INSOL INTERNATIONAL

INSOLVENCY PRACTITIONERS GROUP

INSOLVENCY PRACTITIONERS' ROLES AND RESPONSIBILITIES - JURISDICTIONAL INSIGHTS

FOREWORD

INSOL International's Insolvency Practitioners Group (IPG) has decided to prepare a publication that explores the roles and tasks of insolvency practitioners in various jurisdictions. The result of IPG's research is contained in this publication.

Worldwide, insolvency practitioners have similar objectives: to provide all stakeholders with the best possible outcome from the restructuring / insolvency mandate. Interestingly, however, in practice, the manner in which insolvency practitioners operate can vary significantly from jurisdiction to jurisdiction. For instance, many jurisdictions have a myriad of options available which are geared to achieving a maximum payout to creditors. The question to address is whether these procedures are used regularly and are they effective in practice?

Other distinguishing factors include, the manner in which insolvency practitioners are appointed, to whom these office holders must report and how regularly, the effect that a restructuring would have on employees, suppliers and other related parties, the extent and ability to investigate the management and directors, the manner in which claims are dealt with both locally and cross-border and many other aspects which an insolvency practitioner must deal with in the fulfillment of his / her mandate. Other important aspects include what qualifications an insolvency practitioner must have to be able to practice, the need to belong to an accredited member association and the manner in which practitioners are remunerated.

This publication strives to provide a comprehensive overview of the issues stated above and provide answers to these questions in multiple jurisdictions. We hope the readers will find the information useful in their daily work.

Through its excellent network, INSOL International has identified seasoned experts around the globe who have been willing to contribute to this publication. This publication is the product of their hard work and efforts. A big thank you goes out to all the contributors for making this publication come to fruition. Much gratitude is also owed to Dr Sonali Abeyratne, Sarah Mylott and Jelena Wenlock for their invaluable support and assistance in getting this publication completed.

Christiaan Zijderveld
Project leader, INSOL Fellow
Houthoff, The Netherlands

Eric Levenstein
Chair, INSOL IPG
Werksmans, South Africa

February 2025

CONTRIBUTORS

INSOLVENCY PRACTITIONERS' ROLES AND RESPONSIBILITIES - JURISDICTIONAL INSIGHTS

Australia	Gayle Dickerson and Stephen Vaughan, KPMG
Brazil	Isabel Picot, INSOL Fellow and Rodrigo Garcia, INSOL Fellow, Galdino, Pimenta, Takemi, Ayoub, Salgueiro, Rezende de Almeida Advogados
Canada	Michael N W Baigel assisted by Jeremy Kroll and Noah Litwack, Baigel Corp.
Cayman Islands	Nicholas Fox and Jaclyn Pascoe, Mourant
England & Wales	Luke Wiseman, INSOL Fellow and Jim Tucker, Interpath Advisory
France	Gilles Podeur, Alerion Avocats
Germany	Dr Stephan Degen, Heuking Kühn Lüer Wojtek PartGmbB
Guernsey	Andrea Harris, INSOL Fellow and Owen Thomas, Grant Thornton
Hong Kong	Alexander Tang, INSOL Fellow, Stephenson Harwood
India	Suharsh Sinha, Saloni Thakkar, Sakshi Bangar and Jay Kothari, AZB & Partners
Jersey	Stephen Alexander and Andrew Bridgeford, Mourant
Nigeria	Okorie Kalu, INSOL Fellow and Nnamdi Ben-Igwenyi, Punuka Attorneys & Solicitors
People's Republic of China	Ran Chen, Shanghai Lang Yue Law Firm (Allen & Overy LLP's joint operation partner in China)
Singapore	Angela Ee and Richard Gardner, EY Parthenon
South Africa	Anneke Barnard, BDO Business Restructuring (Pty) Ltd
The Netherlands	Christiaan Zijderveld, INSOL Fellow and Joost den Hollander, INSOL Fellow, Houthoff
UAE	Haroon Ahmed, Paul Leggett and Jennifer Frenis, Deloitte
USA	John S. Mairo, Esq. INSOL Fellow, Porzio, Bromberg & Newman, P.C. and Allen D. Wilen CPA/CFF, CFA, CIRA, INSOL Fellow, EisnerAmper, LLP

INSOLVENCY PRACTITIONERS' ROLES AND RESPONSIBILITIES - JURISDICTIONAL INSIGHTS

CAYMAN ISLANDS

1. Insolvency procedures

1.1 What drives the decision in your jurisdiction to use certain insolvency procedures?

There are a number of corporate insolvency procedures available in the Cayman Islands under Part V of the Cayman Islands Companies Act (2023 Revision) (the Companies Act). The best procedure to use in the circumstances will largely depend on who is bringing the proceedings, what their objective is and whether the company is considered solvent under Cayman Islands law.

