



INSOL International

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INSOL International sincerely thanks the authors for writing this paper that provides very useful information to our members seeking information about the Cayman Islands.

October 2012



Collection of Practical Issues Important to Smaller Practitioners

By Scott Andersen & Margot MacInnis*
KRyS Global

1. How to Find Information About Insolvency Practitioners, Proceedings Involving them and Applicable Laws

1.1 Laws, Proceedings and Insolvency Practitioners

1.1.1 Cayman Islands Laws

The Cayman Islands are a British Overseas Territory and its laws are principally derived from Cayman Islands legislation and English common law. Corporate insolvency proceedings in the Cayman Islands are dealt with according to the Companies Law (2011 Revision) ("Companies Law") and Company's Winding Up Rules 2010 (2011 Revision) ("CWR"). The Bankruptcy Law (1997 Revision) ("Bankruptcy Law") prescribes how personal insolvencies are administered.

The Insolvency Practitioners (Amendment) Regulations, 2010 ("IP Regulations") provide statutory guidance as to the qualification, independence, insurance and residency requirements of people seeking to be appointed as an Insolvency Practitioner ("IPs") in respect of official liquidations which are commonly referred to as court supervised liquidations.

1.1.2 Types of Insolvency Proceedings

Corporate Insolvency - Official Liquidation

A company may be wound up by the court if: the company has passed a special resolution requiring it to be wound up by the court; the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; the period, if any, fixed for the duration of the company by the articles of association expires, an event specified in its articles occurs; the company is unable to pay its debts; or, the court is of the opinion that it is just and equitable that the company should be wound up.

The application to the court for the winding up of a company can be presented by the company itself, a creditor(s) or member(s). The Cayman Islands Monetary Authority ("CIMA") may present a winding up petition in respect of any company which is carrying on a regulated business in Cayman on the basis that the company is not duly licensed or registered to do so under the regulatory laws or for any other reason as provided under the regulatory laws or any other law.

The CWRs prescribe the manner and form in which a winding up application (also referred to as winding up petition) must be presented and confers duties on the petitioner that must be discharged before the application is heard. For instance, if the application is filed by a member the court is required to make orders for directions on, amongst other things, whether or not the company itself is able to participate in the proceedings. The CWRs also stipulate that the petitioning member must, at the time of filing the petition, issue a summons for directions upon every member named as a respondent to the petition.

The court may, for the purposes of conducting the proceedings in an official liquidation, appoint one or more than one person as official liquidator. At least one of the official liquidators is required to be a qualified IP meeting the criteria stipulated in the IP Regulations.

Any time after a winding up petition has been presented, but before the winding up order and appointment of official liquidator is made, the court can appoint an official liquidator provisionally. This might occur if there is a case for the court to make the winding up order, and there is risk of: dissipation or misuse of the company's assets; a minority member being oppressed; or, mismanagement or misconduct on the part of the company's directors.

* The views expressed in this article are the views of the authors and not of INSOL International, London.



Where a company is being wound up voluntarily, the voluntary liquidator has an obligation to apply to the court for a supervision order unless the directors of the relevant entity provide a declaration of solvency within 28 days from commencement of the liquidation.

Personal Insolvency - Bankruptcy

A single creditor, or two or more, depending on who the aggregate debt is owed to, may petition the court for a debtor's bankruptcy if the debtor has committed an "act of bankruptcy". These acts encompass, amongst other acts, instances whereby a debtor has declared he/she is unable to meet the obligations, the debtor has failed to pay a liquidated sum greater than \$40 within seven days of being put on notice for payment, or the debtor has transferred or conveyed property which would be determined void as a fraudulent preference if they were adjudged bankrupt.

Debtors themselves are entitled to present a bankruptcy petition against themselves without alleging any grounds or committing an act of bankruptcy.

According to the Bankruptcy Law, at any time after a petition has been filed, the court may order that the trustee become the receiver or manager of the property or business of the debtor, to do anything which might be done by a trustee after an absolute order for bankruptcy has been made.

The Governor of the Cayman Islands has appointed the Clerk of the court as the Bankruptcy Trustee since 1980 and with the approval of the court; the trustee can appoint an agent, who can be an IP, to assist where the estate is too large.

