Limited ("**OCRA**") which is a licenced trust and corporate service provider on the Isle of Man. The services offered by OCRA include the provision of directors, company secretaries, registered office, nominee shareholders and general administration for clients incorporating companies in the Isle of Man. One such company administered by OCRA (until recently for the reasons set out below) was BBIL.

Background to BBIL

3. On 25 January 2010 OCRA incorporated an Isle of Man company for a prospective client. That client did not follow up on the enquiry and OCRA therefore retained the company as a shelf company. That company was incorporated with the name Bedford Limited and with company number 124375C. The directors were Richard Maurice Dixon ("**Mr Dixon**") and Colin Forster ("**Mr Forster**"), the secretary was Laxey Corporate Services Limited ("**LCSL**") and the shareholder was Targus Holdings Limited an in house company of OCRA used for the purpose of providing nominee shareholdings ("**Targus**"). Mr Forster subsequently resigned on 15 June 2011 when he left the employ of OCRA and Stephen Mark Eppleston ("**Mr Eppleston**") was appointed in his stead
4. In January 2012 OCRA was approached by a Canadian National with a view to him becoming a client. That individual was Christopher George Smith ("**Mr Smith**"). Mr Smith's last known address is 250 Jarvis Street, Apartment 503, Toronto, Ontario M5B 2L2.
5. In March 2012 OCRA entered into a contract with Mr Smith to provide corporate services. In particular, he required a company to be an online advertising platform selling advertising impressions through banner ads on websites and an advertising inventory to publishers. Mr Smith requested the company name of Banners Broker International Limited.

6. To facilitate this OCRA utilised the shelf company Bedford Limited. The name was changed to BBIL on 11 April 2012 and a structure was set up to give ultimate beneficial ownership to Mr Smith. The shareholding was transferred to Targus Investments Limited, an in house company of OCRA and a Deed of Trust were entered into from Targus to Monetize Group Incorporated ("MGI"). MGI was, when last evidenced in March 2012, a Belize company of which Mr Smith is the sole shareholder and director.
7. In May 2012 a bank account was opened in the name of BBIL with RBSI Isle of Man ("RBS"). Funds were first received into that account in late May.
8. OCRA continued to provide the Registered Office for BBIL until 16 January 2013. On that date OCRA filed a notice that BBIL no longer had authority to maintain its registered office at OCRA's premises.
9. OCRA also continued to provide directors and a company secretary for BBIL until late May 2013. The circumstances leading to their resignation and to the filing of the Notice regarding the Registered Office are set out below. The shares in BBIL remain with Targus.
10. In the circumstances from 21st May 2013 BBIL had no registered office, directors or company secretary.

Concerns regarding BBIL

11. The concerns of OCRA regarding BBIL arose initially in June 2012. At that time it was considered necessary to seek further due diligence from Mr Smith.
12. A detailed timeline of events relating to BBIL, the concerns of OCRA and details of the information requested from Mr Smith is attached as the Schedule hereto.
13. It was as a direct result of the failure of Mr Smith to provide information and instructions to OCRA that OCRA had no option but to resign the directors and secretary of BBIL and to give notice that BBIL had no authority to maintain its registered office at OCRA's premises. This situation arose as a result of OCRA carrying out standard due diligence enquiries and requesting information about BBIL. Those enquiries did not elicit information from Mr Smith. The contractual relationship with Mr Smith was thereby terminated.

14. At all material times OCRA had endeavoured to elicit information regarding the business of BBIL from Mr Smith and his Canadian Attorneys but such information has not been provided. Further, OCRA has endeavoured to allow Mr Smith a reasonable opportunity to move his business to an alternative Corporate Service Provider; however Mr Smith has not made any alternative arrangements.
15. Unfortunately, OCRA retains a connection with BBIL in that:-
 - (a) it holds approximately £6.6million of cash deposits which it holds on constructive trust for BBIL in separate designated OCRA / BBIL client accounts ("**the Cash Deposits**");
 - (b) Targus holds 100% of the issued share capital in BBIL on trust for MGI ("**the Shares**").