An insolvent company will need to decide whether to attempt a restructuring or wind itself up. If it wishes to perform a restructuring and it is insolvent, the best method is to appoint a restructuring officer to propose a compromise or arrangement to the companies' creditors and/or members. The filing of a petition for the appointment of a restructuring officer gives rise to an automatic global moratorium on claims against the company, giving the company the breathing room to implement a restructuring. As set out below, the moratorium does not affect security interests.

Companies can also petition to be wound up by the court on any of the grounds for compulsory liquidation as set out in the Companies Act, including but not limited to insolvency.

Alternatively, if the company is solvent, a company may resolve that it be wound up voluntarily.

The choice of procedure for a creditor will depend on whether that creditor holds a security interest or not. The Companies Act explicitly sets out that a secured creditor may enforce their security without the leave of the court and notwithstanding a petition or order to appoint a restructuring officer or official liquidator.

A secured creditor may also want to consider receivership as a means of enforcing its security. The appointment, powers and role of the receiver will be governed by the relevant security document.

Any creditors (including contingent or prospective creditors) can petition for the compulsory winding up of a company on the grounds set out under the Companies Act including, *inter alia*, that 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.

A member or contributory of a company also has standing to present a petition for the winding up of a company, as long as they have sufficient economic interest in its winding up. Normally such petitions are brought on the just and equitable ground.

The Cayman Islands Monetary Authority (CIMA) as the regulator can also bring insolvency proceedings in respect of companies carrying on a regulated business. CIMA has the standing to appoint a controller to take control of a company or to petition for the winding up of any regulated company pursuant to Cayman Islands regulatory laws. Controllership appointments often end in official liquidation.

1.2 Are certain procedures listed but hardly ever used for a corporate insolvency? If so, what are the reasons for non use of these procedures?

Receiverships have not, traditionally, been used as frequently in the Cayman Islands. However, market perception appears to be shifting and receiverships continue to offer a valuable alternative to the formal insolvency procedures for enforcement by secured creditors.

Whilst not, strictly speaking, a procedure used for corporate insolvency, the appointment by the court of inspectors to examine the affairs of any company and report thereon can be a useful remedy when the requisite number of shareholders (one-fifth; or one-third in the case of a banking company) obtains it. However, as recent cases have shown, this remedy is normally only available where good grounds for suspicion of misconduct or mismanagement can be shown.

1.3 For those procedures that are used more often, what are the foremost reasons to use the procedures?

- Is it an immediate liquidity event,
- a foreseeable liquidity event (but not yet immediate) or
- do you see other drivers (e.g. incentives for directors to file for administration to avoid insolvent trading liability)?

1.3.1 Appointment of a restructuring officer

As mentioned above, a Cayman Islands company may present a petition to the court for the appointment of a restructuring officer on the grounds that the company is, or is likely to become, unable to pay its debts and intends to present a compromise or arrangement to its creditors. The reason to use this procedure is to carry out a restructuring where the company is insolvent.

The restructuring officer regime came into force on 31 August 2022. This is unsurprising, as the filing of a petition for the appointment of a restructuring officer gives rise to an automatic global moratorium on claims against the company without commencing winding up proceedings. Previously, the Cayman Courts adapted the provisional liquidation process to allow a moratorium on claims against the company to implement a restructuring. However, as a precedent step before being able to apply for the appointment of a provisional liquidator, it was necessary to present a winding up petition against the company. This use of the winding up petition tended, in some quarters, to be perceived in a negative light which, in turn, limited its popularity as a restructuring process. Therefore, the key reason to use the restructuring officer petition procedure is that it avoids having to present a winding up petition and it imposes a global moratorium on claims immediately.

The restructuring officer regime provides the Cayman Islands with a number of additional benefits, including:

- a modern, flexible restructuring process, including the ability for the company to easily commence restructuring proceedings;
- easier earlier foreign recognition of the restructuring proceedings; and
- the ability to have a debtor-in-possession process.

