PART 54 Insolvency Proceedings

PART 54

Construction and interpretation 54.1 - 54.3

54.1

In this Part:

"block transfer order" has the meaning in Rule 54.228;

"the Companies Law" means the Companies Law 2009;

"the Court Law" means the DIFC Courts Law 2004;

"insolvency proceedings" means any proceedings under the Law, the Regulations or this Part of these Rules ;

"the Law" means the Insolvency Law 2009;

"office-holder" means in relation to insolvency proceedings any person who by virtue of any provision of the Law or the Regulations holds an office in relation to those proceedings;

"outgoing office-holder" has the meaning in Rule 54.227;

"the petitioner" or "the petitioning creditor" includes, in winding up, any person who has been substituted as such, or has been given carriage of the petition;

"the Regulations" means the Insolvency Regulations 2009 (and any reference to a numbered regulation is to that regulation within the Regulations);

"replacement office-holder" has the meaning in Rule 54.227; and

"substantive application" is that part of the application in Rule 54.230(1) and 54.230(2)

54.2

For the purposes of this Part a "Company" includes:

54.2.1 a Recognised Company in respect of which a winding-up order is sought or which is being wound up by the Court pursuant to Part 6 of the Law save as otherwise provided or the context otherwise requires; and

54.2.2 a Foreign Company where and insofar as the context requires.

54.3

Other terms which have a defined meaning in the Law, the Companies Law, the Regulations and these Rules have the same meaning in this Part.

Time limits 54.4 - 54.5

54.4

The provisions of Rules 2.11 to 2.15 (Time) apply, as regards computation of time, to anything required or authorised to be done in this Part.

54.5

The provisions of Rule 4.2(1) (The Court's general powers of management) apply so as to enable the Court to extend or shorten the time for compliance with anything required or authorised to be done by this Part.

Power of Judge, Registrar 54.6

54.6

Save where these Rules provide otherwise, anything to be done under or by virtue of the Law, the Regulations or this Part of the Rules by, to or before the Court may be done by, to or before a Judge or a Registrar

Preliminary 54.7

54.7

This Section applies to any application made to the Court under the Law or the Regulations except (save as otherwise provided):

(1) a petition for a winding-up order under Article 50 of the Law (see Section III);

(2) an application for the appointment of a provisional liquidator (see Section IV); and

(3) an application for a cell receivership order (see Section V).

Form and contents of application 54.8

54.8

Each application shall be in writing and shall state:

(1) that the application is made under the Law or the Regulations (as the case may be);

(2) the names of the parties;

(3) the name of the Company which is the subject of the insolvency proceedings to which the application relates;

(4) where the Court has previously allocated a reference number to the insolvency proceedings within which the application is made, that number;

(5) the nature of the remedy or order applied for or the directions sought from the Court ;

(6) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;

(7) where the Law, the Regulations or these Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and

(8) the applicant’s address for service.

Filing and service of application 57.9 - 54.13

54.9

On receipt of an application notice containing a request for a hearing the Court will notify the applicant of the time and date for the hearing of the application.

54.10

Unless the Court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the time and date for the hearing, on the respondent named in the application (or on each respondent if more than one).

54.11

The Court may give any of the following directions:

(1) that the application be served upon persons other than those specified by the relevant provision of the Law, the Regulations or these Rules ;

(2) that the giving of notice to any person may be dispensed with; and

(3) that notice be given in some way other than that specified in Rule 54.10.

54.12

An application must be served at least fourteen (14) calendar days before the date fixed for its hearing unless:

(1) the provision of the Law or the Regulations under which the application is made makes different provision; or

(2) the case is one of urgency to which Rule 54.13 applies.

54.13

Where the case is one of urgency, the Court may (without prejudice to its general power to extend or abridge time limits):

(1) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(2) authorise a shorter period of service than that provided for by Rule 54.12;

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the Court thinks fit.

Hearings without notice 54.14

54.14

Where the relevant provisions of the Law or the Regulations do not require service of the application on, or notice of it to be given to, any person:

(1) the Court may hear the application as soon as reasonably practicable without fixing a time and date for the hearing as required by Rule 54.9; or

(2) it may fix a time and date for the hearing in which case Rules 54.9 to 54.13 shall apply to the extent that they are relevant;

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

Witness statements 54.15 - 54.19

54.15

Subject to Rules 54.20 to 54.21, where evidence is required by the Law or the Regulations as to any matter, such evidence may be provided in the form of a witness statement unless:

54.15.1 in any specific case, the Act, a Regulation or a Rule makes different provision; or

54.15.2 the Court otherwise directs.

54.16

Witness statements and affidavits must comply with the requirements of Part 29 (Evidence), save that photocopy documents may be used unless the Court orders otherwise.

54.17

Where in insolvency proceedings a witness statement is made by an office-holder, the witness statement must state:

(1) the capacity in which that office-holder is acting; and

(2) the address at which that office-holder works.

54.18

The Court may, on the application of any party to the matter in question order the attendance for cross-examination of the person making the witness statement.

54.19

Where, after such an order has been made, the person in question does not attend, that person's witness statement must not be used in evidence without the permission of the Court .

Use of reports 54.20 - 54.21

54.20

Unless the application involves other parties or the Court otherwise orders, a report may be filed in Court instead of a witness statement by:

(1) a liquidator;

(2) an administrative receiver;

(3) a receiver;

(4) a cell receiver; or

(5) a provisional liquidator.

54.21

In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of Rule 54.22 and any hearing before the Court as if it were a witness statement.

Filing and service of witness statements 54.22

54.22

Unless the provision of the Law or the Regulations under which the application is made provides otherwise, or the Court otherwise allows:

(1) if the applicant intends to rely at the first hearing on evidence in a witness statement, he shall file the witness statement with the Court and serve a copy on the respondent (or on each respondent if more than one);

(2) where a respondent to an application intends to oppose it and to rely for that purpose on evidence in a witness statement, he shall file the witness statement with the Court and serve a copy on the applicant (or on each applicant if more than one) and on every other respondent; and

(3) the timetable for the filing and service of witness statements shall be as set out in Rules 23.40 to

23.48.

Hearing of application 54.23 - 54.26

54.23

Unless the Court otherwise directs, the application will be heard in public in accordance with Article 13 of the Court Law .

54.24

The jurisdiction of the Court to hear and determine an application may be exercised by the Registrar (to whom any application should be made in the first instance) unless:

(1) a direction to the contrary has been given; or

(2) it is not within the Registrar's power to make the order required (whether pursuant to Part 3 (Organisation of the Court) or otherwise).