The Claims

16. As noted in the Schedule hereto, on 14 June 2013 OCRA received a Letter Before Action ("**the LBA**") from Advocates for Ian Driscoll ("**Mr Driscoll**"). Mr Driscoll alleged breaches of agreements purportedly entered into by him and BBIL such that he has allegedly suffered losses of in excess of \$3million.
17. In the absence of instruction or information from Mr Smith as a result of which BBIL by then had no directors, OCRA understands no reply was sent to the LBA.
18. Further, on 16 July 2013 OCRA received notification of further potential legal action against BBIL from a Matthew Painter purporting to be writing on behalf of a group commencing legal action against BBIL. No details were provided and no further communications have been received as at the date hereof.
19. On 24 July 2013 OCRA was made aware that proceedings had been issued by Mr Driscoll against BBIL. Mr Driscoll attempted to serve the proceedings at the offices of the advocates for OCRA; however the advocates correctly refused to accept service.
20. OCRA together with Mr Eppleston and Mr Dixon as former directors of BBIL and Targus have no knowledge of the matters referred to in the LBA. Further, they no longer have any contractual relationship with BBIL and Mr Smith and have received no information or instruction from Mr Smith. The questions they had asked of Mr Smith and his Canadian Attorneys remain

unanswered.

21. Subsequently Mr Smith has made two enquiries with OCRA as to his gaining access to the Cash Deposits. Firstly, Mr Smith requested access to the Cash Deposits by telephone call to Mr Craig Melvin on 8th July 2013. No information was provided to Mr Smith and Mr Smith did not provide any of the information that he had previously been asked for by OCRA.
22. Secondly, Mr Smith visited OCRA unannounced on 22nd August 2013. During that meeting he requested information about how he could access the Cash Deposits. OCRA understood from Mr Smith that he had approached other CSP's although no arrangements had been or have subsequently been made for BBIL to be transferred elsewhere.
23. Further, and of particular concern, OCRA is also now aware that Mr Smith has purported to appoint himself as director of BBIL without any authority from Targus.
24. On 1 November 2013 advocates for OCRA were served with a copy of certain documents which had been sent directly to Mr Smith. Such documents evidenced an (unsuccessful) attempt that Mr Driscoll had made to obtain an injunction in support of his proceedings and in particular they highlighted the purported appointment of Mr Smith as a director of BBIL. OCRA is aware that on 22 August 2013 a Form 9N was filed at the Isle of Man Companies Registry notifying that Mr Smith had been appointed director of BBIL. It is the position of OCRA and Targus that this appointment is not valid. It has been made without any knowledge or authority of Targus as the sole owner of the Shares and accordingly is invalid. Targus and OCRA remain concerned that Mr Smith is holding himself out as director of despite his improper appointment.
25. The papers served on OCRA also evidenced that this Honourable Court had granted an order for service of the proceedings out of the jurisdiction upon Mr Smith. OCRA does not know when such proceedings were served, nor whether they have been dealt with by Mr Smith. It is therefore of concern both to OCRA and to Targus that the proceedings commenced by Mr Driscoll are not being properly attended to and this may be prejudicial to the company and to its creditors.

Winding Up

26. In light of the foregoing Targus as the sole shareholder of BBIL wishes to place BBIL into

Liquidation. It is considered that this is the most appropriate way of ensuring that any claims and creditors are dealt with and the assets of BBIL which are currently in limbo are protected.

27. Accordingly on 23 December 2013 Targus passed a written resolution to apply to the Court for BBIL to be placed into Liquidation and for Miles Andrew Benham ("**Mr Benham**") and Timothy Allan Mann ("**Mr Mann**") to be appointed joint liquidators of BBIL.

