

CAYMAN ISLANDS



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**FOREIGN BANKRUPTCY PROCEEDINGS (INTERNATIONAL CO-OPERATION) RULES, 2018**

## **FOREIGN BANKRUPTCY PROCEEDINGS (INTERNATIONAL CO-OPERATION) RULES, 2018**

The following rules are made by the Insolvency Rules Committee in exercise of the powers conferred by Section 155(1) of the Companies Law 2016 (2016 Revision) (as amended)

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

- (1) These Rules shall be cited as the Foreign Bankruptcy Proceedings (International Co-operation) Rules, 2018.
- (2) These Rules shall apply to every application made, or notice filed, pursuant to Part XVII of the Companies Law (2016 Revision) (as amended) ("the Law").
- (3) These Rules shall come into force on the date stated in the commencement order, referred to in these Rules as the "commencement date". No application, order or direction made under Part XVI of the Companies Law (2007 Revision) (as may have been revised or amended) (and renumbered as Part XVII of the Companies Law (2009 Revision) and subsequent Revisions) before the commencement date shall be treated as a non-compliance with these Rules provided that it complied with the rules, practice directions or procedure then in force.
- (4) Words and expressions used in the Law shall have the same meaning when used in these Rules.
- (5) The forms contained in the Appendix to these Rules shall be used where applicable, with such variations as the circumstances of the particular case may require.

### **1A. General provisions**

- (1) The Grand Court Rules, 1995 (as amended and revised) ("the GCR") shall apply to proceedings pursuant to Part XVII of the Law save to the extent that they are inconsistent with Part XVII of the Law or these Rules.
- (2) GCR Order 102, r. 16 shall not apply to proceedings pursuant to Part XVII of the Law.
- (3) No order for security for costs shall be made against a foreign representative on any application pursuant to section 241. Nothing in this Rule shall derogate from the power of the Court of Appeal to make orders for security for costs in respect of any proceedings before that court.

## **2. Application pursuant to section 241(1)(a)**

- (1) An application by a foreign representative made pursuant to Section 241(1)(a) of the Law for a declaration that he is entitled to act on behalf of a debtor shall be made by petition.
- (2) Any such petition shall be advertised, and if the petitioner seeks any relief pursuant to section 241(1)(b)-(e) then the petition shall be served only on such persons as the Court may direct.
- (3) A petition under this rule shall state :-
  - (a) particulars of the debtor's incorporation;
  - (b) the nature and place of the debtor's business;
  - (c) the court or other authority by which the foreign representative was appointed;
  - (d) the powers and duties of the foreign representative under the law of the place of his appointment; and
  - (e) the reasons for seeking a declaratory order.
- (4) A petition under this rule shall be verified by an affidavit sworn by the foreign representative. Where more than one foreign representative has been appointed in respect of a debtor, whether jointly or jointly and severally, one of the foreign representatives may swear the affidavit in support of the petition for and on behalf of all the foreign representatives.
- (5) A certified copy or an office copy of the order of the court or other authority by which the foreign representative was appointed shall be exhibited to the verifying affidavit.
- (6) A petition under this rule shall be supported by an affidavit of foreign law which sets out the powers and duties of the foreign representative under the law of the place of his appointment.
- (7) A declaratory order under this rule shall be in Form 1 and shall be published in the Gazette within 7 days of the making of the declaratory order and in such other newspaper or website, and at such times, as the Court may direct.

## **3. Application pursuant to section 241(1)(b)-(e)**

- (1) An application by a foreign representative for any relief pursuant to section 241(1)(b)-(e) where he has already obtained a declaration pursuant to section 241(1)(a) shall be made by summons. Such summons shall be served on every respondent to the application and shall be supported by an affidavit sworn by the foreign representative containing full particulars of —