Corporate & Personal - Receivership

IPs can be appointed as receivers of property in the Cayman Islands pursuant to rights contained in a security document when the security interest is enforceable in the Cayman Islands. The principal types of security devices that receivers are appointed under include mortgages, charges on securities, vehicles and legal assignments of choses in action.¹

1.2 Statutory and Non - Statutory Organization of IPs

The applicable legislation and regulations adopted in the jurisdiction prescribe how IPs are to conduct themselves and the court has an overarching role in monitoring and enforcing compliance. IPs are under an obligation to report to the court when conducting a court supervised appointment and the court may make orders removing an official liquidator from office on the application of a creditor or member of the company.

The Insolvency Rules Committee, established under the Companies Law, is empowered to make rules specifying: the qualifications which must be held by an IP appointed as an official liquidator; persons who are disqualified from acting as official liquidators generally or in relation to a particular company not in liquidation before the court; the nature and scope of IPs professional indemnity insurance and security which might need to be posted by IPs acting as official liquidators. The rules relating to IP qualifications and indemnity insurance are codified in the IP Regulations.

In Cayman, individual firms in which IPs are engaged are responsible for maintaining compliance with Cayman laws and regulations. IPs may also maintain memberships of foreign or international insolvency professional associations such as the American Bankruptcy Institute ("ABI"), the Association of Business Recovery Professionals in the United Kingdom (R3) or INSOL International, and IPs must be mindful of complying with the guidelines and rules implemented by these. Locally, the Insolvency Practitioners Sub-Committee of the Cayman Islands Society of Professional Accountants ("CIPSA") is charged with considering the implications of proposed changes in law, regulations and professional standards both on and off the island, as they affect IPs in the Cayman Islands.

¹ A chose in action refers to a property right, or the rights to possession of something that can only be obtained or enforced through legal action such as the right to sue for damages.



Additionally, the Cayman Islands is a member association of INSOL International whose principle focus is the promotion of technical and commercial best practice within the jurisdiction.

1.3 Qualifications and Certifications of IPs

There are no formal IP qualification courses in the Cayman Islands. However the IP Regulations stipulate that if a person is not licensed to act as an insolvency practitioner in a relevant country, they must be a professionally qualified accountant with a minimum of 5 years experience to qualify as an IP.²

In Cayman many IPs, and often their staff, will have specific insolvency qualifications in foreign countries which are endorsed as relevant countries in the IP Regulations, for example, the Joint Insolvency Examination Board (England).

Foreign practitioners, who meet the insurance and independence requirements outlined in the IP Regulations, are capable of accepting joint appointments if the alternate appointee is a Cayman domiciled IP. Foreign IPs will be required to comply with the relevant regulatory and reporting framework adopted in their homeland.

Many IPs and their staff have also attained specific skills within insolvency, restructuring and forensic accounting and hold certifications in fraud examination, asset recovery, anti money laundering and business valuations.

1.4 Professional Associations and Resources

1.4.1 Local Professional Associations and Resources

The Insolvency Practitioners Sub-Committee of CIPSA is the primary source of information on IPs in the Cayman Islands. The chair of the sub-committee is the CIPSA representative for the Insolvency Rules Committee. Many IPs and their staff are members of the Cayman Islands member association of INSOL International.

1.4.2 Foreign Professional Associations and Resources

The accounting profession in the Cayman Islands consists of people who have qualified in foreign jurisdictions who maintain their foreign qualifications and professional memberships whilst in Cayman. Foreign associations such as the ABI and the Association of Business Recovery Professionals (R3) serve as sources of IP information and offer guidance as to industry best practice.

1.4.3 Insolvency Co-operative Partnerships and Networks

The CIPSA IP Sub-Committee, INSOL and the ABI are IP networks which Cayman Islands IPs are often members of. These networks convene conferences and provide IPs access to information and material pertinent in conducting their roles, particularly INSOL International and ABI in respect of cross-border issues and foreign insolvency proceedings.

1.5 Sources of Information Regarding Proceedings and IPs

Creditors and liquidation committees are entitled to obtain information from IPs regarding the conduct of an appointment and official liquidators are obliged to prepare reports and accounts with respect to their conduct of the official liquidation and state of the company's affairs which they are required to file in court. Official liquidators have no continuing duty to report to members, however, are required to provide copies of reports and accounts to any member upon request.