Relief sought

28. In the circumstances, Targus now seeks an order appointing a liquidator to wind up BBIL. It appears to Targus that it is in the interests of the company, its shareholder and its creditors that BBIL should be wound up. Targus therefore seeks an order that BBIL be wound up and that Mr Benham and Mr Mann of MannBenham Advocates Limited, 49 Victoria Street, Douglas, Isle of Man (or such other persons as this Honourable Court thinks fit) be appointed Provisional Liquidators and deemed Official Receivers of BBIL and that Targus be paid its costs out of and incidental to the Claim from the assets of BBIL, as more particularly set out in the draft order attached to this Claim Form.
29. In addition, Targus also seeks the Court's approval for the remuneration of the Liquidator's pursuant to Section 181 (2) of the Companies Act 1931 and Rule 136 of the Companies (Winding Up) Rules 1924. More particularly Targus seeks the following Orders from this Honourable Court:
- (i) That the remuneration of Mr Benham and Mr Mann as Joint Provisional Liquidators and Deemed Official Receivers of BBIL be fixed by reference to the time properly spent by Mr Benham and Mr Mann and their staff (as appropriate at the rates set out in the Schedule attached to the draft Order together with all reasonable out of pocket expenses and proper disbursements and VAT at the applicable rate;
 - (ii) Mr Benham and Mr Mann shall file with the Court an application for approval of their future fee notes together with any supporting documents for such periods as they shall determine but not more than six months from the date hereof and not more than six monthly thereafter until the conclusion of the liquidation of BBIL or further order of this Court.

SCHEDULE

BANNERS BROKER INTERNATIONAL LIMITED TIMELINE FROM 25 TH JANUARY 2010	
25/01/10	<p>The Claimant ("OCRA") incorporated an Isle of Man 1931 company for a prospective client who subsequently did not follow up the enquiry. The company was left as OCRA stock /shelf. The company was at that time called Bedford Limited and had company number 124375C.</p> <p>The original directors (being staff of OCRA) were Richard Maurice Dixon ("Mr Dixon") and Colin Forster ("Mr Forster").</p> <p>The original shareholder was Targus Holdings Limited an in house company of OCRA used for nominee shareholding services.</p> <p>The Company Secretary was Laxey Corporate Secretaries Limited ("LCSL").</p>
	2011
15/06/11	<p>Mr Forster resigned as director (when he left the employ of OCRA). Stephen Mark Eppleston ("Mr Eppleston") a member of OCRA staff was appointed in his stead</p>
	2012
January	A Canadian gentleman, Christopher George Smith ("Mr Smith") approached OCRA with a view to becoming a client.
March	The business plan was for the company to be an online advertising platform selling advertising impressions through banner ads on website and an advertising inventory to publishers.

	OCRA engaged Mr Smith as a client. His date of birth is 28 th August 1970 and his last known address is 250 Jarvis Street, Apartment 503, Toronto, Ontario M5B 2L2.
	The name requested by Mr Smith for the company was Banners Broker International Limited ("BBIL").
	Shareholding was transferred from Targus Holdings Limited to another in house company of OCRA – Targus Investments Limited ("Targus"). Beneficial ownership of BBIL is held under a Deed of Trust from Targus Investments Limited to Monetize Group Incorporated ("MGI"). MGI is a Belize company which is not administered by OCRA).
	MGI has Incorporation Number 107,933 and it was incorporated on 26 th July 2011. The sole shareholder and director of MGI was evidenced at 23 rd March 2012 as Mr Smith and its registered office 35 New Road, Belize City, Belize. The company agent is Belize Offshore Formation Limited.
11/04/12	Bedford Limited changed its name to BBIL.
May	OCRA opened an account in the name of BBIL at RBSI Isle of Man ("RBSI") (GBP & USD) and funds began to arrive from the end of May, uninitiated by any contracts or agreements authorised by the directors of BBIL
29/05/12	USD491,375 was received from Banners Broker Ireland Limited with an address in Cork. Enquiries made by OCRA have not located any company by this name incorporated in Ireland. All subsequent funds have been from Allied Wallet Limited ("Allied Wallet") (an ewallet payment company which is incorporated in England with company number 05832811) most with a reference 'Banners Broker International' or similar and one quotes a reference 'Banners Broker Canada'.