54.25

Nothing in Rule 54.24 precludes an application being made directly to the Judge in a proper case.

54.26

Where an application is made to the Registrar , the Registrar may refer to the Judge any matter which the Registrar thinks should properly be decided by the Judge , and the Judge may either dispose of the matter or refer it back to the Registrar with such directions as that Judge thinks fit.

Adjournment of hearing and directions 54.27 - 54.29

54.27

The Court may adjourn the hearing of an application on such terms as it thinks fit.

54.28

The Court may at any time give such directions as it thinks fit as to:

(1) service or notice of the application on or to any person;

(2) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application, including whether a hearing is necessary; and

(3) the matters to be dealt with in evidence.

54.29

The Court may give directions as to the manner in which any evidence is to be adduced at a resumed hearing and in particular as to:

(1) the taking of evidence wholly or partly by witness statement or orally;

(2) the cross-examination of the maker of a witness statement; and

(3) any report to be made by an office-holder.

Enforcement of Court orders 54.30

54.30

In any insolvency proceedings, orders of the Court may be enforced in the same manner as a judgment to the same effect in accordance with Part 45 (General Rules About Enforcement of Judgments and Orders).

Introductory provisions 54.31 - 54.32

54.31

The Rules in this Section apply in relation to a winding up by the Court under Part 4, Chapter 5, or Part 6 of the Law.

54.32

For the purposes of this Section, the term “a Company” includes a Recognised Company (with such modifications as may be necessary).

Injunction to restrain presentation or advertisement of petition 54.33 - 54.34

54.33

An application may at any time be made by a Company for an injunction to restrain a person from:

(1) presenting a petition for the winding up of a Company; or

(2) advertising a petition for the winding up of a Company.

54.34

Such application should be made in accordance with Section II of this Part.

Presentation and filing of petition 54.35 - 54.39

54.35

The petition, verified by a statement of truth in accordance with Part 22 (Statements of Truth) and Rules 54.40 to 54.45, shall be filed in Court.

54.36

There must be annexed to the petition (and each copy thereof) a copy of any written demand which has been served on the Company by the petitioner pursuant to Article 51.1(a) of the Law and Regulation 5.1.

54.37

There shall be delivered with the petition:

(1) if the petitioner is a person other than the Company, one copy for service on the Company;

(2) if any office-holder has been appointed in respect of the Company or the assets of the Company (or any of them), one copy for service on each such office-holder; and

(3) if the Company is an Authorised Person and the petitioner is not the DFSA , one copy for service on the DFSA for notification purposes.

54.38

Each of the copies delivered shall have applied to it the seal of the Court , and shall be issued to the petitioner.

54.39

The Court shall fix a date and time for the hearing of the petition, and this shall be endorsed on any copy of the petition issued to the petitioner under Rule 54.38.

Verification of petition 54.40 - 54.45

54.40

The petition shall be verified by a statement of truth in such form as the Court may specify.

54.41

If the petition is in respect of debts due to different creditors, the debts to each creditor must be separately verified.

54.42

A statement of truth which is not contained in or endorsed upon the petition which it verifies must be sufficient to identify the petition and must specify:

(1) the Court reference number of the petition;

(2) the name and registered number of the Company; and

(3) the name of the petitioner.

54.43

The statement of truth must be made:

(1) by the petitioner (or if there are two or more petitioners, any one of them);

(2) by some person such as a director, company secretary or similar company officer, or a legal representative, who has been concerned in the matters giving rise to the presentation of the

petition; or

(3) by some responsible person who is duly authorised by the petitioner to make the statement of truth and has the requisite knowledge of those matters.

54.44

Where the person making the statement of truth is not the petitioner himself, or one of the petitioners, he must in the statement of truth identify himself and state:

(1) the capacity in which, and the authority by which, he makes it; and

(2) the means of his knowledge of the matters verified in the statement of truth.

54.45

A statement of truth verifying more than one petition shall include in its title the names of the Companies to which it relates and shall set out, in respect of each Company, the statements relied on by the petitioner; and a clear and legible photocopy of the statement of truth must be filed with each petition which it verifies.

Consent of the insolvency practitioner proposed for appointment as liquidator 54.46

54.46

The petition shall contain the name and address of the insolvency practitioner whom the petitioner proposes should be appointed as liquidator or provisional liquidator of the Company in the event that a winding-up order is made by the Court and a statement that the person so nominated is (to the best of the petitioner's belief) a registered insolvency practitioner for the purposes of Article 89 of the Law and has consented to such appointment. There shall be attached to the statement of truth a copy of the written consent to such appointment signed by the insolvency practitioner so nominated.

Service of petition 54.47 - 54.52

54.47

Rules 54.48 to 54.52 apply as regards service of the petition on the Company (where the petitioner is other than the Company itself); and references to the petition are to a copy of the petition bearing the seal of the Court .

54.48

Subject as follows, the petition shall be served at the Company’s registered office.

54.49

Service of the petition at the registered office may be effected in any of the following ways:

(1) it may be handed to a person who there and then acknowledges himself to be, or the best of the server’s knowledge, information and belief is, a director or other officer, or employee, of the Company;

(2) it may be handed to a person who there and then acknowledges himself to be authorised to accept service of documents on the Company’s behalf; or

(3) in the absence of any such person as is mentioned in paragraphs 54.49.1 or 54.49.2, it may be deposited at or about the registered office in such a way that it is likely to come to the notice of a person attending at the office.

54.50

If for any reason service at the registered office is not practicable, or the Company has no registered office, the petition may be served on the Company by leaving at the Company’s last known principal place of business in such a way that it is likely to come to the attention of a person attending there, or by delivering it to the secretary or some director, manager or principal officer of the Company, wherever that person may be found.

54.51

If for any reason it is impracticable to effect service as provided by Rules 54.49 or 54.50, the petition may be served in such other manner as the Court may by order approve or direct.

54.52

Application for an order of the Court under Rule 54.51 may be made by an application without notice to any other party, supported by a witness statement, stating what steps have been taken to comply with Rules 54.49 and 54.50 and the reasons why it is impracticable to effect service as there provided.

Proof of service 54.53 - 54.56

54.53

Service of the petition must be proved by a certificate of service.

54.54

The certificate of service must be sufficient to identify the petition served and must specify:

(1) the name and registered office of the Company;

(2) the address of the registered office of the Company;

(3) the name of the petitioner;

(4) the court reference number of the petition;

(5) the date of the petition;

(6) whether the copy served was a sealed copy;

(7) the date on which service was effected; and

(8) the manner in which service was effected.