Official liquidators are also required to comply with requests for information from liquidation committees (otherwise creditors when no such committee exists) and members. However, the official liquidator need not comply with requests for information where they appear to be

² According to the IP Regulations relevant countries include England and Wales, Scotland, Northern Ireland, the Republic of Ireland, Australia, New Zealand; and, Canada.



unreasonable, compliance costs are excessive or there are insufficient assets to meet compliance costs.

Cayman IPs often maintain websites as they are usually an effective medium for communicating with stakeholders. Information typically disclosed on websites includes reports, unsealed affidavits filed with the court and other important correspondence.

Under the CWRs creditors, members, officers and professional service providers are entitled to inspect the courts files in respect of a liquidation and take copies of documents filed. The court will not permit inspection of sealed documents (maintained in the courts confidential files) and may refuse inspection in certain circumstances.

2. Cross-border Issues Essential to Small Practitioners

The multi - jurisdictional nature of IPs' appointments in the Cayman Islands almost always lends itself to instances where cross border issues are encountered.

2.1 Recognition and Enforcement of Foreign Judgments and Proceedings

2.1.1 Recognition of Foreign Proceedings

There is no Model Law in the Cayman Islands but seeking recognition of a foreign insolvency proceeding in the Cayman Islands is not overly burdensome. To obtain recognition of foreign proceedings in the Cayman Islands, the foreign IP must petition the court under section 241 of the Companies Law. Before the hearing of the petition, the court may order that the hearing of the petition be advertised locally and internationally, depending on the nature and scale of the company's activities.

In determining whether to make orders recognising the foreign proceedings, the court is guided by matters which assure an economic and expeditious administration of the estate. This includes consideration as to whether claimants are justly treated wherever they may be domiciled, if claimants are not prejudiced or inconvenienced in the processing of claims in the foreign bankruptcy proceedings, if property is distributed in the order prescribed in the Companies Law and comity.

When recognising foreign proceedings the Cayman court will also consider if: the foreign court had jurisdiction to commence the foreign insolvency proceeding or if the order commencing the foreign insolvency proceedings is final. Further, interim or interlocutory judgments will not obtain similar recognition or enforcement and the court will usually stay enforcement proceedings if execution has been stayed in the foreign jurisdiction.

2.1.2 Recognition of Cayman Islands Insolvency Proceedings in Foreign Jurisdictions

In order for certain companies in the Cayman Islands, particularly exempt limited companies, to comply with local laws, they are restricted from conducting economic activities within the jurisdiction and the focus of their activities is usually an onshore jurisdiction, for example the United States of America, the United Kingdom or Canada. In such circumstances a Cayman IP may wish to seek recognition of the local insolvency proceedings in the respective foreign jurisdiction. This will particularly be the case where the Cayman IP requires assistance to procure and secure assets, obtain books and records or seek a stay of legal proceedings.

The most common jurisdiction where recognition is sought is the United States. There have been a number of highly public decisions on the question of "Centre of Main Interest" in the context of a Chapter 15 application involving Cayman entities, such as SPhinX, Bear Stearns and Basis Yield.



2.2 Tracing and Recovering Assets

Insolvency proceedings in the Cayman Islands often require an IP to trace and recover assets located in foreign, onshore jurisdictions where the entities assets are located or where its business was predominately located. The Companies Law confers certain powers upon official liquidators to assist with tracing and recovering assets and imparts particular obligations on company officers to assist the official liquidator in this regard.

To assist the official liquidator identify and collect company property, the court may require any person that has possession of any property or documents to which the company is entitled, deliver them up to the official liquidator. The Companies Law also empowers the official liquidator to apply to the court for examination of company officers and professional service providers or for them to seek orders for the delivery up of documents or other property belonging to the company.

Cayman Islands laws enable IPs to obtain specific orders which are enforceable in Commonwealth jurisdictions to protect assets from dissipation. For instance, Mareva Injunctions, or freezing orders, are court orders which effectively freeze assets so that a defendant to an action cannot dissipate them from beyond the jurisdiction of the court so as to frustrate a judgment. Also, prior to a winding up order being made the court may appoint a liquidator provisionally to secure company property which may be a risk of dissipation or potentially subject to mismanagement by company officers.

3. Marketing of Smaller Practices

3.1 Approaches to Marketing

The insolvency market in the Cayman Islands consists of about a dozen firms including those associated with multinational firms (the Big 6), several firms with global networks and a few independent firms. Firms range in size from one or two staff to those with over 30.