June	OCRA received a contract dated 25 th May 2012 between Allied Wallet acting through its branch office in Los Angeles, and BBIL signed by Mr Smith purportedly as a 'principal' of BBIL. Mr Smith was advised that BBIL was an Isle of Man Company and that any agreements therefore needed to be executed by the directors.
	OCRA determined that further due diligence should be carried out. This was subsequently put into effect.
16/07/12	Letter sent by OCRA to Mr Smith to request information
06/08/12	OCRA requested very detailed information from Mr Smith in order to support activity, payments etc.
August	OCRA requested authorisation from Mr Smith to correspond with Aird & Berlis ("A & B") a Canadian Law firm based in Toronto who at that time were purportedly acting on behalf of Mr Smith. Some information was provided but this was limited and did not cover the detail that OCRA had requested.
06/08/12	On this date the balance on the US account with RBSI was USD6.8M. The majority of payments had been received from Allied Wallet.
04/09/12	OCRA advised Mr Smith that they must arrange for VAT registration and they therefore requested an updated business plan, planned activities, estimated turnover, breakdown of sales (UK, European and Non-European), estimated profits, details of subcontractors and any contracts.
16/10/12	OCRA chased Mr Smith for information relating to a payment request to A & B, a proposed sale of BBIL via a share purchase agreement between MGI and DYZ Media Inc (a BVI company), details of a bank account held with Choice Bank Limited as there was and is no record of the BBIL directors applying for such, details of a contract forwarded under the name

	of Banners Broker Canada, requested Allied Wallet statements for such and confirmation that OCRA may approach a tax advisor for a VAT opinion. In addition Mr Smith was informed that should such information not be provided within 28 days he must either transfer administration, or OCRA would disengage or dissolve the company.
22/10/12	OCRA chased A & B for information relating to the Allied Wallet Account, details of invoices and documentation relating to VAT registration, as per their letter of 16 th October 2012.
30/10/12	OCRA chased Mr Smith, copied to A & B for an update on when the missing company information would be received and he was reminded that the deadline for receipt was the 16 th November 2012.
31/10/12	OCRA wrote to Allied Wallet advising them that Mr Smith was not authorised to commit BBIL
14/11/12	OCRA further wrote to Mr Smith advising that they were not prepared to extend the deadline for receiving all requested information regarding company activities, source of funds, VAT registration, invoicing and ratification of agreements.
14/11/12	OCRA received an email from Mr Smith requesting another extension to the deadline for receiving information.
11/12/12	OCRA informed the relationship manager at RBSI (Jeremy Meggitt) to advise him (as they are required to do under their Eligible Introducer Agreement) that OCRA were not comfortable with the account and they were intending to disengage.
21/12/12	OCRA advised Mr Smith that they can no longer assist and process any administration on behalf of BBIL. They requested the details of the new CSP where BBIL was to be transferred and confirmed that they had disengaged.
	2013
04/01/13	OCRA received correspondence from Donald B Johnston of A & B advising that Mr Smith understood OCRA's decision to

	terminate the business relationship and that he was in the process of locating a new CSP.
09/01/13	OCRA advised Mr Smith that he had 14 days to provide new CSP details in order to transfer the administration of BBIL out from OCRA.
16/01/13	OCRA advised their relationship manager at RBSI formally via an email that OCRA wished to cease administering BBIL.
21/01/13	Form 335a (statement that a company does not have authority to maintain its registered office at the specified premises) filed with Companies Registry Isle of Man. This had not been done immediately that OCRA had disengaged as OCRA had endeavoured to allow Mr Smith time to find and instruct an alternative CSP.
February	RBSI advised OCRA they were not happy about maintaining an account with no valid mandate. OCRA confirmed that they were taking advice.
18/03/13	RBSI advised OCRA that they no longer wished to provide banking services to BBIL and they gave 60 days' notice of account closure.
	Stephen Porter, a Director of OCRA (Isle of Man) Limited entered into discussions with RBSI. As a result of such discussions a compromise was reached whereby the funds held in the name of BBIL with RBSI were transferred to a new OCRA client money account ref BBIL.
22/04/13	OCRA received notice from Old Court Chambers that they should note an interest in the matter of Burlingtons LLP/Dispute with Ian Driscoll ("Mr Driscoll").
15/05/13	OCRA arranged for the BBIL bank account to be closed with RBSI and a new OCRA/BBIL Client Account to be opened in