54.55

Where substituted service has been ordered under Rule 54.51, the certificate of service must have attached to it a sealed copy of the order.

54.56

The certificate of service must be filed in Court as soon as reasonably practicable after service, and in any event not less than five (5) business days before the hearing of the petition.

Other persons to receive copies of petition or entitled to copy of petition 54.57 - 54.60

54.57

If to the petitioner’s knowledge any office-holder has been appointed in respect of the Company or

the assets of the Company (or any of them), a copy of the petition shall be sent by him to such office-holder.

54.58

If to the petitioner's knowledge the Company is an Authorised Person and the petitioner is not the DFSA itself, a copy of the petition shall be sent by the petitioner to the DFSA .

54.59

A copy of the petition which is required to be sent pursuant to Rules 54.57 or 54.58 shall be despatched on the next business day after the day on which the petition is served on the Company.

54.60

Subject to any order of the Court to the contrary every director, contributory and creditor of the Company is entitled to be furnished by the legal representative of the petitioner (or by the petitioner himself, if acting in person) with a copy of the petition within two (2) business days after requiring it on payment of reasonable copying charges.

Advertisement of petition 54.61 - 54.64

54.61

The petitioner shall cause the petition to be advertised, in accordance with Regulation 5.3, in the English language newspaper(s) and in the Arabic language newspaper(s) as the Court may by Practice Direction designate.

54.62

Unless the Court otherwise directs, the notice must be made to appear:

(1) if the petitioner is the Company itself, not less than seven (7) business days before the day appointed for the hearing; or

(2) otherwise, not less than seven (7) business days after service of the petition on the Company, nor less than seven (7) business days before the day so appointed.

54.63

In addition to the standard contents (as set out in Section VII), the notice must state:

(1) that a petition has been presented for the winding up of the Company;

(2) the name and address of the petitioner;

(3) the date on which the petition was presented;

(4) the date and time fixed for the hearing of the petition;

(5) the name and address of the petitioner's legal representative (if any);

(6) the name and address of the insolvency practitioner whom the petitioner proposes for appointment as liquidator; and

(7) that any person intending to appear at the hearing (whether to support or oppose the petition or the appointment of the insolvency practitioner proposed for appointment as liquidator) must give notice of that intention in accordance with Rules 54.70 to 54.73.

54.64

Non-compliance with Rules 54.61 to 54.63, is a ground on which the Court may, if it thinks fit, dismiss the petition.

Certificate of compliance 54.65 - 54.68

54.65

The petitioner or his legal representative shall, at least five (5) business days before the hearing of the petition, file in Court a certificate of compliance with the Rules , in such form as the Court may specify, relating to service and advertisement.

54.66

The certificate shall show:

(1) the name and registered office of the Company;

(2) the name of the petitioner;

(3) the court reference number of the petition;

(4) the date of presentation of the petition;

(5) the date and time fixed for the hearing; and

(6) the date or dates on which the petition was served and notice of it was given in compliance with the Rules .

54.67

A copy or, where this is not reasonably practicable, a description of the form and content of any notice given shall be filed in Court with the certificate.

54.68

Non-compliance with Rules 54.65 to 54.67 is a ground on which the Court may, if it thinks fit, dismiss the petition.

Permission for petitioner to withdraw 54.69

54.69

If at least five (5) business days before the hearing the petitioner, on an application without notice to any other party in such form as the Court may specify, satisfies the Court that:

(1) the petition has not been advertised;

(2) no notices (whether in support or opposition) have been received by him with reference to the petition; and

(3) the Company consents to an order being made under this Rule;

the Court may order that the petitioner has permission to withdraw the petition on such terms as to costs as the parties may agree or the Court may think fit.

Notice of appearance 54.70 - 54.74

54.70

Every person who intends to appear on the hearing of the petition shall give to the petitioner notice of his intention in accordance with Rules 54.71 to 54.73 in such form as the Court may specify.

54.71

The notice shall specify:

(1) the name and address of the person giving it, and any telephone number and reference which may be required for communication with him or with any other person (to be also specified in the notice) authorised to speak or act on his behalf;

(2) whether his intention is to support or oppose the petition;

(3) whether or not he objects (in the event that a winding-up order is made by the Court) to the appointment as liquidator or provisional liquidator of the insolvency practitioner proposed for such appointment by the petitioner;

(4) whether, if he does so object, he proposes that (in the event that a winding-up order is made by the Court) some other insolvency practitioner be appointed liquidator or provisional liquidator; and

(5) the amount and nature of his debt (if any).

54.72

The notice shall be sent to the petitioner at the address shown for him in the Court records or in the advertisement of the petition required by Regulation 5.3, or it may be sent to his legal representative.

54.73

The notice shall be sent so as to reach the addressee not later than 4 p.m. on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).

54.74

A person who fails to comply with Rules 54.70 to 54.73 may appear on the hearing of the petition only with the permission of the Court .

List of appearances 54.75 - 54.78

54.75

The petitioner shall prepare for the Court a list of the persons (if any) who have given notice under Rule 54.70 in such form as the Court may specify, specifying their names and addresses and (if known to him) their respective legal representatives.

54.76

Against the name of each creditor in the list it shall be stated whether his intention is to support the petition, or to oppose it and whether he objects (in the event that a winding-up order is made by the Court) to the appointment as liquidator or provisional liquidator of the insolvency practitioner proposed for such appointment by the petitioner.

54.77

On the date appointed for the hearing of the petition, a copy of the list shall be lodged at Court or handed to the Court before the commencement of the hearing.

54.78

If any permission is given under Rule 54.74, the petitioner shall add to the list the same particulars in respect of each person to whom permission has been given.

Witness statement in opposition 54.79 - 54.80

54.79

If the Company intends to oppose the petition, it shall file in Court a witness statement in opposition not less than five (5) business days before the date fixed for the hearing.

54.80

A copy of the witness statement shall be sent by the Company to the petitioner forthwith after filing.

Adjournment of hearing of petition 54.81

54.81

If the Court adjourns the hearing of the petition, unless the Court otherwise directs, the petitioner must forthwith send:

(1) to the Company; and

(2) where any creditor has given notice under Rule 54.70 but was not present at the hearing, to that creditor;

notice of the order adjourning the petition, stating the date and time of the adjourned hearing.

