

CAYMAN ISLANDS



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PRACTICE DIRECTION No.1/2010
(GCR O. 1, r.12)

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FINANCIAL SERVICES DIVISION

PROCEDURE RELATING TO THE COMMENCEMENT

AND MANAGEMENT OF FINANCIAL SERVICES

PROCEEDINGS

1. Appointment of Registrar of the FSD

- 1.1 Ms Audrey Bodden has been appointed Registrar of the FSD, pursuant to Rule 2(1) of the Grand Court (Amendment) Rules 2009 with effect from Monday 27th September 2010.
- 1.2 All communications with the Registrar should be –
 - (a) by hand delivery at the FSD Registry, 3rd Floor (Room #101), Kirk House; or
 - (b) by e-mail addressed to Audrey.bodden@gov.ky; or
 - (c) by telephone on 244 3808.

2. Assignment of proceedings to a Judge of the FSD

- 2.1 It is the responsibility of the Registrar, acting in consultation with the Chief Justice, to assign every financial services proceeding, as defined in GCR O.72, r.1(2), to a named judge of the FSD at the time the proceeding is commenced.
- 2.2 It is the responsibility of the petitioner/plaintiff's attorney to provide the Registrar with any and all information which appears to him to be relevant in determining which judge should be assigned to the matter. For example –
 - (a) If the plaintiff's attorney considers that it would be appropriate for two or more related matters to be assigned to the same judge, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process ; or
 - (b) If the plaintiff's attorney considers that it would be inappropriate for a matter to be assigned to a particular judge, for whatever reason, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process.
- 2.3 As soon as a judge has been assigned, the Registrar will –
 - (a) notify the parties' attorneys; and

- (b) deliver the Court file to the assigned judge.
- 2.4 Attorneys can expect to be notified about the name of the assigned judge on the next business following the day on which the originating process is filed at the FSD Registry.
- 2.5 The docket of the financial services proceedings assigned to each Judge of the FSD will be updated by the judge's secretary and circulated weekly to the Chief Justice, the Registrar and the Listing Officer.
- 2.6 Attorneys are reminded that GCR O.5, r.1(7) requires that the initials of the assigned judge be included in the title of the proceeding as part of the cause number. It follows that the assigned judge's initials must be included as part of the cause number as it appears in all pleadings, affidavits and orders.

3. Procedure for listing hearings

- 3.1 Ms Yasmin Ebanks has been appointed Listing Officer of the FSD with effect from Monday 27th September 2010.
- 3.2 All communications with the Listing Officer should be –
 - (a) by hand delivery at the FSD Registry, 3rd Floor (Room #105), Kirk House; or
 - (b) by e-mail addressed to Yasmin.ebanks@gov.ky, with a copy to the assigned judge's secretary.
- 3.3 For the purposes of this Practice Direction the expression "hearing" shall include summonses for directions, case management conferences ("CMCs") (which may take the form of video or telephone conference calls), interlocutory applications and trials.
- 3.4 No matter can be listed for hearing unless and until the proceeding has been assigned to a judge of the FSD who has had an opportunity to review the Court file.
- 3.5 Practice Direction #1/2000 (Listing Forms) does not apply to the FSD.
- 3.6 Notwithstanding that a primary objective of the FSD is to ensure the availability of judges, the Listing Officer is not authorized to fix any hearing date without the prior approval of the assigned judge. If the assigned judge is not already familiar with the issues or cannot readily ascertain the issues relevant to the proposed hearing by reviewing the Court file, the parties may be required to produce an agreed case memorandum in accordance with GCR O.72, r.4(3).
- 3.7 In the case of trials or other potentially lengthy hearings, the assigned judge will normally fix the hearing date at the hearing of a summons for directions or at a CMC in which all the parties' attorneys (and their leading counsel) will be required to participate.
- 3.8 The Registrar will publish a monthly list (on the 1st of each month) of hearings scheduled in the FSD for the ensuing month.

4. Listing procedure in respect of Capital Reductions

- 4.1 When presenting a petition for an order confirming a resolution for reducing the share capital of a company (under s.15 of the Companies Law) the petitioner's attorney is required (pursuant to GCR O.102, r.6) to issue a summons for directions at the same time as presenting the petition.
- 4.2 The petitioner's attorney must provide the Registrar with a draft of the proposed order for directions including the timetable for the company meeting(s) and court hearing(s), together with a covering letter which explains whether and, if so, why the matter is particularly time sensitive.
- 4.3 If upon reading the petition, affidavit and written submissions, the assigned judge is satisfied that settling a list of creditors should be dispensed with under s.15(3) or that the reduction is not an exceptional case where settlement of a list of creditors is required under s.15(2), and the materials filed do not disclose any other reason for the assigned judge to require additional evidence or submissions, then he may make an order for directions without the need for a hearing. In all other cases he will direct the Listing Officer to fix a hearing in chambers.