	order to transfer the BBIL funds to. The total sum transferred was \$6,652,132.54.
21/05/13	OCRA arranged for resignation of Directors and Company Secretary although they retained the nominee shareholding through Targus. The formal 9N giving notice of the resignations was filed with the companies registry on 31 st May 2013.
10/06/13	OCRA received an email from a Richard Mocatta (presumably a 'client' investor) advising that BBIL were still using the registered office address. He also requested information as to where the new registered office was.
14/06/13	OCRA received notice from Old Court Chambers advising that they would be acting on behalf of Ian Driscoll regarding an alleged breach of contract between Mr Driscoll and BBIL. Quantifiable loss at that date totalled \$3,030,106.10.
02/07/13	Mr Smith telephoned Andrew Cronin ("Mr Cronin") from OCRA (who had dealt with Mr Smith at the outset and had sent the requests for information letters). Mr Smith indicated that he wished to discuss the transfer out of the administration of BBIL. Mr Cronin advised he was on holiday at that time so could not assist him. Mr Smith advised he had approached other CSP (unnamed) who had refused to take over administration of BBIL.
03/07/13	OCRA received correspondence from a client of BBIL requesting the closure of their account. The mail returned and the client was advised that BBIL are no longer authorised to use the Registered Office address.
08/07/13	Mr Smith phoned Craig Melvin of OCRA ("Mr Melvin") to advise that he had been unsuccessful in finding a new CSP and he wanted to know what his options were. He indicated that he required access to funds urgently. Mr Melvin confirmed to Mr Smith that OCRA could not assist with any transfer of funds as the directors had resigned the result of which was that the mandates were void. Mr Smith was also informed that the funds were in a client account at RBSI as a holding measure.

16/07/13	OCRA received notification of further potential legal action against BBIL from a Matthew Painter purporting to be writing on behalf of a group commencing legal action against BBIL. No details were provided and no further communications have been received as at the date hereof.
17/07/13	Mr Smith enquired again about how he could access funds; OCRA again advised him that BBIL was unable to transfer any funds.
09/08/13	OCRA received an enquiry from Amber Business Limited, an Isle of Man corporate services provider, advising that Mr Smith had approached them to take over the administration of BBIL. No further progress has been made in this regard.
19/08/13	OCRA were advised by RBSI that a person named Mr Smith claiming to be the ultimate beneficial owner of BBIL had telephoned them stating that he was planning to visit the IOM and the bank to discuss the account
21/08/13	OCRA received a letter addressed to BBIL from a client of BBIL stating that they had been trying to close their account for five months, this letter was returned
22/08/13	Mr Smith attended at the offices of OCRA unannounced and enquired what he could do to access funds. He was informed that as OCRA had resigned their services they could not assist and Mr Smith should make enquiries with other CSP's to see if they could take over administration of BBIL.

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION
CHANCERY PROCEDURE**

IN THE MATTER of the Companies Act 1931

and

IN THE MATTER of **BANNERS BROKER INTERNATIONAL LIMITED**

and

IN THE MATTER of the Claim issued by Targus Investments Limited ("Targus") dated 10th January 2014 ("the Winding Up Claim")

At a Court held at Douglas on
the day of 2014

HIS HONOUR...

Upon hearing the Winding Up Claim this day in the presence of Counsel for Targus [and...] and having considered the Witness Statement of Stephen Porter dated 10th January 2014 and Upon consideration had thereof **IT IS ORDERED THAT:**

1. Banners Broker International Limited ("BBIL") be wound up pursuant to the provisions of Section 162(1) of the Companies Act 1931 ("the Act");
2. Miles Andrew Benham ("Mr Benham") and Timothy Allan Mann ("Mr Mann") both of MannBenham Advocates, 49 Victoria Street, Douglas, Isle of Man be and are hereby appointed Provisional Liquidators and Deemed Official Receivers of BBIL pursuant to Section 174 of the Act;
3. Mr Benham and Mr Mann as Provisional Liquidators and Deemed Official Receivers of BBIL shall have the following powers:
 - (a) To carry on the business of BBIL, in so far as may be necessary for the beneficial winding up thereof;
 - (b) To open, maintain and operate without the further consent of any other person, such bank accounts as is deemed necessary by Mr Benham and Mr Mann;