Substitution of creditor for petitioner 54.82 - 54.83

54.82

Where a person petitions and is subsequently found not entitled to do so, or where the petitioner:

(1) fails to advertise his petition within the time prescribed by the Regulations or this Part of the Rules or such extended time as the Court may allow;

(2) consents to withdraw his petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing, or on a day to which it is adjourned; or

(3) appears, but does not apply for an order in the terms of the prayer of his petition;

the Court may, on such terms as it thinks just, substitute as petitioner any person who in its opinion would have a right to present a petition, and who is desirous of prosecuting it.

54.83

An order of the Court under Rule 54.82 may, where a petitioner fails to advertise his petition within the time prescribed by the Regulations or this Part of the Rules , or consents to withdraw his petition, be made at any time.

The winding-up order 54.84 - 54.91

54.84

Rules 54.85 to 54.91 apply when a winding-up order has been made by the Court .

54.85

A winding-up order shall be in such form as the Court may specify, subject to any amendments or further provisions as the Court considers appropriate.

54.86

The petitioner shall, not later than the business day following that on which the order is made, lodge with the Court a draft of the form in which he proposes the order be drawn up; and the petitioner and every other person who has appeared on the hearing of the petition shall leave at the Court all the documents required for enabling the order to be completed as soon as reasonably practicable.

54.87

It is not necessary for the Court to appoint a date and time for any person to attend to settle the order, unless in any particular case the special circumstances make an appointment necessary.

54.88

A winding-up order must name a person as the liquidator or provisional liquidator in respect of the conduct of the winding-up in accordance with Article 58(1) of the Law and Regulation 5.4(2).

54.89

Three copies of the winding-up order, sealed with the seal of the Court , shall be sent as soon as reasonably practicable by the Court to the liquidator or provisional liquidator (as the case may be) in respect of the conduct of the winding-up.

54.90

The liquidator or provisional liquidator shall cause:

(1) a sealed copy of the order to be served on the Company by prepaid letter addressed to it at its registered office (if any) or, if there is no registered office, at its principal or last known principal place of business; and

(2) a sealed copy of the order to be sent to the Registrar of Companies.

54.91

Upon the making of a winding-up order, the Court shall forthwith in accordance with Regulation 5.4(1):

(1) give notice of the fact to the Company, the petitioner, the DFSA (in the case of an Authorised Person) and any other person represented at the hearing of the petition; and

(2) cause notice of the fact that the order has been made to be advertised, in accordance with

Regulation 5.3, in the English language newspaper(s) and in the Arabic language newspaper(s) as the Court may by Practice Direction designate.

Dismissal of the petition 54.92 - 54.95

54.92

Unless the Court otherwise directs, when a petition is dismissed, the petitioner shall forthwith give notice of the dismissal. Such notice shall be advertised in the same manner as the petition was advertised under Rules 54.61 to 54.64 or otherwise as the Court may direct.

54.93

The notice advertised under Rule 54.92 must state:

(1) that a petition for the winding-up of the Company has been dismissed;

(2) the name and address of the petitioner;

(3) the date on which the petition was presented;

(4) the date on which the petition was advertised; and

(5) the date of the hearing at which the petition was dismissed.

54.94

Where the petitioner is not the Company itself and the petitioner has not complied with Rules 54.92 and 54.93 within 21 days of the date of the hearing at which the petition was dismissed, the Company may advertise notice of the dismissal itself. Where the Company advertises notice of the dismissal itself, then unless the Court orders otherwise:

(1) the petitioner shall pay to the Company the costs reasonably incurred by the Company in advertising such notice; and

(2) the amount of the costs so payable, unless agreed between the Company and the petitioner, must be decided by detailed assessment and the Company may commence detailed assessment proceedings in accordance with Part 40 (Procedure for Detailed Assessment of Costs).

54.95

Rules 54.92 to 54.94 above do not apply in the case where a petition is withdrawn pursuant to Rule

54.69 above.

Applications to stay winding up 54.96 - 54.98

54.96

The Court may at any time after an order for winding up, on the application of the provisional liquidator, the liquidator or the DFSA or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

54.97

The Court may, before making an order, give notice of the application to the DFSA , who may furnish the Court with a report with respect to any facts or matters which are in its opinion relevant to the application.

54.98

A copy of every order made staying a winding up shall forthwith be forwarded by the Company to the Registrar of Companies.

Appointment of provisional liquidators 54.99 - 54.101

54.99

An application to the Court for the appointment of a provisional liquidator under Article 59 of the Law may be made by:

(1) the petitioner;

(2) a creditor of the Company;

(3) the Company;

(4) the DFSA ;

(5) an administrative receiver; and

(6) any other person who under any enactment would be entitled to present a petition for the winding-up of the Company.

54.100

The application must be supported by a witness statement stating:

(1) the grounds on which it is proposed that a provisional liquidator should be appointed;

(2) that the person proposed to be appointed has consented to act and, to the best of the applicant's belief, is a registered insolvency practitioner for the purposes of Article 89 of the Law;

(3) whether to the applicant's knowledge:

(a) there has been proposed or is in force for the Company a voluntary arrangement under Part 2 of the Law;

(b) an administrative receiver is acting in relation to the Company;

(c) a liquidator has been appointed for the Company's voluntary winding-up; or

(d) a cell receivership order under Regulation 8.2 has been made in respect of the Company; and

(4) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed, and the facts and bases upon which such estimate is made.

54.101

The Court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

Notice and advertisement of appointment 54.102 - 54.104

54.102

Where a provisional liquidator has been appointed, the Court shall as soon as reasonably practicable give notice of the fact to the provisional liquidator.

54.103

Unless the Court otherwise directs, on receipt of the notice of appointment, as soon as reasonably practicable the provisional liquidator shall give notice of that appointment by advertisement once in the English language newspaper(s) and in the Arabic language newspaper(s) as the Court may by Practice Direction designate.

54.104

In addition to the standard contents (as set out in Section VII), the notice under Rule 54.103 (to be in such form as the Court may specify) must state:

(1) that a provisional liquidator has been appointed; and

(2) the date of the appointment.

Order of appointment of provisional liquidator 54.105 - 54.107

54.105

The order appointing the provisional liquidator shall specify the functions to be carried out by him in relation to the Company's affairs.

54.106

The Court shall as soon as reasonably practicable after the order is made, send sealed copies of the orders as follows:

(1) three copies to the person appointed as provisional liquidator; and

(2) if there is an administrative receiver or cell receiver acting in relation to the Company, one copy to him.