In addition, the safeguards afforded in the legislation and through the restructuring officer, should enable the Cayman Islands to continue to facilitate high value, complex corporate restructurings.

1.3.2 Voluntary liquidation

A Cayman Islands company may be voluntarily wound up:

a) upon the expiry of the period fixed for the duration of the company in the company's founding documents;

b) upon the occurrence of an event on which the company's founding documents provide that the company is to be wound up;

c) if the company resolves by special resolution that it be wound up voluntarily; or

d) if the company in a general meeting resolves by ordinary resolution that it be wound up voluntarily because it is unable to pay its debts.

The Cayman Islands voluntary liquidation regime provides a well-established, simplified and cost effective out of court procedure for the dissolution of a solvent company. While voluntary liquidations are not court supervised, the voluntary liquidator or any contributory is able to apply to the court to determine any question arising in the voluntary liquidation.

As mentioned above, a company in voluntary liquidation unable to file a declaration of solvency in the requisite period will be required to petition to the court for the liquidation of the company to continue under the supervision of the court.

1.3.3 Official liquidation

A Cayman Islands company may be wound up by the court if:

a) the company has passed a special resolution for its own winding up by the court;

b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

c) the period fixed for the duration of the company by the articles of association expires, or on the occurrence of an event upon which the articles of association provides that the company is to be wound up;

d) the company is unable to pay its debts; or

e) the court is of the opinion that it is just and equitable that the company should be wound up.

The Companies Act, at section 93, explicitly sets out a definition for inability to pay debts.

A company shall be deemed to be unable to pay its debts if:

a) a company has failed to satisfy a statutory demand (i.e. failed to pay a creditor for an amount owing that exceeds KYD 100 for a period of more than three weeks following the service of the statutory demand);

b) a company has failed to fully satisfy a judgment debt; or

c) it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

It is well established that for the purposes of section 93(c) of the Companies Act, the legal test for solvency is on a cash flow basis, taking into account not only debts that are immediately due and payable, but also debts which will become due in the reasonably near future.

As mentioned previously, a winding up order brings into force an automatic moratorium and no suit, action or other proceedings, other than criminal proceedings, can be proceeded with or commenced against the company except with the leave of the court.

The Cayman Courts are well versed in supervising complex cross-border winding up proceedings and the Cayman Islands official liquidation regime is designed to protect the interests of the stakeholders and ensure the maximum possible benefit for the ultimate beneficiaries in the liquidation.

1.3.4 Provisional liquidation

The Cayman Courts may, at any time after the presentation of a winding up petition, but before the making of a winding up order, appoint a provisional liquidator. An application for the appointment of a provisional liquidator may be made by a creditor or contributory on the grounds that:

a) there is a *prima facie* case for making a winding up order; and

b) the appointment of a provisional liquidator is necessary in order to:

(i) prevent the dissipation or misuse of the company's assets;

(ii) prevent the oppression of minority shareholders; or

(iii) prevent mismanagement or misconduct on the part of the company's directors.

The company may also apply for the appointment of a provisional liquidator on the broad basis that it is appropriate to do so.

The appointment of a provisional liquidator triggers an automatic moratorium providing a stay against creditor proceedings which protects the assets of a company as an interim measure pending the hearing of the winding up petition.

1.4 In practice, is the role that the IP has or can play, a factor that is of relevance when determining whether or not to apply for certain types of insolvency procedures?

Sometimes, the level of control played by an IP or continued to be played by a company's board can influence the form of restructuring officer appointment order sought. Not uncommonly, there is demand for a 'light touch' appointment where the IP has a supervisory capacity, but certain day-to-day responsibilities remain with the board.

1.4.1 Restructuring officer

Under the Companies Act, a restructuring officer appointed by the court shall have the powers and carry out only such functions as the court may confer on the restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company. The powers of the restructuring officer, and the extent to which the restructuring officer's appointment will affect and modify the powers and functions of the board of directors, is therefore not prescribed and will be determined by the appointment order, leaving room for flexibility. The court is also empowered to impose any conditions on the board of directors in relation to the exercise of its powers and functions, as the court considers appropriate. This flexible approach means that a 'light touch' / debtor-in-possession restructuring is possible. It is also possible for the company, the restructuring officer, a creditor, a shareholder, or CIMA, to apply to the court at any time for a variation or discharge of the order appointing the restructuring officer.