- (a) the facts and matters relied upon in support of the allegation that the respondent is a "relevant person" within the meaning of the Law;
  - (b) the reasons for seeking the order against the respondent.
- (2) An order made under this rule shall be in Form 2 or 3 or 4 or 5 as may be appropriate.
- (3) The examination may be conducted by –
  - (a) the foreign representative; or
  - (b) a person acting with the authority of the foreign representative, including his attorney or a foreign lawyer.
- (4) The examination shall take place in private at the time and place specified in the order or at such other time and place as may be agreed between the examinee and the foreign representative.
- (5) The examinee shall be entitled to have his attorney and/or foreign lawyer present at the examination, but such attorney or foreign lawyer shall not be entitled to participate in the examination by putting questions to the examinee unless permitted to do so by the foreign representative or other person conducting the examination.
- (6) The examinee shall take all such steps as may be reasonably necessary to inform himself of the matters about which he is to be examined and the foreign representative or other person conducting the examination may adjourn the examination for this purpose.
- (7) The examinee shall be given an opportunity to review all the documents intended to be put to him in advance of the examination, for which purpose the foreign representative or other person conducting the examination may provide the examinee with copies.
- (8) The examination shall be conducted in the form of questions and answers. The examination shall be recorded by a court reporter. The court reporter shall prepare a transcription of the examination and certify it as a complete and accurate transcription.
- (9) The court reporter shall record the names and addresses of all the persons present and the times(s) at which the examination commenced and finished.
- (10) The examination shall be carried out under oath.
- (11) The documents referred to during the examination must be identified but need not be exhibited to the transcript unless the foreign representative or other person conducting the examination requires that some or all of them be exhibited.

- (12) The examinee shall answer all the questions put to him (subject to any claim of self-incrimination or legal professional privilege) which are within his knowledge or means of knowledge regarding any matter within the scope of the order and is compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge.
- (13) Where an examinee objects to answering any questions put to him, he must state the grounds of his objection and the foreign representative may apply to the Court for an order that the question be answered. Any such application shall be made on notice to the Respondent.
- (14) If the Court determines that the examinee had no valid ground of objection, it may order him to submit to a further examination and pay the costs occasioned by his objection.

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

- (1) Whenever a company which is incorporated under Part II of the Law or registered under Part IX of the Law is made the subject of a foreign bankruptcy proceeding, notice of this fact shall be filed with the Registrar and published in the Gazette.
- (2) The notice required to be filed with the Registrar shall be in Form 6 and shall have annexed to it a certified copy of the order, notice or other document which evidences the commencement and existence of the foreign bankruptcy proceeding and, if such document is in a language other than English, an English translation of it. The notice shall be filed by the company's liquidator or, if no liquidator has been appointed under the Law, by its directors within 14 days of the date upon which the foreign bankruptcy proceeding commenced.
- (3) The notice in Form 6 shall be published without its annexures in the Gazette not later than 21 days after the date on which the notice was filed with the Registrar.

Made by the Insolvency Rules Committee on the 27th day of November 2017.

The Honourable Andrew Jones Q.C., Chairman

The Honourable Sam Bulgin Q.C., Attorney-General

Colin McKie Q.C., Legal Practitioner

Hector Robinson QC, Legal Practitioner

Simon Conway, Insolvency Practitioner

Jude Scott CPA, Public Accountant

**APPENDIX - PRESCRIBED FORMS**

**Form No 1**

**Recognition Order**

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO:           OF 20 \_\_

In Open Court

[*date of order*]

The Honourable Mr(s) Justice [                     ]

IN THE MATTER OF Part XVII of the Companies Law

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

**RECOGNITION ORDER**

UPON the application of [*state name and address of foreign representative(s)*] by [*his/their*] petition dated [*state date*] for an order recognising [*his/their*] right to act in the Islands on behalf of or in the name of [*state name of debtor*] (the "Debtor")

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

AND UPON hearing counsel for [*the foreign representative(s)*]

AND UPON [*hearing counsel for any persons upon whom the petition was served*] [*and/or*][*being satisfied that the petition was served on* [*state name*] *and upon* [*state name*] *not appearing*]

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

[*Further orders or directions made pursuant to section 241(1)(b)-(e).*]

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].

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

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

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The Honourable Mr(s) Justice [*name of assigned Judge*]

JUDGE OF THE GRAND COURT

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].