54.107

Of the three copies of the order sent to the provisional liquidator under Rule 54.106(1):

(1) one copy shall be sent by him to the Company or, if a liquidator has been appointed for the Company's voluntary winding-up, to him; and

(2) one shall be sent to the Registrar of Companies.

Security 54.108 - 54.110

54.108

The cost of providing the security required under the Law upon the appointment of a provisional

liquidator shall be paid in the first instance by the provisional liquidator; but:

(1) if a winding-up order is not made, the person so appointed is entitled to be reimbursed out of the property of the Company, and the Court may make an order accordingly; and

(2) if a winding-up order is made, he is entitled to be reimbursed as an expense of the liquidation in the prescribed order of priority.

54.109

If the provisional liquidator fails to give or keep up his security, the Court may remove him and make such order as it thinks fit as to costs.

54.110

If an order is made under Rule 54.109 removing the provisional liquidator, or discharging an order appointing him, the Court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place.

Remuneration 54.111 - 54.114

54.111

The remuneration of the provisional liquidator shall be fixed by the Court from time to time on his application.

54.112

In fixing his remuneration, the Court shall take into account:

(1) the time properly given by him (as provisional liquidator) and his staff in attending to the Company’s affairs;

(2) the complexity (or otherwise) of the case;

(3) any respects in which, in connection with the Company’s affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree;

(4) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, his duties; and

(5) the value and nature of the property with which he has had to deal.

54.113

Without prejudice to any order the Court may make as to costs, the provisional liquidator's remuneration shall be paid to him, and the amount of any expenses incurred by him reimbursed:

(1) if a winding-up order is not made, out of the property of the Company; and

(2) if a winding-up order is made, as an expense of the liquidation, in the prescribed order of priority.

54.114

Unless the Court otherwise directs, in a case falling within Rule 54.113(1) above the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting his remuneration and expenses.

Termination of appointment 54.115 - 54.118

54.115

The appointment of the provisional liquidator shall be terminated without further order on the appointment of a liquidator and may be terminated by the Court on his application or on that of any of the persons specified in Rule 54.99.

54.116

If the provisional liquidator's appointment terminates, whether in consequence of the dismissal of the winding-up petition or otherwise, the Court may give such directions as it thinks fit with respect to the accounts of his administration or any other matters which it thinks appropriate.

54.117

Notice of termination of the appointment of a provisional liquidator must be given by the provisional liquidator, unless the termination is on the making of a winding-up order or the Court otherwise directs. Such notice must as soon as reasonably practicable be:

(1) sent to the Registrar of Companies;

(2) sent to the DFSA if the Company is an Authorised Person; and

(3) advertised in the same manner as the appointment of the provisional liquidator was advertised pursuant to Rule 54.103.

54.118

In addition to the standard contents (as set out in Section VII), a notice under Rule 54.117 must state:

(1) that the appointment as provisional liquidator has terminated;

(2) the date of that termination; and

(3) that the appointment terminated otherwise than (if it be the case) on the making of a winding-up order.

Scope 54.119

54.119

This Section applies in relation to the making of a cell receivership order under Regulation 8.2.

Application for a cell receivership order 54.120 - 54.124

54.120

An application for a cell receivership application shall be in such form as the Court may specify.

54.121

If made by the Company or by its directors, an application for a cell receivership order shall state the name of the Company and its address for service, which (in the absence of special reasons to the contrary) is that of the Company’s registered office.

54.122

If the application is made by the directors, it shall state that it is made under Regulation 8.3.1(b); but from and after making it is to be treated for all purposes as the application of the Company.

54.123

If made by any other person (including the DFSA), an application for a cell receivership order shall state the name and address for service of the applicant.

54.124

The application shall contain a statement of the applicant's belief that the cellular assets attributable to a particular cell of the Company are or are likely to be insufficient to discharge the claims of creditors in respect of that cell.

Statement by proposed cell receiver 54.125

54.125

There shall be attached to the application a written statement which shall be in such form as the Court may specify by each of the persons proposed to be a cell receiver stating:

(1) that he consents to accept appointment;

(2) details of any prior professional relationship(s) that he has had with the applicant or the Company to which he is to be appointed as cell receiver; and

(3) his opinion that it is reasonably likely that one or more of the purposes set out in Regulation 8.2.3 would be achieved.

Witness statement in support of cell receivership application 54.126 - 54.129

54.126

Where it is proposed to apply to the Court for a cell receivership order to be made in relation to a Company, a witness statement complying with Rules 54.127 to 54.129 must be prepared, with a view to its being filed at Court in support of the application.

54.127

If the application is to be made by the Company or by its directors, the witness statement shall be made by one of the directors, or the secretary of the Company, stating himself to make it on behalf of the company or, as the case may be, on behalf of the directors.

54.128

If the application is to be made by any other person, the witness statement shall be made by the applicant or a person acting under the authority of the applicant, and there must be stated in the witness statement his means of knowledge of the matters to which the witness statement relates and the nature of his authority (if applicable).

54.129

The witness statement in support of an application for a cell receivership order shall contain:

(1) a statement of the financial position in respect of that cell, specifying (to the best of the applicant's knowledge and belief) the assets and liabilities of the cell, including contingent and prospective liabilities;

(2) details of any security known or believed to be held by creditors in respect of that cell;

(3) details of any debt or liability owing to the applicant by that cell and any security held by the applicant in respect of that cell;

(4) details of the nature of the business of that cell and, if different, the business of the Company as a whole;

(5) details of any insolvency proceedings in relation to that cell or to the Company, including any petition that has been presented for the winding up of the Company or any administrative receiver who has been appointed in respect of the Company so far as within the immediate knowledge of the applicant; and

(6) any other matters which, in the opinion of those intending to make the application for a cell receivership order, will assist the Court in deciding whether to make such an order, so far as lying within the knowledge or belief of the witness.

Filing of application 54.130 - 54.133

54.130

The application (and all supporting documents) shall be filed with the Court , with a sufficient number of copies for service and use as provided by Rule 54.134.

54.131

Each of the copies filed shall have applied to it the seal of the Court and be issued to the applicant.

54.132

The Court shall fix a venue for the hearing of the application and this shall be endorsed on each copy of the application issued under Rule 54.131.

54.133

After the application is filed, it is the duty of the applicant to notify the Court in writing of the existence of any insolvency proceedings in relation to the Company as soon as he becomes aware of them.

Service of application 54.134

54.134

The application shall be served in addition to those persons referred to in Regulation 8.3.3:

(1) if there is pending a petition for the winding-up of the Company, on the petitioner (and also on the provisional liquidator) if any;

(2) on the person proposed as the cell receiver; and

(3) if a supervisor of a voluntary arrangement under Part 2 of the Law has been appointed, on him.