1.4.2 Voluntary liquidator

In the case of a voluntary winding up, the company shall from the commencement of its winding up cease to carry on its business except in so far as it may be beneficial for its winding up. The company's corporate state and powers shall continue until the company is dissolved. On the appointment of a voluntary liquidator all the powers of the directors cease, except so far as the company in a general meeting or the liquidator sanctions their continuance. Any person, including a director or officer of the company, may be appointed as its voluntary liquidator.

1.4.3 Official liquidator

In the case of an official liquidation, the liquidator steps into the shoes of the directors and takes control of the company. It is the function of an official liquidator to collect, realise and distribute the assets of the company to its creditors and, if there is a surplus, to the persons entitled to it; and to report to the company's creditors and contributories upon the affairs of the company and the manner in which it has been wound up. In order to carry out this function, the Companies Act provides official liquidators with broad investigative and dispositive powers. Schedule 3 of the Companies Act sets out which powers an official liquidator may exercise without court sanction and which powers require an order of the court sanctioning the liquidator to exercise them.

1.4.4 Provisional liquidator

A provisional liquidator can only carry out such functions the court has conferred on the provisional liquidator and powers of the provisional liquidator will be limited by the appointment order.

2. Appointment

2.1 Aside from formal qualifications, are there any "soft" requirements in order to be able to take appointments as an IP? For instance, does an IP need to have gained prior experience in another field or under the supervision of a more seasoned IP?

To qualify for appointment as a restructuring officer or an official liquidator (which includes a provisional liquidator) an IP must satisfy the professional qualification, residency, independence, and insurance requirements as set out in the Insolvency Practitioners' Regulations (2023 Consolidation) (as amended) (the Regulations).

2.1.1 Professional qualification requirement

A person shall be qualified to accept appointment by the court as official liquidator or restructuring officer of any company only if:

a) that person is licensed to act as an IP in a *relevant* country; or

b) that person is qualified as a professional accountant by an approved institute, is in good standing with such institute, has a minimum of five years' relevant experience and is credited with not less than 2,500 chargeable hours of relevant work.

The list of 'relevant countries' includes England and Wales, Scotland, Northern Ireland, the Republic of Ireland, Australia, New Zealand, and Canada.

2.1.2 Residency requirement

A qualified IP must:

a) be a resident of the Cayman Islands (albeit that, in the case of joint restructuring officer or liquidator appointments, the court can appoint one foreign IP as long as it also appoints one domestic IP); and

b) hold a trade and business licence which authorises that person or that person's firm to carry on business as professional IPs.

2.1.3 Independence requirement

A qualified IP must be properly regarded as independent as regards that company. An IP shall not be regarded as independent if, within a period of three years immediately preceding the commencement of the liquidation, that person, or the firm of which that person is a partner or employee, or the company of which that person is a director or employee, has acted in relation to the company as its auditor.

2.1.4 Insurance requirement

A qualified IP must have professional indemnity insurance in accordance with the limits prescribed in the Regulations.

There are no qualification requirements to be appointed as a voluntary liquidator. Any person, including a director of the company, may be appointed as its voluntary liquidator.

2.2 Does the appointing body take prior experience into consideration when appointing an IP?

The court appoints restructuring officers, provisional liquidators and official liquidators. Once the relevant IP has met the requirements outlined at 2.1 above, the appointment is within the discretion of the court. The court will ensure that the relevant IP or their firm is equipped to deal with the proceedings before making such an appointment.

2.3 If stakeholders do not appoint the IP, can stakeholders influence who gets appointed?

If so, how does this work in practice?

A stakeholder can nominate their chosen appointee to be appointed as the IP. This is normally provided for in the relevant petition. The ultimate appointment is however still within the court's discretion and, in exercising that discretion, the court will have regard to the wishes of those with the true economic interest in the company. The court can also appoint more than one IP to act jointly or to perform a specific role in the proceedings.

2.4 How does your jurisdiction safeguard that an IP is impartial? Are there any conflict rules and independence requirements, or restrictions on accepting an appointment? If so, how do they work in practice?

As set out above, the Regulations stipulate specific independence requirements. A qualified IP must be properly regarded as independent as regards the company. Any obvious conflict of interest would prohibit the IP from acting. The Regulations specifically state that an IP shall not be regarded as independent if, within a period of three years immediately preceding the commencement of the liquidation, that person (or their firm) has acted in relation to the company as its auditor.