3.1.1 Local Marketing

The Cayman Islands is one of the world's leading financial services centers which lends itself to the jurisdiction being privy to a number of international and prestigious conferences that attract counsel and IPs from across the world. These events provide IPs an opportunity access the global market and enables them to raise theirs, and their firms profile by performing speaking engagements and conducting business development. These events provide IPs an environment to develop business relationships with other professionals who might refer work. IPs will also actively participate in the local community to raise awareness of their firms brand and employ targeted marketing strategies to develop personal relationships with local referrers such as attorneys and service providers.

3.1.2 International Marketing

International marketing by smaller practitioners in the Cayman Islands is challenging due to the size of the global market. To overcome this it is important for smaller practitioners to identify the key decision makers in organizations who might seek their assistance, advice or expertise and to have an intrinsic understanding of how referrals are made within in the offshore funds market. Once IPs have identified the key decision maker, it is important they maintain regular communication with the potential referrer to develop the relationship and ensure that they and their firms brand presence is at the forefront.

IPs in smaller Cayman Islands practices also develop strategic, informal relationships with other service providers in major financial centers to achieve a common goal based on a common understanding. This approach enables IPs to accept engagements that they may have otherwise declined as it will provide them access to additional resources, expertise and skills in major financial centers, which creates synergies in the interest of stakeholders of the company in liquidation.



3.2 Economic and Financial Considerations as to Marketing

Regardless of the marketing approach adopted, there is always a prevailing uncertainty as to when an IP will be approached to consent to act or when a court will make orders appointing them as an official liquidator. Therefore, IPs must specifically plan their marketing strategy; the financial resources allocated to it and revisit these regularly to ensure that they are aligned with the business plan.

4. How are Insolvency Practitioners Compensated for their Services?

4.1 Consideration of Remuneration by Creditors/Investors, Liquidation Committee and Court

In court supervised liquidations where a liquidation committee has been formed, a principal function of the committee is to review the remuneration of the official liquidator before the official liquidator can seek court approval. Where a liquidation committee has not been established, the official liquidator must convene a meeting of creditors in accordance with the CWRs at which the official liquidator will propose a resolution approving the basis of their remuneration and the amount for which court approval will be sought.

If a liquidation committee has been formed, IPs will consider establishing a protocol agreement with the committee in relation to how their fees are to be reviewed and paid. To assist with this process, IPs may outline the duties and responsibility of the liquidation committee to assist members' with discharging their obligations to the estate, its creditors or investors and assist the official liquidator with administering the estate.

IPs must provide the liquidation committee; creditors or contributories information reasonably required enabling them to make an informed decision about the reasonableness of the proposed basis of remuneration and amounts for which the IP intends to seek the courts approval.

If the liquidation committee fails to agree the terms of the remuneration agreement, or the amount of remuneration the IP seeks approval of, or a resolution of creditors or contributories is not passed, the IP can apply to the court for its approval.

If the court has appointed a liquidator provisionally before a winding up application has been heard, on the application of the provisional liquidator the court can make orders fixing their remuneration from time to time.

4.2 Prevailing Approaches to Compensation of Insolvency Practitioners

According to the IP Regulations, IPs are entitled to have their remuneration calculated on a time, contingency or fixed fee basis. IPs may, subject to approval of the liquidation committee and the court, employ a combination of these.

4.2.1 Time Basis

The total fee charged by an IP is usually based on the hourly rates charged for each person who carried out the work, multiplied by the number of hours spent by each person on each of the tasks performed. This is the most common method.

In the Cayman Islands, the IPs hourly rates must fall within the scale of hourly rates prescribed by the IPRs and subsequently approved by the court.

4.2.2 Contingency Basis

The total fees are based on a percentage of a particular variable, such as proceeds of asset realizations or funds distributed to creditors, or structured to be contingent on a certain outcome being achieved, for example the successful setting aside of antecedent transactions.

If either of these basis are selected the total contingency of percentage fee must fall within the percentage rates prescribed in the IPRs ranging from 2.5% to 10%.



4.2.3 Combination

Due to the varying nature of tasks an IP is required to address when discharging their duties, including statutory tasks not directly related to realizing assets or distributing funds to creditors, a combination of time and contingency fee basis may be appropriate.