In this Rule, references to the application are to a copy of the application issued by the Court under Rule 54.131 together with the witness statement required by Rule 54.126 and the documents attached to the application.

Notice to officers charged with execution of legal process, etc. 54.135

54.135

The applicant shall as soon as reasonably practicable after filing the application give notice of its being made to:

(1) any enforcement officer or other officer who to his knowledge is charged with an execution or other legal process either against that cell of the Company or its property or against the Company or its property generally; and

(2) any person who to his knowledge has distrained either against that cell of the Company or its property or against the Company or its property generally.

Manner in which service is to be effected 54.136 - 54.139

54.136

Service of the application in accordance with 54.134 shall be effected by the applicant, or his legal practitioner, or by a person instructed by him or his legal practitioner, not less than five (5) business days before the date fixed for the hearing.

54.137

Service shall be effected as follows:

(1) on the Company (subject to Rule 54.138 below), by delivering the documents to its registered office;

(2) on any other person (subject to Rule 54.139 below), by delivering the documents to his proper address; or

(3) in either case, in such other manner as the Court may direct.

54.138

If delivery to a Company's registered office is not practicable, service may be effected by delivery to its last known principal place of business.

54.139

For the purposes of Rule 54.137 (2) above, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

Proof of service 54.140 - 54.141

54.140

Service of the application must be verified by a certificate of service. The certificate of service must be sufficient to identify the application served and must specify:

(1) the name and registered number of the Company;

(2) the address of the registered office of the Company;

(3) the name of the applicant;

(4) the court reference number in respect of the application;

(5) the date of the application;

(6) whether the copy served was a sealed copy;

(7) the date on which service was effected; and

(8) the manner in which service was effected.

54.141

The certificate of service shall be filed with the Court as soon as reasonably practicable after service, and in any event not less than one (1) business day before the hearing of the application.

Application where Company in liquidation or administrative receivership 54.142

54.142

Where an application is made for a cell receivership order under Regulation 8.2.4, the witness statement required by Rule 54.126 shall contain:

(1) full details of the existing insolvency proceedings, including the name and address of the liquidator or administrative receiver, the date he was appointed and by whom;

(2) the reasons why it has subsequently been considered appropriate that an application for a cell receivership order should be made;

(3) all other matters that would, in the opinion of the applicant, assist the Court in considered the need to make provisions in respect of matters arising in connection with the liquidation or administrative receivership; and

(4) the details required in Rule 54.129.

The hearing 54.143 - 54.146

54.143

At the hearing of an application for a cell receivership order, any of the following persons may appear or be represented:

(1) the applicant;

(2) any of the persons specified in Regulation 8.3.3; and

(3) with the permission of the Court , any other person who appears to have an interest justifying his appearance.

54.144

If the Court makes a cell receivership order, it shall be in such form as the Court may specify.

54.145

If the Court makes a cell receivership order, the costs of the applicant and of any person whose costs are allowed by the Court , are payable as an expense of the cell receivership.

54.146

Where the Court makes a cell receivership order in relation to a Company upon an application under Regulation 8.2.4, the Court shall include in the order (i) such provision as the Court thinks fit with respect to matters arising in connection with the liquidation or administrative receivership and (ii) such other provisions as the Court shall think fit.

Notice of cell receivership order 54.147 - 54.149

54.147

If the Court makes a cell receivership order, it shall as soon as reasonably practicable send two sealed copies of the order to the person who made the application.

54.148

The applicant shall send a sealed copy of the order as soon as reasonably practicable to:

(1) the person appointed as cell receiver; and

(2) if the Company is an Authorised Person, the DFSA .

54.149

If the Court makes an order under Regulation 8.3.2, it shall give directions as to the persons to

whom, and how, notice of that order is to be given.

Scope 54.150 - 54.151

54.150

Subject to Rule 54.151, this Section applies in relation to the service of:

(1) petitions;

(2) applications;

(3) documents relating to petitions or applications; and

(4) court orders;

which are required to be served by any provision of the Law, the Regulations or this Part of the Rules (“court documents”).

54.151

This Section does not apply to the service of:

(1) a winding up petition;

(2) any document relating to such a petition; or

(3) a winding-up order.

Part 9 service 54.152 - 54.153

54.152

Except where different provision is made in this Part and subject to any direction or order of the Court , Part 9 (Service) applies in relation to the service of court documents, whether within or outside the jurisdiction.

54.153

For the purpose of the application by Rule 54.152 of Part 9 (Service) to the service of documents in insolvency proceedings an application commencing insolvency proceedings or an application within

insolvency proceedings against a respondent is to be treated as a claim form.

Service of orders staying proceedings 54.154

54.154

Where in insolvency proceedings the Court makes an order staying any action, execution or other legal process against the property of a Company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the party having the carriage of the proceedings to be stayed.

Service on joint office-holders 54.155

54.155

Where there are joint office-holders in insolvency proceedings, service on one of them is to be treated as service on all of them.

VII CONTENT OF NOTICES TO BE ADVERTISED 54.156 - 54.158

54.156

Where under the Law, the Regulations or this Part of the Rules a notice is to be advertised, in addition to any content specifically required by the Law, the Regulations or any other provision of this Part of the Rules , the content of such a notice must be as set out in this Section.

54.157

All notices published must specify insofar as it is applicable in relation to the particular notice:

(1) the name and postal address of the office-holder acting in the proceedings;

(2) the capacity in which the office-holder is acting and the date of appointment;

(3) either an e-mail address, or a telephone number, through which the office-holder may be contacted;

(4) the name of any person other than the office-holder (if any) who may be contacted regarding the proceedings;

(5) the Court name and any number assigned to the proceedings by the Court ;

(6) the registered name and number of the Company;

(7) the registered office of the Company or, in the case of a Recognised Company, its place of business in the DIFC or, in the case of any other Foreign Company, its registered office and, if different, its principal place of business;

(8) any principal trading address if this is different from its registered office;

(9) any name under which it was registered in the 12 months prior to the date of the commencement of the proceedings which are the subject of the notice; and

(10) any name or style (other than its registered name) under which:

(a) the Company carried on business; or

(b) any debt owed to a creditor was incurred.

54.158

Information required under this Section to be included in a notice to be advertised may be omitted if it is not reasonably practicable to obtain it.

Scope 54.159 - 54.160

54.159

This Section applies in relation to costs in connection with insolvency proceedings.

