



## Practice Direction No.3 of 2015 – direction on administration and liquidation costs and procedure

Service area / [Dispute Resolution and Litigation](#)

Location / [Guernsey](#)

Date / [August 2015](#)

The Royal Court of Guernsey has issued a Practice Direction pertaining to the information required when applying for the appointment of an administrator or liquidator in Guernsey.

### The practice direction

The Companies (Guernsey) Law 2008 (as amended) (the 2008 Law) governs corporate insolvency proceedings in Guernsey. It provides that the remuneration of insolvency office holders be “fixed by the Court”. Historically, the established practice in applications of this type was for fees to be fixed by reference to a schedule of hourly rates provided by the office holder with a detailed fee statement being examined at the conclusion of the process. In many cases, detailed statements were prepared in accordance with the English Statement of Insolvency Practice number 9 (SIP9).

Going forward, the Royal Court has decided that further clarity in respect of the likely fees of office holders is required at the outset of the insolvency process. Accordingly, Practice Direction No. 3 of 2015, issued on 19 August 2015 requires:

- an estimate of the total fees to be charged by the administrator or liquidator together with an indication of the nature of any other expenses likely to be incurred, for example, legal fees;
- a statement that a creditor or group of creditors has agreed to underwrite the fees and expenses without charge to any other creditor;
- in exceptional circumstances, an explanation as to why it is impossible to estimate all or some of the fees and expenses at the time of the application.

In addition to the above fee-related requirements, all applications are required to include a description of the nature of the work to be undertaken, both inside and outside of the Bailiwick of Guernsey.

The Practice Direction does acknowledge that, in complex insolvencies, the provision of such estimates may be onerous or impractical. The Practice Direction allows the appointed administrator or liquidator to apply to the Royal Court for a variation of the estimate if necessary or, if additional information comes to light which will make a significant difference to the work involved or the total costs. Such an application must be supported by a statement explaining why an uplift is necessary.

### Discussion

The Practice Direction may be seen as an additional burden in the process for the appointment of insolvency office holders. However, it arrives against a background of increased scrutiny of the proposed fees of office holders by the Court, usually at the first hearing of any application. In some cases a fee cap had been imposed by the Court at those hearings without any prior warning leading to confusion for appointees, following appointment, if caps were exceeded.

In that regard, the Practice Direction brings welcome clarity to the process, although it will undoubtedly increase the burden placed upon potential appointees in advance of their appointment. It is hoped that in cases of significant complexity, the Court will adopt a pragmatic view in relation to the workability of a fixed or capped fee. The Practice Direction’s intention is certainly to assist creditors by ensuring complete transparency on the fees and expenses charged in insolvency proceedings.

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It is also encouraging that the Practice Direction envisages that applications for an increase in the fee cap/estimate will be kept as simple as possible. In particular, it is hoped that hearings will not be necessary in most cases and that the Court will be able to determine these on the papers in light of a report provided by the office holder. Carey Olsen is currently engaged in assisting a liquidator with what may be the first application of this kind and it is envisaged that with the requisite planning, the office holder will be able to make that application (as an officer of the Court) without the need to formally engage an advocate leading to significant cost saving to the insolvent estate.



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