If, at any stage (prior to or post-appointment) any stakeholder has concerns regarding a potential lack of impartiality, then there are established mechanisms through which such concerns can be raised with the court and appropriate orders sought, which could include an alternate appointment.

3. Dismissal

3.1 Assuming that an IP can be dismissed upon the request of a creditor (or the debtor), in what circumstances can a request be made and how does this practically work?

3.1.1 Restructuring officer

The company acting by its directors; a creditor of the company, including a contingent or prospective creditor; a shareholder of the company; or CIMA, can apply to the court for an order to remove the restructuring officer from office and appoint an alternative restructuring officer.

A restructuring officer who has been removed and replaced shall prepare a report and accounts for the replacement restructuring officer, within 21 days of the date of removal and replacement.

3.1.2 Voluntary liquidator

A voluntary liquidator can be removed from office by a resolution of the company in a general meeting convened for that purpose. A general meeting for the purpose of considering a resolution to remove the voluntary liquidator of a company may be convened by any shareholder or shareholders holding not less than one fifth of the company's issued share capital.

Regardless of whether or not a general meeting has been convened by the company, any shareholder may apply to the court for an order that a voluntary liquidator be removed from office on the grounds that the voluntary liquidator is not a fit and proper person to hold office.

3.1.3 Official liquidator

Only a creditor or contributory of the company can apply to court, by way of summons, for an order to remove an official liquidator from office. A removal summons must nominate a qualified insolvency practioner to be appointed in succession to the removed liquidator.

The summons must be served on the official liquidator, each member of the liquidation committee (if established), counsel for the liquidation committee (if any), and any other creditors or contributories as directed by the court. The official liquidator must be given at least 14 days' notice of a summons for their removal.

An official liquidator who is removed from office by order of the court must deliver the company's books and records and a copy of their liquidation files to their successor. The official liquidator being removed must also, within 28 days, prepare a report and accounts.

3.2 Does dismissal occur often? If so, what are the consequences (if any) for the IP being dismissed?

No, such is the quality of the profession and of levels of performance in the Cayman Islands that dismissals are rare in practice.

The consequences for the IP being dismissed are the reporting and accounting obligations discussed at 3.1 above.

3.3 How easy or difficult is it to hold an IP accountable in your jurisdiction and what other measures are available to do so?

The court exercises its supervisory jurisdiction closely and attentively. In almost all cases, concerned stakeholders have a straightforward route to lay any legitimate concerns before the court, and can be assured that it will make appropriate orders, in the best interests of the economic stakeholders of any company.

4. Role of the IP

4.1 Aside from the formal / statutory requirements, how does an IP – in practice – perform their role? Is the IP 'self-starting' with a focus on (for instance) realising assets or is the IP more prone to await and act upon instructions by creditors or the court?

IPs in the Cayman Islands are equipped with the powers needed to be 'self-starting' and act in the best interests of the ultimate stakeholders in the insolvency proceedings. They are proactive in seeking to preserve value and realise the maximum possible benefit for the stakeholders. Notwithstanding this, IPs can apply to the court to determine any question, or seek sanction of any power required, which arises in the course of carrying out their functions and duties.

It is the duty of the IP to act for the benefit of the body of stakeholders as a whole and not for any one particular stakeholder. As such an IP will not take directions from an individual creditor or contributory and the wishes of the body of stakeholders as whole will be taken into account. In a liquidation, this is often assisted by establishing a liquidation committee to act as a representative body of the company's stakeholders. The liquidation committee is also tasked with reviewing the official liquidator's remuneration, and in doing so will consider the reasonableness of the actions taken by the official liquidators. In practice, it is likely that the views of the larger stakeholders will be given greater weight by the IP in deciding upon a course of action.

4.2 Do IPs have much leeway to determine the manner in which they perform their tasks?

Provided the IP is acting within their powers, and in the best interests of the company's stakeholders, the IP has a broad discretion to determine the manner in which they perform their functions. As mentioned at 4.1 above, the liquidation committee can challenge the reasonableness of any activity undertaken by an official liquidator. If any work or activity undertaken is determined to be unreasonable, then the liquidator may not be able to recover their remuneration for this work.

5. Investigations

5.1 Does an IP also have an inquisitive role?

Yes. The Companies Act explicitly provides a liquidator with investigatory powers.

5.2 Does the IP have an obligation to conduct investigations, or is the IP otherwise generally prone to investigate issues surrounding the insolvency and institute claims as a matter of practice? If so, how often does this occur and is an IP often successful?