54.160

In this Section a reference to costs includes charges and expenses.

Requirement to assess costs by the detailed procedure 54.161 - 54.165

54.161

Where the costs of any person are payable as an expense out of the insolvent estate in accordance with the Law, the Regulations or by order of the Court , the amount payable must be decided by detailed assessment unless agreed between the office-holder and the person entitled to payment.

54.162

In the absence of such agreement as is mentioned in Rule 54.161, the office-holder:

(1) may serve notice requiring that person to commence detailed assessment proceedings in accordance with Part 40 (Procedure for Detailed Assessment of Costs); and

(2) must serve such notice (except in an administrative receivership) where a liquidation or creditors' committee formed in relation to the insolvency proceedings resolves that the amount of the costs must be decided by detailed assessment.

54.163

Where the costs of any person employed by an office-holder in insolvency proceedings are required to be decided by detailed assessment under an order of the Court directing that those costs are to be paid otherwise than out of the insolvent estate, the Registrar shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

54.164

Where an office-holder is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally be liable for costs unless the Court otherwise directs.

54.165

Nothing in Rules 54.161 to 54.164 above shall affect the power of the Court to order an immediate assessment of the costs of any proceedings, or part of any proceedings, before the Court pursuant to Part 38 (General Rules About Costs).

Application for costs 54.166 - 54.169

54.166

This Section applies where a party to, or person affected by, any proceedings in an insolvency:

(1) applies to the Court for an order allowing his costs, or part of them, incidental to the proceedings; and

(2) that application is not made at the time of the proceedings.

54.167

The person concerned shall serve a sealed copy of his or her application on the office-holder.

54.168

The office-holder may appear on an application to which Rule 54.166 applies.

54.169

No costs of or incidental to the application shall be allowed to the applicant unless the Court is satisfied that the application could not have been made at the time of the proceedings.

Costs and expenses of witnesses 54.170 - 54.171

54.170

Except as directed by the Court , no allowance as a witness in any examination or other proceedings before the Court shall be made to any officer of the insolvent Company to which the proceedings relate.

54.171

A person presenting any petition in a Company insolvency shall not be regarded as a witness on the hearing of the petition, but the Registrar may allow his expenses of travelling and subsistence.

Final costs certificate 54.172 - 54.173

54.172

A final costs certificate of the Registrar is final and conclusive as to all matters which have not been objected to in the manner provided for under these Rules .

54.173

Where it is proved to the satisfaction of the Registrar that a final costs certificate has been lost or destroyed, he may issue a duplicate.

Appeals and reviews of Court orders 54.174 - 54.176

54.174

The Court may review, rescind, or vary any order made by it in the exercise of its jurisdiction under this Part.

54.175

Appeals in proceedings under this Part lie as follows:

(1) to a Judge of the Court of First Instance where the decision appealed against is made by the Registrar ; and

(2) to the Court of Appeal from a decision of a Judge of the Court of First Instance.

54.176

Any application for the rescission of a winding-up order shall be made within five (5) business days after the date on which the order was made.

Procedure on appeal 54.177 - 54.179

54.177

An appeal against a decision at first instance may only be brought with either the permission of the Court which made the decision or the permission of the Court which has jurisdiction to hear the appeal.

54.178

An appellant must file an appeal notice (within the meaning of Part 44 (Appeals)) within 21 calendar days after the date of the decision of the Court that the appellant wishes to appeal.

54.179

Subject to Rules 54.174 to 54.178, the procedure in Part 44 (Appeals) applies to any appeal to which this Section applies.

Principal court rules and practice to apply 54.180 - 54.181

54.180

The provisions of the Rules in the first column of the table in this Rule (including any related practice directions) apply to insolvency proceedings by virtue of the provisions of the Rules in this Part set out in the second column with any necessary modifications, except so far as inconsistent with these Rules :

Provisions of the Rules	Provisions of this Part
Part 19 (Further Information)	Rule 54.182(1)
Part 28 (Production of Documents)	Rule 54.182(2)
Part 29 (Evidence)	Rule 54.16
Part 33 (Payments into Court)	Rule 54.184
Part 40 (Procedure for Detailed Assessment of Costs)	Rule 54.94(2) and 54.162(1)
Part 44 (Appeals)	Section IX
Part 45 (General Rules About Enforcement of Judgments and Orders)	Rule 54.30

54.181

The provisions of the other Parts of these Rules (including any related practice directions) not referred to in the table in Rule 54.180 apply to proceedings under the Law, the Regulations and this Part of the Rules with any necessary modifications, except so far as inconsistent with the Rules contained in this Part.

Further information and disclosure 54.182 - 54.183

54.182

Any party to insolvency proceedings may apply to the Court for an order:

(1) that any other party:

(a) clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter,

in accordance with Part 19 (Further Information); or

(2) to obtain documents from any other party in accordance with Part 28 (Production of Documents).

54.183

An application under Rule 54.182 may be made without notice being given to any other person.

Payment into Court 54.184

54.184

Part 33 (Payments into Court) applies to money lodged in Court under the Law, the Regulations or otherwise in relation to an insolvency proceeding under this Part.

No determination of insolvency proceedings by the Small Claims Tribunal 54.185

54.185

No insolvency proceedings may be issued in or be transferred to the Small Claims Tribunal under Part 53 (The Small Claims Tribunal) and Part 53 shall not apply to insolvency proceedings.

Office copies of documents 54.186 - 54.188

54.186

Any person who has under the Law, Regulations of this Part of the Rules the right to inspect the Court file of insolvency proceedings may require the Court to provide him with an office copy of any document from the file.

54.187

A person’s rights under Rule 54.186 may be exercised on his behalf by his legal representative.

54.188

An office copy provided by the Court under Rule 54.186 shall be in such form as the Court may specify, and shall bear the Court ‘s seal.

Formal defects 54.189

54.189

No insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the Court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court .

Introduction 54.190

54.190

This Section applies to applications to the Court for an order under Article 25(3) of the Law (Powers of liquidator) or Articles 94 to 96 of the Law (Inquiry into Company's dealings).

Form and contents of application 54.191 - 54.194

54.191

An application for such an order shall be in writing specifying the grounds on which it is made.

54.192

The application must specify the name of the respondent.

54.193

It shall be stated whether the application is for an order that the respondent:

(1) appear before the Court ;

(2) submit witness statements (and, if so, the particulars to be given of the matters to be included);

(3) produce books, papers or other records (if so, the items in question to be specified);

(4) clarify any matter which is in dispute in the proceedings or give additional information in relation to any such matter and, if so, Part 19 (Further Information) shall apply to any such order; or

or for any two or more of those purposes or for some other (and, if so, what other) relief.