5. Litigation and the Funding of Litigation

5.1 Types of Litigation Commenced by Cayman Islands IPs

According to the Companies Law, an official liquidator, with sanction of the court, is empowered to bring or defend any action or other legal proceeding in the name and on behalf of the company.

The Companies Law provides official liquidators statutory remedies to void transactions which confer a preference on a creditor over other creditors of the company (if the company is insolvent at the time of the transaction) or results in company property being transferred at less than market value. The court can, on the application of the official liquidator, make orders that the beneficiaries of such transactions repay amounts to the company for interests of creditors as a whole. Also, if it appears that any business of the company has been carried on with the intent to defraud creditors, the court can declare that any persons who were knowingly parties to it, liable to contribute to the company's assets as the court deems proper.

As directors duties in the Cayman Islands are not laid out in the Companies Law, directors are required to perform common law duties, when conducting the affairs of the company. If directors contravene these common law duties, which include acting in the interests of creditors, exercising skill and care and not obtaining a personal profit from their position, a Cayman Islands IP can instigate litigation against such wrong doers to recover property and damages for the benefit of creditors. Directors are also fiduciaries and an IP can recover damages of property from relevant people when such duties are not performed. An IP can also instigate litigation against professional service providers who engage in professional misconduct and fraud.

5.2 Funding Litigation

5.2.1 Self Funding (company assets)

IPs are entitled to apply company property to meet the costs of litigation where sufficient assets exist and the action is considered cost beneficial to pursue. An IP may seek leave of the court before pursuing litigation, particularly if the costs are expected to be significant and there are risks in proceeding.

5.2.2 Creditor and Third Party Litigation Funding

A creditor or investor may elect to pay the IPs costs, as and when they are incurred, in conducting a recovery action. This method of funding is dynamic and can include funding for adverse costs, disbursements and the liquidator's costs of administering the estate whilst the litigation is being conducted. Any funding to pursue claims will constitute costs of the liquidation and the funding creditor will be afforded a priority of repayment from any recoveries.

Alternatively, if creditors are unwilling to indemnify the IP, a "professional" funder can be approached to lend the estate some or all of the costs to be incurred in litigation. If the recovery action is successful the funder will receive an agreed share of the litigation proceeds however, if unsuccessful, the funder will not have a right of recourse against the liquidator, or the estate to recover the funds contributed.

An official liquidator is required to seek court sanction before entering into either of these litigation funding alternatives.



5.2.3 Contingency and Conditional Fees

Contingency and conditional fee arrangements are prohibited in the Cayman Islands. However, insofar that the litigation is being conducted in an extraterritorial jurisdiction where they are permitted, particularly the United States of America, contingency and conditional fee arrangements are suitable alternatives as they align the interests of legal representatives with the estate and its creditors.

The estate is sometimes required to meet out of pocket costs in contingency arrangements as disbursements and security for costs are often excluded from these.

5.3 Practical Considerations Encountered in Funding Litigation

Alternative litigation funding options enable IPs to instigate recovery proceedings in circumstances whereby the company may have insufficient assets from which the IP can fund the litigation being contemplated. IPs might also consider alternative litigation funding options to align the interests of attorney's with the company entitled to prosecute the action and to possibly divest the estate of litigation risk.

A key practical concern an IP will have when funding litigation is how to manage the litigation. In their capacity as an official liquidator, the IP will have obligations to the court to monitor and maintain control of the action, whereas the funder may seek control, particularly in respect of key decisions such as settlements. The official liquidator and funder will need to strike a balance between these issues as the court is unlikely to provide the official liquidator leave to enter into agreements where the funder retains control of the litigation.

The official liquidator may also be obliged to regularly update the court as to the status of the litigation and the court may require the funder to disclose details of its financial circumstances to satisfy the court that it has sufficient financial capacity to progress the litigation contemplated.

Additionally, an official liquidator and potential funder will need to consider several issues including, how to deal with adverse costs orders, how the ongoing liquidation costs not directly associated with the litigation are to be dealt with, the mechanism for and timing of funding payments and how the official liquidators costs incurred with respect to the litigation prior to obtaining funding are to be dealt with.

5.4 Alternatives to Litigation

If appropriate, an IP will look to alternative means to dispute resolution other than instigating litigation which can become protracted and costly within the Cayman Islands. Three alternatives available include mediation, arbitration and tolling with potential defendants with a view to settle.