The liquidator has investigative powers not express duties per se. However the liquidator is an officer of the court and to effectively carry out the function of an official liquidator it will almost always be necessary for the liquidator to thoroughly investigate the affairs of the company. IPs are generally very experienced in pursuing litigation and have a good success rate in pursuing claims.

6. Supervision

6.1 How on a practical level is supervision of an IP organised?

6.1.1 Restructuring officer

The court will keep close supervision of restructuring officers. Unless the court orders otherwise, the restructuring officer is required to send a detailed report to the court and the company's stakeholders within 28 days of their appointment.

6.1.2 Voluntary liquidator

As detailed at 7.1 below, a voluntary liquidator is required to prepare and circulate reports and accounts to the company's members, and on request to any creditor of the company whose debt has not been paid in full. This includes, annual reports and accounts, a final report and accounts and any other reports and accounts that the voluntary liquidator considers appropriate.

6.1.3 Official liquidator

It is the function of the liquidator to report to the relevant stakeholders, the liquidation committee, the court, and to CIMA in circumstances where the company carries on a regulated business. As set out previously, certain powers can only be exercised by the liquidator with court sanction. The liquidation committee will also review, and where appropriate challenge, the reasonableness of a liquidator's work when reviewing their remuneration.

6.2 Is the supervising body sufficiently equipped to perform its role and do IPs experience that they are genuinely supervised?

Under statute and the court's inherent jurisdiction, the court has broad and flexible powers, and is sufficiently equipped to supervise IPs in the jurisdiction.

6.3 Do stakeholders have sufficient ability to act against or correct the IP if and when this is deemed necessary? If so, how is this achieved?

The liquidation committee can make representations to the liquidator on behalf of the general body of stakeholders and can dispute the reasonableness of work undertaken by the liquidator, which could ultimately mean that the liquidator could forfeit remuneration for that work. Stakeholders can also make an application to the court to act against or provide directions to the liquidator, as the court is the ultimate supervising authority over the liquidation and the liquidator.

7. Disclosure obligations

7.1 Assuming that an IP is obliged to make (periodic) public disclosures for the benefit of creditors / interested parties, do these public disclosures provide sufficient insight into how the insolvency matter is developing? Are they sufficiently detailed and accurate?

7.1.1 Restructuring officer

Unless the court orders otherwise, a restructuring officer shall send a report to every creditor and contributory, and in the case of a regulated entity, to CIMA. The Companies Winding Up Rules (2023 Consolidation) (the CWR) stipulates that the report must (unless ordered otherwise) include details of:

- the steps already taken and the further steps intended to be taken in the restructuring;
- the financial position of the company at the latest practicable date;
- the work done by or on behalf of the restructuring officer and the amount of remuneration claimed by that restructuring officer;
- such other information which is required in order to provide the stakeholders with a proper understanding of the company's affairs, financial position and proposed restructuring; and
- such other matters as the court may direct.

7.1.2 Voluntary liquidator

The voluntary liquidator shall prepare reports and accounts with respect to the voluntary liquidator's conduct of the liquidation and the state of the company's affairs. The voluntary liquidator's reports and accounts shall be sent to the company's members together with notice of a general meeting convened for the purpose of considering and, if thought fit, approving such report and accounts. The voluntary liquidator shall, on request, send copies of their reports and accounts to any creditor of the company whose debt has not been paid in full.

The voluntary liquidator's report shall constitute a narrative description and analysis of the steps taken and, the case of an interim report, the further steps intended to be taken in the liquidation.

The voluntary liquidator's report and accounts should provide the company's members with all the information necessary to enable them to make an informed decision about the company's financial condition.

7.1.3 Official liquidator

It is the duty of the official liquidator to report to the members of the liquidation committee all such matters as appear to the official liquidator to be, or as the members have indicated to the official liquidator as being, of concern to them with respect to the winding up. The official liquidator is entitled to refuse to comply with a request for information where it appears to the official liquidator that the request is frivolous or unreasonable; the cost of complying would be excessive, having regard to the relative importance of the information; or there are insufficient assets to enable the official liquidator to comply.

The official liquidator is also obliged to report to contributories, where the company is solvent, or the creditors, where the company is insolvent, or both where the company is of doubtful solvency.

