

**PRACTICE DIRECTION No. 2/2003****(GCR O.1, r.12)****REMUNERATION OF OFFICIAL LIQUIDATORS****1. Introduction**

- 1.1 The Court has responsibility under the Companies Law (2003 Revision) Section 107(2) for determining the remuneration of official liquidators.
- 1.2 The purpose of this practice direction is to set out the procedure by which the Court's responsibility will be discharged following the decision of the Court of Appeal published on 30<sup>th</sup> April, 2003.
- 1.3 This practice direction applies to all compulsory liquidations (including provisional orders) and all voluntary liquidations which are brought under the supervision of the Court, with effect from 1<sup>st</sup> January, 2004 (the "Commencement Date").
- 1.4 References to "Rules" shall mean the English Insolvency Rules 1986, subject to any necessary modification to the extent that such rules are inconsistent with the Companies Law (2003 Revision).

**2. Winding-up Orders**

- 2.1 Subject to paragraph 2.2, every winding up order and every order that a voluntary liquidation continue under the supervision of the Court shall contain a direction in the following terms:
  - (a) *The official liquidator(s) shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up; and*
  - (b) *The hourly rates and the amount of remuneration shall be determined in accordance with Rules 4.127 - 131.*
- 2.2 Nothing in this practice direction shall prevent the liquidation committee or the creditors from agreeing that the official liquidators' remuneration be fixed as a percentage of the value of the assets which are realised or distributed.

### **3. Establishment of Liquidation Committees**

3.1 With effect from the Commencement Date it will be the practice of the Court to require that liquidation committees should be established in every case unless:-

- (a) the number of creditors or shareholders, as the case may be, is so small that the functions normally performed by the committee can be performed conveniently by the whole body of creditors or shareholders; or
- (b) it is anticipated that the liquidation will be completed in less than six months.

3.2 Rules 4.151 to 4.171 shall apply subject to the following modifications:-

- (a) Rule 4.156 - "meetings" may take the form of telephonic conference calls;
- (b) Rule 4.167 - nothing in this rule shall prevent communication by facsimile or email;
- (c) Rule 4.169 - when "meetings" take the form of telephonic conference calls, the liquidator shall defray communication charges out of the assets.

3.3 In principle, the liquidation committee will comprise creditors if the company is insolvent or shareholders if the company is solvent, but the Court may direct that a liquidation committee comprise a combination of creditors and shareholders.

3.4 A liquidation committee shall be established by resolution of the creditors or shareholders (as the case may be) passed at a meeting convened by the liquidator as soon as reasonably practical and in no event later than 3 months after the commencement of the liquidation.

3.5 In appropriate cases, the Court will direct that a liquidation committee be established when liquidators are appointed provisionally.

3.6 The reasonable professional fees incurred by the liquidation committee in properly discharging its functions shall be treated as an expense of the liquidation to be paid out of the assets of the company.

### **4. Determination of Official Liquidators' Remuneration**

4.1 If there is a liquidation committee, it will have responsibility for determining the scale of hourly rates (and any subsequent variation of the scale) and the amount

of remuneration in accordance with the criteria set out in Rule 4.127(4).

- 4.2 Whilst it is open to a liquidation committee to agree premium rates or insist upon discounted rates in respect of particularly complex or particularly simple matters, the normal effect of complexity or simplicity will be to increase or decrease the proportion of the time spent by the official liquidators personally and/or by their most senior staff.
- 4.3 If there is no liquidation committee or the committee does not make the requisite determination, the official liquidators' remuneration may be fixed by a resolution of a meeting of creditors (in the case of an insolvent liquidation) or shareholders (in the case of a solvent liquidation).
- 4.4 If the official liquidators' remuneration has been fixed by the liquidation committee and he considers the amount to be insufficient, he may request that it be increased by resolution of the creditors or shareholders as the case may be.
- 4.5 If the official liquidator considers that the remuneration fixed for him by the liquidation committee or by resolution of the creditors or shareholders is insufficient, he may apply to the Court for an order increasing its amount or rate in accordance with Rule 4.130.
- 4.6 In the event of an appeal to the Court:
- (a) the Court may direct the obtaining of expert evidence; and
  - (b) the Court may make an inter partes order for costs in accordance with the general principles contained in GCR O.62, r.4.
- 4.7 Any creditor (in the case of an insolvent liquidation) or shareholder (in the case of a solvent liquidation) may, with the concurrence of at least 25% in value of the creditors or shareholders (including himself), apply to the Court under Rule 4.131 for an order that the official liquidators' remuneration be reduced on the grounds that it is, in all the circumstances, excessive.

## 5. Determination of Provisional Liquidators' Remuneration

- 5.1 In cases where a winding-up order is made, the Court may direct that the liquidation committee established in accordance with paragraph 3.1 above shall have responsibility for determining retrospectively the scale of hourly rates and the amount of remuneration payable to the provisional liquidator and Rules 4.151 to 4.171 shall apply.
- 5.2 In cases where a provisional winding-up order is made for the purpose of facilitating a reorganisation, the Court will consider directing the establishment of a provisional liquidation committee which will be given responsibility for

determining the scale of hourly rates and the amount of remuneration payable to the provisional liquidators, unless there is some other suitable arrangement approved by the Court.

- 5.3 In cases where the winding-up petition is dismissed, the provisional liquidators' remuneration will be determined by the Court.

**6. Provision of information to Committees**

- 6.1 When seeking agreement to his remuneration, the liquidator shall provide sufficient information to enable the committee to form a judgment as to whether the proposed fee is reasonable. In addition, each member of the committee shall be provided with a copy of the Creditors Guide to Liquidators' Fees.
- 6.2 If there is no committee, the same information should be provided to all the creditors or shareholders.
- 6.3 An application for approval of his remuneration may be presented in the form of a "fees report" or combined as part of a general report made in accordance with Rule 4.168.
- 6.4 The cost of preparing a fees report and providing information to the committee in support of the liquidator's application for approval of his remuneration shall be an expense of the liquidation to be paid out of the assets of the company.

**7. Transitional provisions**

- 7.1 To the extent that any winding-up order and/or direction made prior to the Commencement Date is inconsistent with the terms of this practice direction, the official liquidators shall apply no later than 28<sup>th</sup> February, 2004 for an order that it be varied.
- 7.2 On any such application, the Court will consider whether to direct the establishment of a liquidation committee or, if a liquidation committee has already been established, any appropriate variation of its powers.

Dated this 29th day of December, 2003.

The Hon. Anthony Smellie, QC, Chief Justice