6. Compliance Issues

6.1 Reporting Obligations to the Court and Statutory Authorities

According to the Cayman Islands Grand Court Practice Directions every firm whose partners or employees are, or seek to be, appointed as official liquidators are required to file with the Clerk of the Court annually written confirmation that they are covered by professional indemnity insurance applicable to the performance of their duties.

IPs are obliged to investigate circumstances when they have reasonable grounds for suspecting money laundering or terrorist financing and are required to file Suspicious Activity Reports with the Financial Reporting Authority of the Cayman Islands.

7. Best Practices

7.1 Accepting Appointments as an Official Liquidator

7.1.1 Licensing Requirements

The licensing requirements for IPs appointed in respect of court supervised liquidations in the Cayman Islands are contained in the IP Regulations.



7.1.2 Professional Requirements

According to the IP Regulations, before an IP can accept appointments as an official liquidator they must satisfy the professional qualification obligations which require them to either be: licensed to act as an IP in a relevant country³; a qualified professional accountant by an approved institute in good standing; or, have been appointed as an official liquidator by the court within 5 years immediately preceding the commencement date.

7.1.3 Residency Requirements

At least one of the IPs appointed must be a resident of the Cayman Islands to accept appointments and they, or the firm which they are a partner or employee of, must hold a trade or business license entitling them to carry on a business as professional IPs.

7.1.4 Independence Requirements

IPs can be appointed if they are regarded as independent and if the IP, or their firm, has acted as the entities auditor within 3 years immediately preceding the commencement of the liquidation, they will be precluded from acting.

7.1.5 Insurance Requirements

IP insurance requirements in the Cayman Islands are stringent and require that IPs maintain sufficient professional indemnity insurance to cover individual claims up to a minimum of US\$10m and at least US\$20m in aggregate. The court is at liberty to make orders increasing this level of cover.

7.1.6 Foreign IPs

Foreign IPs, who do not meet the residency requirement, but meet the independence and insurance requirements are able to accept appointments jointly with a Cayman Islands IPs. Such appointments assist in overcoming cross border issues when an entity is registered in the Cayman Islands, but its operations are conducted in a foreign jurisdiction.

7.2 IP Communications

7.2.1 Communicating with Creditors, Liquidation Committee and the Court

According to the Companies Law a function of an official liquidator is to report to the company's creditors or contributories on the affairs of the company and the manner in which it has been wound up.

Under the CWRs an IP is only required to convene a meeting of creditors once a year, however IPs are at liberty to do so whenever they consider appropriate, the court directs them or when a request is received from creditors whose debts exceed US\$500,000 or represent 5% of unsecured liabilities. Whilst there is no duty to do so, according to best practice standards an IP may furnish creditors with a report more frequently, whenever a meeting is convened to consider the status of the winding up.

The court will direct the official liquidator to prepare reports when it makes a supervision order, however, best practice is to communicate with creditors and contributories to keep them informed as circumstances change in the winding up.

According to the CWRs reports distributed by official liquidators must, unless relating to a discrete matter, provide creditors and contributories with an account and the information necessary to enable them to make an informed decision about the company's financial condition and their prospects of recovery, to the extent that it is reasonable to do so.

³ According to the Insolvency Practitioners Regulations 2008 (2010 Revision) relevant countries include England and Wales, Scotland, Northern Ireland, The Republic of Ireland, Australia, New Zealand and Canada.



In the Cayman Islands liquidation committee's are established in respect of every company which is wound up under the supervision of the court when there are at least three, but no more than five, creditors or contributories eligible and appointed to them. IPs are obliged to report to the liquidation committee and, in an effort to communicate with them in best practice, prudent IPs will seek to correspond with them frequently in an effort to share information and seek their views as to the conduct of the winding up.

The purpose of a liquidation committee is to represent the interest of creditors as a whole and their function is to consult, when asked, on certain matters and to consider the basis of the official liquidator's remuneration and disbursements.

To assist in discharging their purpose and function, the liquidation committee is entitled to appoint an attorney to give legal advice and the official liquidation may often have to communicate directly with them. Further, the reasonable expenses of the liquidation committee members (and creditors not on the committee in certain circumstances) may be paid from the assets of the company if approved by the court.