5. Listing procedure in respect of petitions for supervision orders under s.124

- 5.1 Attorneys should anticipate that supervision orders pursuant to s.124 of the Companies Law will normally be made without the need for any hearing (pursuant to CWR O.15, r.5(1).)
- 5.2 In the event that the petition gives rise to any issue in respect of which further evidence or submissions are required, the assigned judge may convene a CMC or direct the Listing Officer to fix a date for hearing the petition in open court.

6. Applications for an order that a company be restored to the register

- 6.1 With effect from Monday 27th September 2010 applications made by a company or one of its members, which are governed by GCR O.102, r.17, will be determined by the Registrar of the FSD rather than the Clerk of the Court and Form Nos. 66 and 67 should be amended accordingly.
- 6.2 If the Registrar decides, pursuant to GCR O.102, r.17(6)(c), that an application ought to be referred to a judge for an oral hearing, the Registrar will –
 - (a) assign the application to a judge of the FSD;

- (b) fix a hearing date; and
- (c) give notice of the hearing to the applicant by e-mail.

6.3 Applications made by creditors, which are governed by GCR O.102, r.18, will continue to be heard in open court by a judge of the FSD.

6.4 At the same time as assigning a creditor's application to a judge of the FSD, the Registrar will fix a hearing date. To enable the petitioner to advertise the petition and give other creditors an opportunity to be heard, the hearing will be fixed on a date not less than 21 days nor more than 28 days after the date on which the petition is presented.

7. Applications for a direction that payment of court fees be deferred

7.1 An application by an official liquidator or officeholder for a direction, pursuant to Rule 6(4) of the Court Fees Rules 2009 (as amended), that payment of court fees be deferred must be made to the assigned judge.

7.2 Such applications should be made by letter addressed to the assigned judge (with a copy to the Registrar) and signed by the officeholder personally.

7.3 The application will be determined by the assigned judge and his decision will be communicated to the applicant and the Registrar by the judge's secretary.

7.4 In the event that the application is refused, the officeholder shall have the right to ask the judge to reconsider his decision, for which purpose the applicant may ask the judge's secretary to fix an appointment for him to appear before the judge in person.

7.5 The purpose of Rule 6(4) is to ensure that an officeholder who is required or entitled to make an application to the Court in the performance of a legal duty in circumstances where the court fees will be payable out of a fund under his control, should not be deterred from performing his duty by being put in the position of having to pay the court fees out of his own pocket.

7.6 For the purposes of determining whether an official liquidator has under his control "sufficient money with which to pay the fees immediately" within the meaning of Rule 6(4), the judge will have regard to the general rules as to priority contained in CWR Order 20, the effect of which is that court fees rank ahead of an official liquidator's remuneration.

7.7 If the officeholder does have some cash or cash equivalent assets under his control, his application letter must state (a) the amount which is immediately available; (b) the amount which is likely to become available to him within the next 90 days; (c) the purposes for which he intends to spend such cash over the next 90 days; and (d) whether he has received any remuneration or holds funds in trust for that purpose.

8. Applications for a direction that multiple proceedings be treated as “consolidated” for the purposes of assessing court fees

- 8.1 An application by a petitioner/plaintiff for a direction that two or more separate proceedings governed by the Companies Winding Up Rules or GCR O.102 be treated as consolidated into one for the purposes of calculating the amount of fixed fees and/or court hearing fees payable pursuant to Rules 3 and/or 5 of the Court Fees Rules 2009 (as amended) must be made to the Registrar.
- 8.2 Such applications should be made by letter addressed to the Registrar at the time of filing the originating process.
- 8.3 The application will be determined by the assigned judge and the provisions of paragraphs 7.3 and 7.4 above shall apply.

9. Case Management Conferences

- 9.1 Without prejudice to the requirements of O.72, r.4(2), the assigned judge may convene a CMC whenever he thinks fit.
- 9.2 A CMC may take the form of a telephone conference call, especially if foreign lawyers and leading counsel have been retained by any of the parties or the assigned judge is likely to be off the Island.
- 9.3 When a CMC takes the form of a telephone conference call, the Registrar will direct one of the parties to set up the call and circulate the dial-in instructions and codes to the judge and all the parties.
- 9.4 The etiquette for telephonic CMCs requires that all participating attorneys must be on line before the appointed time, so that the judge will be the last person to join the conference, whereupon he will ask all the participants to identify themselves.
- 9.5 Telephonic CMC’s may not be tape recorded without the consent of the Judge. If the Judge permits or directs that the CMC be tape recorded, he will direct that a written transcript be prepared, sent to the judge and circulated amongst the parties. Whenever a CMC is not tape recorded, the note taken or approved by the judge will constitute the official record.
- 9.6 Hearing dates may be fixed by the assigned judge during the course of a CMC and, in appropriate cases, CMCs may be convened for the principal purpose of fixing the date for the trial or further hearings.

10. Availability of the judges of the FSD

10.1 Judges of the FSD may conduct CMCs and, in appropriate cases, hear summonses for directions and interlocutory applications by means of telephone or video conferences when they are off the Island.

10.2 Paragraphs 9.4 and 9.5 above shall apply to any hearing which takes place by telephone or video conference.

DATED this 17th day of September 2010

The Hon Anthony Smellie QC

Chief Justice