**Form No 2**

**Injunction**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: OF 20\_\_

In [Open Court][*where application is by petition or summons*][Chambers][*where application is by summons*]

[*date of order*]

The Honourable Mr(s) Justice [ ]

IN THE MATTER OF Part XVII of the Companies Law

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

[*and where application is made by summons -*]

[BETWEEN:

[*State name of foreign representative(s)*], foreign representative(s) of [*state name of debtor*]

Petitioner(s)

AND:

[*State name of respondent*]

Respondent

INJUNCTION

UPON the application of the Petitioner(s) by [*his/their*] [*summons*][*petition*] dated [*state date*] for an injunction to restrain [*state name*] from commencing proceedings against [*state name of debtor*] (the "Debtor")

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

AND UPON hearing counsel for the Petitioner(s) [*and the Respondent*]

[AND UPON the Petitioner(s) undertaking by his/their counsel [*set out any undertakings given*]]

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].



IT IS ORDERED that:

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

Dated the                    day of                    20\_\_

Filed the                    day of                    20\_\_

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

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].

**Form No 3**

**Order for a Stay of Enforcement**

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO:                      OF 20\_\_

In [Open Court][Chambers]

[*date of order*]

The Honourable Mr(s) Justice [                      ]

IN THE MATTER OF Part XVII of the Companies Law

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

AND BETWEEN:

[*State name of foreign representative(s)*], foreign representative(s) of [*state name of debtor*]  
Petitioner(s)

AND:

[*State name of respondent*]  
Respondent

ORDER FOR A STAY OF ENFORCEMENT

UPON the application of the Petitioner(s) by [*his/their*] summons dated [*state date*] for a stay of enforcement in respect of the judgment dated [*state date*] and given against [*state name of debtor*] in cause number [      ] ("the Judgment")

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

AND UPON hearing counsel for the parties

[AND UPON the Petitioner(s) undertaking by his/their counsel [*set out any undertakings given*]]

IT IS ORDERED that:

1. The Respondent shall not commence enforcement proceedings [*or shall take no further steps in respect of [identify enforcement proceedings already commenced]*] in respect of the Judgment

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].

without the prior leave of the Court.

2. *[Further or other directions.]*

Dated the            day of            20\_\_

Dated the            day of            20\_\_

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

This Order was filed by *[state name of the attorneys acting on behalf of the petitioner(s)]* whose address for service is *[address within the jurisdiction and contact details]*.

**Form No 4**

**Order for Examination**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

FSD CAUSE NO:                      OF 20\_\_

In [Open Court][Chambers]

[*date of order*]

The Honourable Mr(s) Justice [                      ]

IN THE MATTER OF Part XVII of the Companies Law

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

BETWEEN:

[*State name of foreign representative(s)*], foreign representative(s) of [*state name of debtor*]

Petitioner(s)

AND:

[*State name of examinee*]

Respondent

**ORDER TO PRODUCE DOCUMENTS AND FOR EXAMINATION**

UPON the application of the Petitioner(s) by [*his/their*] summons dated [*state date*] for an order that the Respondent produce documents relating to, [*and/or be examined by the Petitioner(s)*], about the business or affairs of [*state name of debtor*] ("the Debtor"),

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

AND UPON hearing counsel for the parties

[AND UPON the Petitioner(s) by [*his/their*] counsel undertaking [*set out details of undertaking*]]

IT IS ORDERED that:

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].

1. The Respondent shall deliver up to the Petitioner(s), or *[his/their]* attorneys, all of the documents specified in Schedule One to this order on or before *[state date]*.
2. For the purpose of the examination referred to below, the Petitioner(s) shall provide to the Respondent copies of all of the documents specified in Schedule Two to this Order on or before *[state date]*.
3. The Respondent shall attend at *[state address in the Cayman Islands]* on *[state date]* at *[state time]* (or at such other place *[in the Cayman Islands]* and on such other date and time as may be agreed with the Petitioner(s)) to be examined orally and on oath by or on behalf of the Petitioner(s) about the business and affairs of the Debtor more particularly described in Schedule Three to this order.
4. The examination may be adjourned from time to time. Each session of the examination shall last no more than four (4) hours and the examination shall not last longer than *[state time]* in total without a further order of the Court.
5. The Respondent shall be entitled to have his attorney and/or foreign lawyer present at the examination, but such attorney or foreign lawyer shall not be entitled to participate in the examination by putting questions to the examinee unless permitted to do so by the Petitioner.
6. The examination shall be conducted in the form of questions and answers. The examination shall be recorded by a court reporter. The court reporter shall prepare a transcription of the examination and certify it as a complete and accurate transcription.
7. The court reporter shall record the names and addresses of all the persons present and the times(s) at which the examination commenced and finished.
8. If the Petitioner(s) require(s) a document referred to during the examination to be exhibited to the transcript then it shall be exhibited to the transcript.
9. The Respondent shall answer all the questions put to him (subject to any claim of self-incrimination or legal professional privilege) which are within his knowledge or means of knowledge regarding any matter within the scope of this order. If required to do so by the

