

CAYMAN ISLANDS



FINANCIAL SERVICES DIVISION

**PROCEDURE RELATING TO THE COMMENCEMENT AND
MANAGEMENT OF FINANCIAL SERVICES PROCEEDINGS**

(PD 2 of 2022)

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PRACTICE DIRECTION No.2 of 2022
(Revoking and replacing Practice Direction No.1 of 2021)

(GCR 0.1, R.12)
(GCR.0.72)

FINANCIAL SERVICES DIVISION
PROCEDURE RELATING TO THE COMMENCEMENT
AND MANAGEMENT OF FINANCIAL SERVICES PROCEEDINGS

1. Appointment of Registrar of the FSD

1.1 With effect from February 2016, Mrs. Shiona Allenger, the Clerk of the Court was also designated as the Registrar of the FSD (appointed pursuant to Rule 2(1) of the Grand Court (Amendment) Rules 2009) and became directly responsible for administrative case management as the focal contact person for attorneys and other persons doing business with the FSD.

With effect from 30 October 2020 Mrs Bridget Clare (nee Myers) was appointed Acting Registrar of the FSD. The FSD Registry will continue to fall under the supervision of the Clerk of Courts and Mrs Clare with Mrs Clare being the first person to contact.

1.2 All communications with the FSD Registry should be –

- (a) by hand delivery at the FSD Registry, 3rd Floor, Kirk House; or
- (b) by e-mail addressed to bridget.clare@judicial.ky and/or shiona.allenger@judicial.ky
- (c) by telephone 244 3808.

1.3 References hereinafter to the Registrar will include the Acting Registrar and *vice versa* as circumstances may require.

2. Assignment of proceedings to a Judge of the FSD

- 2.1 It is the responsibility of the Registrar, acting on the directions of the Chief Justice, to assign every financial services proceeding, as defined in GCR 0.72, 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's or plaintiff's attorney to provide the Registrar with any and all information which appears 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 day following the day on which the originating process is filed at the FSD Registry.
- 2.5 The Registrar will ensure that the docket of the financial services proceedings assigned to each Judge of the FSD is kept up to date and circulated weekly to the Chief Justice.
- 2.6 Attorneys are reminded that GCR 0.72, r. 2(6) 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 Mrs Yasmin Ebanks will continue to serve as Listing Officer for the Grand Court including the FSD and will continue to make Listings in consultation with the Acting Registrar of the FSD.
- 3.2 Listing for FSD cases will be primarily managed by the Acting FSD Registrar in liaison with the Listing Officer. All requests for FSD listings must be made by email addressed to Bridget.Clare@judicial.ky or to Shiona.Allenger@judicial.ky, copied to Yasmin.Ebanks@judicial.ky.
- 3.3 For the purposes of this Practice Direction the expression "hearing" shall continue to 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 All applications whether made by summons or by letter (where the application is for a matter to be taken on the papers in keeping with FSD Users Guide Section BI) must be filed with the FSD Registry and the appropriate fees paid before presentation to the judge.
- 3.6 Practice Direction #1/2000 (Listing Forms) does not apply to the FSD.
- 3.7 Notwithstanding that a primary objective of the FSD is to ensure the availability of judges, the Registry of the FSD and Listing Officer are 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 0.72, r.4(3).
- 3.8 In the case of trials or other potentially lengthy hearings, the assigned judge in consultation with the Acting Registrar and Listing Officer, will normally fix the hearing date at the hearing of a summons for directions or at a CMC in which all parties' attorneys (and their leading counsel) will be required to participate.
- 3.9 The Acting Registrar in conjunction with the Listing Officer 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 Act) the petitioner's attorney is required (pursuant to GCR 0.102, 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 Registrar 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 0.15, 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 (in consultation with the Registrar) 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 Applications made by a company or one of its members, which are governed by GCR 0.102, r.17, are determined by the Registrar of the FSD and Form Nos. 66

and 67 should be amended accordingly.

6.2 If the Registrar decides, pursuant to GCR 0.102, 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 0.102, r.18, will continue to be heard in open court by a judge of the FSD.

6.4 At the same time as referring 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 other officeholder (hereinafter "officeholder) for a direction, pursuant to Rule 6(4) of the Court Fees Rules (2021 Revision), that payment of court fees be deferred, must be made to the assigned judge.

7.2 Such applications should be made by letter signed by the officeholder personally, addressed to the assigned judge and sent to the Registrar.

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

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

7.5 The purpose of Rule 6(4) of the Court Fees Rules 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 officeholder 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 officeholder'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.
- 7.8 As court fees must be paid in priority to other claims including a liquidator's remuneration, an officeholder will be obliged to ensure the payment of court fees in keeping with that priority. Court fees deferred are a debt owed to the Government and will be enforceable as such

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 pursuant to Rule 6(5) of the Court Fees Rules (2021 Revision) for a direction that two or more separate proceedings governed by the Companies Act and the Companies Winding Up Rules or GCR 0.102 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 (2021 Revision) must be made to the Registrar.
- 8.2 Such applications shall 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.
- 8.4 In deciding upon an application under Rule 6(5) the assigned judge will have regard to the fact that the filing of each proceeding will have engaged the time and effort of the Registrar and support staff and whether instead of ordering that only one set of fees shall be payable, the additional fees paid or some reasonable proportion of them,

shall be applied to cover fees which will be due for the hearing of the consolidated proceeding going forward.¹

9. Case Management Conferences

- 9.1 Without prejudice to the requirements of 0.72, r.4 (2), the assigned judge may convene a CMC whenever he or she 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 video conference or telephone call, the Registrar will direct the IT Department to set up the call and circulate the log-in instructions to the Judge and all the parties. Where the CMC takes the form of a telephone call, the Registrar will direct one of the parties (usually the applicant) 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 video conference (or telephone) CMCs requires that all participating attorneys (apart from leading counsel or foreign lawyers who may participate remotely) must be present in the court room or Judge's chambers and be on line before the appointed time, so that the Judge will be the last person to join the conference, whereupon he or she will ask all the participants to identify themselves.

Where the CMC will not be determinative of substantive issues, the Judge may, in advance to the hearing, dispense with the need for the attorney(s) to be present at Court and, in which event; the other provisions of this practice direction will apply accordingly.

- 9.5 Video conference (or telephonic) CMC's may not be recorded without the consent of the Judge. If the Judge permits or directs that the CMC be recorded, he will direct that a written transcript be prepared, sent to the judge for approval and circulated amongst the parties. Whenever a CMC is not recorded, the note taken or approved by the Judge will constitute the official record.
- 9.6 Hearing dates may be fixed by the Judge during the course of a CMC and, in

¹ Direction 8.4 recognises the authority given by Rule 6(5) (with the approval of Cabinet) for the ordering of abatement of fees while also recognising that section 41(ba) of the Public Management and Finance Act (2018 Revision) provides that "A ministry or portfolio shall not - (ba) waive any revenues".

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 other 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.
- 10.3 As explained at [11] of Practice Direction 6 of 2020 Trials of any FSD cause or matter or any question or issue arising therein, may take place in the United Kingdom. This will continue until further notice.
- 10.4 Practice Directions 6 and 6A of 2020 will continue to apply generally to FSD causes or matters until further notice.

11. This Practice Direction shall come into force on the 13th day of April, 2022. With effect from 13th day of April, 2022 Practice Direction No. 1 of 2021 is revoked.



Hon Anthony Smellie
Chief Justice

12 April 2022