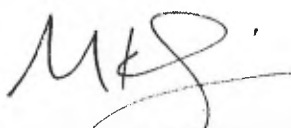
- (c) To appoint an advocate or such other law agent or legal advisor (whether in the Isle of Man or elsewhere) to assist in the performance of their duties;
 - (d) To pay any classes of creditors in full;
 - (e) To bring or defend any action or other legal proceedings in the name of and on behalf of BBIL;
 - (f) Such other powers as are provided pursuant to Section 184(2) of the Act.
4. Mr Benham and Mr Mann as Provisional Liquidators and Deemed Official Receivers of BBIL shall forthwith advertise notice of this order in two newspapers published and circulating in the Isle of Man and shall file a plain copy of this order with the Registrar of Companies in satisfaction of Section 170 of the Act;
5. Meetings of creditors under Section 179 of the Act shall be held within two months of the date of this order;
6. The remuneration of Mr Benham and Mr Mann as Joint Provisional Liquidators and Deemed Official Receivers of BBIL shall be fixed by reference to the time properly spent by Mr Benham and Mr Mann and their staff (as appropriate) at the rates set out in the Schedule hereto together with all reasonable out of pocket expenses and proper disbursements and VAT and the applicable rate;
7. The costs of Targus of and incidental to the Winding Up Claim shall be payable from the assets of BBIL as an expense of the Liquidation of BBIL.

SEAL OF THE HIGH COURT

NOTE – It will be the duty of such of the persons who are liable under section 175 of the Companies Act 1931 to make out or concur in making out the Defendant's statement affairs as the Liquidators and deemed Official Receivers may require, to attend on the Liquidators and deemed Official Receivers at such time and place as they may appoint, and to give them all information they may require.

Tab 24

This is Exhibit "24" referred to in the Affidavit of Paul Robert
Appleton sworn August⁶....., 2014



Notary ~~Public in England~~ and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

Made on behalf of

Initials and surname of witness

No. of statement of this witness
(if more than one)Identifying initials and number
of each exhibit (if any)

Date of statement

M.A. BENHAM

MAB 1

10.01.14.

Claim No.

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION

CHANCERY

PROCEDURE

Parties

TARGUS INVESTMENTS LIMITED

Claimant

BANNERS BROKER INTERNATIONAL LIMITED

Defendant

Full name of witness	MILES ANDREW BENHAM
Address ¹	49 VICTORIA STREET, DOUGLAS, ISLE OF MAN
Position held and name of firm or employer ²	DIRECTOR, MANNBENHAM ADVOCATES LIMITED
Occupation or description	ADVOCATE

¹ Place of residence or, if witness is making statement in a professional, business or other occupational capacity, work address

² Complete if witness is making statement in a professional, business or other occupational capacity

Please indicate with an 'X' here if witness is ☐ a party ☐ an employee of a party

Statement³

(use numbered paragraphs)