This Order was filed by *[state name of the attorneys acting on behalf of the petitioner(s)]* whose address for service is *[address within the jurisdiction and contact details]*.

Petitioner(s), the Respondent shall provide the names and addresses of any person who reasonably might be expected to have knowledge of any question put to the Respondent.

10. If the Respondent objects to answering any question put to him, he shall state the grounds of his objection. If the Respondent has objected to answering any question put to him then the Petitioner(s) may apply to the Court for an order that the Respondent answer the question. Any such application shall be made on notice to the Respondent on not less than [*number*] of days' notice.

11. [*Further or other directions*].

Dated the                    day of                    20\_\_

Filed the                    day of                    20\_\_

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

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].

**Form No 5**  
**Order for Turnover of Property**

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO:                      OF 20\_\_

In [Open Court][Chambers]

[*date of order*]

The Honourable Mr(s) Justice [                      ]

IN THE MATTER OF Part XVII of the Companies Law

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

BETWEEN:

[*State name of foreign representative(s)*], foreign representative(s) of [*state name of debtor*]

Petitioner(s)

AND:

Respondent

ORDER FOR TURN OVER OF PROPERTY

UPON the application by the Petitioner(s) by [*his/their*] summons dated [*state date*] for an order that the Respondent turnover to the Plaintiff(s) any property belonging to [*state name of debtor*] (the "Debtor")

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

AND UPON hearing counsel for the parties

IT IS ORDERED that:

1. The Respondent shall turn over to the Petitioner(s) all of the property belonging to the Debtor specified in this Schedule to this order on or before [*state date*].

This Order was filed by [*state name of the attorneys acting on behalf of the petitioner(s)*] whose address for service is [*address within the jurisdiction and contact details*].

2. The Respondent shall swear an affidavit on or before [date] that, having conducted all reasonable inquiries as to the nature and extent of the property of the Debtor in his possession, power, or control, he has turned over all the property to the Petitioner(s) [*and/or if the Respondent is aware of property of the Debtor in the Respondent's possession, power, or control, but which the Respondent has not turned over to the Petitioner, the nature and extent of that property and the reason(s) why the Respondent has not turned it over to the Petitioner(s).*]
  
3. [*Further or other directions about the method by which the property is to be delivered or title to the property transferred.*]

Dated the                    day of                    20\_\_

Filed the                    day of                    20\_\_

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



**Form No 6**

**Notice of Foreign Bankruptcy Proceedings**

THE COMPANIES LAW

NOTICE OF FOREIGN BANKRUPTCY PROCEEDINGS

[Name of company]

Registration No \_\_\_\_\_

To: The Registrar of Companies

TAKE NOTICE that the above-named Company was made the subject of [*describe the foreign bankruptcy proceeding*] on [*state commencement date*] [*by the filing of [identify document filed in foreign court or authority], by the order of [identify the court or other authority], or otherwise as the case may be*]. Enclosed herewith are certified copies of [*the relevant filings, orders, notices or other documents evidencing the commencement and existence of the foreign bankruptcy proceedings*][*and a translation thereof into English*].

[AND FURTHER TAKE NOTICE that [*state name of trustee in bankruptcy, liquidator, administrator, receiver or other official*] of [*state address and contact details*] has been appointed [*identify the nature of office held by appointee*].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

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

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