The CWR provide that the official liquidator shall report on:

- the steps taken in the liquidation since the date of the winding up order or the date of the previous report;
- matters which are relevant to any resolutions intended to be put to the next meeting of stakeholders;
- any matters on which the official liquidator is asked to report on by the liquidation committee;
- any matters on which the official liquidator is directed to report on by the court;
- any matters on which the official liquidator seeks a direction of the court; and
- any other matters which, in the opinion of the official liquidator, are or ought to be of concern to the contributories or creditors of the company.

The CWR also prescribes that the official liquidator's accounts are to be very detailed and include:

- the nature and estimated realisable value of the company's assets;
- any security over the company's assets;
- the nature and amount of the company's income and liabilities;
- the expenses of the liquidation;
- the amount of liquidator's remuneration approved by the court;
- the work done by or on behalf of the official liquidator and the amount of remuneration claimed by the official liquidator;
- the distributions made to creditors and contributories; and
- such other information which is required in order to provide the stakeholders with a proper understanding of the company's affairs and financial position.

The CWR explicitly state that, except in the case of a report relating to a discrete matter, every official liquidator's report and accounts shall provide the company's stakeholders with the information necessary (when read with previous reports) 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 reasonably possible to do so.

8. Influence by creditors

8.1 Assuming that creditors' committees can be formed, do they in practice have sufficient ability to oversee and / or influence the process? If so, how?

Liquidation Committees (which are populated solely by creditors in the case of an insolvent liquidation) are a valuable sounding board, whose presence is helpful for liquidators. They are routinely placed on notice of applications made in liquidation proceedings, which provides another level of oversight and the ability to flag any concerns directly with the Cayman Court, in appropriate cases.

9. Remuneration

9.1 Is IP remuneration an issue in your jurisdiction? If so, are IPs insufficiently remunerated?

The remuneration of an official liquidator and restructuring officer is governed by the Regulations. Remuneration is comparable with other leading offshore jurisdictions. An official liquidator or restructuring officer is not entitled to receive any remuneration without the prior approval of the court.

An official liquidator or restructuring officer may be remunerated on the basis of:

a) the time spent by the official liquidator / restructuring officer and their staff upon the affairs of the insolvency proceeding; or

b) a percentage of the amount distributed to creditors and members of the company; or

c) a percentage of the amount realised upon the sale of the company's assets; or

d) a fixed fee; or

e) a combination of some or all of the above.

9.1.1 Restructuring officer

The remuneration of a restructuring officer shall be approved on an application to the court. The application may be made *ex parte* and determined on the papers but the court may order that the application be served on the company's stakeholders.

9.1.2 Official liquidator

While the basis and rates of remuneration are agreed in a remuneration agreement, it is not uncommon for liquidation committees, or in the absence of a liquidation committee, the creditors or contributories, to object to the reasonableness of particular items of work undertaken by an official liquidator, if they consider that such work should not have been undertaken.

9.1.3 Voluntary liquidator

The basis and amount of a voluntary liquidator's remuneration shall be authorised by resolution of the company. The company may resolve to remunerate the voluntary liquidator on the basis of:

a) an hourly rate (or scale of rates) for the time reasonably and properly devoted to the liquidation;

b) a fixed sum;

c) a commission or percentage of the assets distributed or realised; or

d) a combination of these methods.

9.2 Are IP fees something stakeholders can object to?

9.2.1 Restructuring officer

Stakeholders are entitled to object to the fairness or reasonableness of the restructuring officer's remuneration.

Where the remuneration of a restructuring officer has been approved by creditors and / or members by approval of the compromise or arrangement, there is a rebuttable presumption that the remuneration of the restructuring officer is fair and reasonable.

9.2.2 Voluntary liquidator

The voluntary liquidator shall not be entitled to receive payment of any remuneration out of the company's assets without the prior approval of a resolution passed at a general meeting of the company except that the amount of remuneration specified in the voluntary liquidator's final report and accounts may be paid if the final general meeting has been duly convened but no member attends and votes either in person or by proxy. Any remuneration may be paid with the court's approval.

9.2.3 Official liquidator

While the basis and rates of remuneration are agreed in a remuneration agreement, it is non uncommon for liquidation committtees, or in the absence of a liquidation committee, the creditors or contributories, to object to the reasonableness of particular items of work undertaken by an official liquidator, if they consider that such work should not have been undertaken.

9.3 Are there any means for an IP to obtain state funding for remuneration and / or investigations?

The relevant rules and legislation do not provide for state funding and there do not appear to be any cases where state funding was obtained.