1. I am a practicing Isle of Man Advocate and one of the directors and shareholders of MannBenham Advocates Limited an incorporated legal practice. I was admitted to the Isle of Man Bar on 25th September 1996 and was licensed as a Notary Public on 2nd January 2002.
2. The other directors and shareholders of MannBenham Advocates Limited are Timothy Allan Mann and Caroline (Carly) Patricia Stratton.
3. I make this affidavit in respect of the application by Targus Investments Limited for the winding up of Banners Broker International Limited ("Banners Broker"). In so far as the content of this witness statement is within my personal knowledge it is true and in so far it is not within my personal knowledge it is true to the best of my knowledge information and belief.
4. I can confirm that I am agreeable to being appointed a liquidator of Banners Broker jointly with Advocate Timothy Allan Mann.
5. By way of background I was contacted by a Benjamin Lo of Berkeley Corporate Services Limited a licensed Belize corporate service provider and a Ted Nham who advised they were trying to find a corporate service provider for Banners Broker.
6. I was advised that OCRA had ceased to provide corporate services to Banners Broker and that it had no registered office.
7. I was advised that OCRA hold around US\$6 million on behalf of Banners Broker in an escrow bank account and that this is the main asset of the company.
8. I was advised that there is a claim against Banners Broker in the Isle of Man High Court which seeks over £2 million and that this is being defended by the company.
9. I was further advised that despite enquiries by Benjamin Lo, no Isle of Man corporate service provider would agree to provide administrative services to the company and that the company had ceased to operate.
10. A search of the companies registry reveals that Banner Brokers has only one director being a Christopher Smith who I understand is the beneficial owner.
11. While my practice was unable to assist with the provision of corporate administration services I explained to Mr Lo and Mr Nham that if the company could not find an administrator and had ceased to trade then the correct course of action may be for the shareholder of Banners Broker to seek that the company be formally wound up by the Isle of Man High Court.

³ The statement must comply with Schedule 8.1 to the Rules of the High Court 2009. Continue on a separate sheet or sheets if necessary (but each page must be numbered, and the last page must contain the above statement of truth and be signed by the witness).

12. I confirmed that Timothy Mann and myself would be prepared to act as independent court appointed liquidators if the company were to be wound up.
13. I advised that as independent court appointed liquidators our costs would be paid from the assets of the company subject to the approval of the Court and I explained that we would charge our time on a time spent basis at our normal commercial rates. I exhibit marked "**MAB 1**" a sheet that sets out our normal charge out rates and if appointed a liquidator I would seek that the court approves these rates.

Fitness to act as Liquidator

14. I have both the necessary knowledge and experience of the law, practice and procedure of winding up a company under Isle of Man law and I am aware of the duties of a liquidator.
15. I have since qualification as an advocate provided legal advice and assistance on matters of insolvency law to creditors, members and liquidators.
16. I have acted as the liquidators advocate on a number of quite complex liquidations from commencement to completion which have necessitated advice to the liquidator on the practice and procedure of the winding up of a company under the Isle of Man Companies Act 1931 and the Companies (Winding up) Rules 1934.
17. In representing creditors and contributories I have dealt with a variety of insolvency issues and advised on the practice and procedure of the liquidation process.
18. Prior to qualifying as an Isle of Man advocate I obtained a BA Honours degree in Accounting and Finance in 1990 and worked at a local leading firm of Chartered Accountants where amongst other things I assisted on a junior level with various winding up cases.
19. My discussions and enquiries lead me to believe that the liquidation of Banners Broker will require a significant amount of legal work and that the liquidation will have a heavy legal emphasis and I note that the company is already involved in litigation proceedings.
20. Clearly accounting services will be required in the liquidation. MannBenham employs the services of a full time Chartered Accountant, Hamish Hockings and if appointed liquidator I would propose to use the services of Mr Hockings to assist with accounting matters. If specialist services such as those of a forensic accountant are required then the liquidators would seek to engage a suitable firm to provide that service.

If you need to continue on a separate sheet please use prescribed form – 'HCC
CONTINUATION SHEET'

I believe that the facts stated in this witness statement are true.

Date	10.01.14	Signature	<i>Mike Barton</i>
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MannBenham Advocates Limited

Hourly Rates

Our charges will be calculated on an hourly rate basis in units of 6 minutes for the work carried out on the matter at the following rates.

<u>Name</u>	<u>Rate per hour</u>
Timothy Mann Director	£425
Miles Benham Director	£375
Carly Stratton Director	£275
Timothy Henwood	£250
Junior Advocate	£210
Solicitor	£250
Accountant	£250
Compliance Officer/ MLRO	£150
Trainee Advocate	£150
Paralegal/Administrator	£100
Secretarial time	£ 45

The above rates are exclusive of VAT and disbursements.

The above rates normally include secretarial time and secretarial time is only charged where as a matter of urgency secretaries have to work outside normal office hours or they have to undertake something unusual or extraordinary on your matter.

Tab 25

This is Exhibit "25" referred to in the Affidavit of Paul Robert
Appleton sworn August6....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

Made on behalf of

Initials and surname of witness

No. of statement of this witness
(if more than one)Identifying initials and number
of each exhibit (if any)

Date of statement

T.A. MANN

10.01.14.

Claim No.

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION

CHANCERY	PROCEDURE
Parties	
TARGUS INVESTMENTS LIMITED	Claimant
BANNERS BROKER INTERNATIONAL LIMITED	Defendant
Full name of witness	TIMOTHY ALLAN MANN
Address ¹	49 VICTORIA STREET, DOUGLAS, ISLE OF MAN
Position held and name of firm or employer ²	DIRECTOR, MANNBENHAM ADVOCATES LIMITED
Occupation or description	ADVOCATE

¹ Place of residence or, if witness is making statement in a professional, business or other occupational capacity, work address

² Complete if witness is making statement in a professional, business or other occupational capacity

Please indicate with an 'X' here if witness is ☐ a party ☐ an employee of a party

Statement³


(use numbered paragraphs)

1. I am a practicing Isle of Man Advocate and one of the directors and shareholders of MannBenham Advocates Limited an Incorporated legal practice. I was admitted to the Isle of Man Bar on 22nd September 1982 and was licensed as a Notary Public on 18th November 1985.
2. The other directors and shareholders of MannBenham Advocates Limited are Timothy Allan Mann and Caroline (Carly) Patricia Stratton.
3. I make this affidavit in respect of the application by Targus Investments Limited for the winding up of Banners Broker International Limited ("Banners Broker"). In so far as the content of this witness statement is within my personal knowledge it is true and in so far as it is not within my personal knowledge it is true to the best of my knowledge information and belief.
4. I can confirm that I am agreeable to being appointed a liquidator of Banners Broker jointly with Advocate Miles Andrew Benham.
5. I have read the witness statement of Miles Andrew Benham of today's date and agree with its contents.
6. Fitness to act as Liquidator
7. I have both the necessary knowledge and experience of the law, practice and procedure of winding up a company under Isle of Man law and I am aware of the duties of a liquidator.
8. I have since qualification as an advocate in 1982 provided legal advice and assistance on matters of insolvency law to creditors, members and liquidators.
9. I have over 30 years experience of practice in the Isle of Man much of it involving litigation and commercial matters and have over the years dealt with a wide variety of winding up matters.
10. From my discussions with Mr Benham I understand that the liquidation is likely to have a strong legal emphasis and that litigation is already ongoing.
11. Accounting matters would where appropriate be dealt with by our in-house Chartered Accountant and if any specialist services are felt necessary then they would be engaged by the liquidators.
12. I am comfortable that we have the necessary skills and experience to act as court appointed liquidators in this case.

³ The statement must comply with Schedule 8.1 to the Rules of the High Court 2009. Continue on a separate sheet or sheets if necessary (but each page must be numbered, and the last page must contain the above statement of truth and be signed by the witness).

If you need to continue on a separate sheet please use prescribed form – 'HCC
CONTINUATION SHEET'

I believe that the facts stated in this witness statement are true.

Date	10.01.14	Signature	
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**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1992, c. 27, s.2, AS AMENDED**

Court File No.

CV-14-10663-00CL

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR CAPACITY AS JOINT
LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED, UNDER PART XIII OF THE BANKRUPTCY
AND INSOLVENCY ACT (CROSS-BORDER INSOLVENCIES)**

	ONTARIO SUPERIOR COURT OF JUSTICE (Commercial List) Proceeding commenced at TORONTO
	APPLICATION RECORD (Application for Recognition of Foreign Main Proceeding) VOLUME 1 OF 2
	Cassels Brock & Blackwell LLP 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H 3C2 David S. Ward LSUC #: 33541W Tel: 416.869.5960 Fax: 416.640.3154 dward@casselsbrock.com Christopher Horkins LSUC #: 61880R Tel: 416.815.4351 Fax: 416.642.7129 chorkins@casselsbrock.com Lawyers for the Applicants