54.194

The application may be made without notice to any party other than the respondent.

Order for examination, etc. 54.195 - 54.199

54.195

The Court may, whatever the purpose of the application, make any order which it has power to make under the Law and the Regulations.

54.196

The Court , if it orders the respondent to appear before it, shall specify a date and time for his appearance, which shall be not less than fourteen (14) calendar days from the date of the order.

54.197

If the respondent is ordered to submit a witness statement, the order shall specify:

(1) the matters which are to be dealt with in his witness statement; and

(2) the time within which the witness statement is to be submitted to the Court .

54.198

If the order is to produce books, papers or other records, the time and manner of compliance shall be specified.

54.199

The order must be served as soon as reasonably practicable on the respondent; and it must be served personally, unless the Court orders otherwise.

Procedure for examination 54.200 - 54.203

54.200

At any examination of the respondent, the applicant may attend in person, or be represented by a legal representative, and may put such questions to the respondent as the Court may allow.

54.201

The following persons may attend the examination with the permission of the Court and may put questions to the respondent (but only through the applicant):

(1) any person who could have applied for an order under the applicable provisions of the Law;

(2) any creditor who has provided information on which the application was made by the applicant.

54.202

If the respondent is ordered to clarify any matter or to give additional information, the Court shall direct him as to the questions which he is required to answer, and as to whether his answers (if any) are to be made in a witness statement.

54.203

The respondent may at his own expense instruct a legal representative, who may put to him such questions as the Court may allow for the purpose of enabling him to explain or qualify any answers given him, and may make representations on his behalf.

Record of examination 54.204 - 54.205

54.204

There shall be made in writing such record of the examination as the Court thinks proper. The record shall be read over either to or by the respondent and signed or otherwise authenticated by him on a date and at a time fixed by the Court .

54.205

The written record may, in any proceedings (whether under the Law or otherwise) be used as evidence against the respondent of any statement made by him in the course of his examination.

Inspection of record of examination, etc. 54.206 - 54.209

54.206

Unless the Court otherwise directs, the written record of questions put to the respondent and the respondent’s answers, and any witness statements submitted by the respondent in compliance with an order of the Court under the applicable provision of the Law, are not to be filed with the Court .

54.207

The documents set out in Rule 54.208 are not open to inspection without an order of the Court by any person other than:

(1) the applicant for an order under the applicable provision of the Law; or

(2) any person who could have applied for such an order in respect of the affairs of the same Company.

54.208

The documents to which Rule 54.207 refers are:

(1) the written record of the respondent’s examination;

(2) copies of the questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent;

(3) any witness statement by the respondent; and

(4) any document on the Court files which shows the grounds for the application for an order.

54.209

The Court may from time to time give directions as to the custody and inspection of any documents to which Rules 54.206 to 54.208 apply, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings 54.210 - 54.213

54.210

Where the Court makes any other order against a person (including, without limitation, an order requiring the production of books, papers or other records or clarifying any matter which is in dispute or giving additional information) the costs of the application for the order may be ordered by the Court to be paid by the respondent.

54.211

Where the Court has ordered an examination of any person under the applicable provision of the Law, and it appears to it that the examination was made necessary because information had been unjustifiably refused by that person, it may order that the costs of the examination be paid by him.

54.212

Subject to Rules 54.210 and 54.211, the applicant's costs shall, unless the Court otherwise orders, be paid as an expense of the insolvency proceeding.

54.213

The costs of a person summoned to attend for examination under this Part incurred in connection with his attendance are at the Court 's discretion.

XII Application of Part [X] to Limited Liability Partnerships 54.214

54.214

This Part shall apply for the purpose of giving effect to the provisions of the Law and the Regulations which are applied by Article 87 (Application to Limited Liability Partnerships) with the following modifications (except where the context otherwise requires):

54.214.1 references to a Company shall include references to a Limited Liability Partnership;

54.214.2 references to a director or to an officer of a Company shall include references to a member of Limited Liability Partnership;

54.214.3 references to the Law or the Regulations, or to any provisions thereof, shall include references to the Law or the Regulations, or the provisions thereof, as they apply to Limited Liability Partnerships in accordance with the Law;

54.214.4 such further or other modifications as the context may require for the purpose of giving effect to (i) the Law and the Regulations in accordance with Article 87 of the Law and (ii) this Rule

54.214.

Forms for use in insolvency proceedings 54.215 - 54.216

54.215

Forms, as specified in this Part and where provided, are to be used in insolvency proceedings.

54.216

Where the forms are required to be used, they may be used with such variations, if any, as the circumstances may require.

Court file 54.217 - 54.225

54.217

The Court shall open and maintain a file in any case where documents are filed with it under the Law, the Regulations or this Part of the Rules .

54.218

Any documents which are filed with the Court under the Law or the Regulations must be placed on the file opened in accordance with Rule 54.217.

54.219

The following persons may inspect or obtain from the Court a copy of, or a copy of any document or documents contained in, a file opened in accordance with Rule 54.217:

(1) the office-holder in the proceedings;

(2) the DFSA ;

(3) any person who is a creditor of the Company to which the proceedings relate if that person provides the Court with a statement in writing by him or a person authorised by him confirming that that person is a creditor;

(4) an officer or former officer of the Company to which the proceedings relate; and

(5) a member of the Company to which the proceedings relate or a contributory in its winding up.

54.220

The right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with Rule 54.217 may be exercised on that person’s behalf by a person authorised to do so by that person.

54.221

Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with Rule 54.217 may do so if that person has the permission of the Court .

54.222

The Court may, upon an application by the office-holder or any person appearing to the Court to have an interest, direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under Rules 54.219 to 54.220 without the permission of the Court .

54.223

Where any person wishes to exercise the right to inspect the file under Rule 54.219, 54.220 or 54.221, that person:

(1) if the permission of the Court is required, must file with the Court an application notice in accordance with this Part; or

(2) if the permission of the Court is not required, may inspect the file at any reasonable time.

54.224

Where any person wishes to exercise the right to obtain a copy of a document under Rule 54.219, 54.220 or 54.221, that person must pay any prescribed fee and:

(1) if the permission of the Court is required, file with the Court an application notice in accordance with this Part; or

(2) if the permission of the Court is not required, file with the Court a written request for the document.

54.225

An application for (a) permission to inspect the file or obtain a copy of a document under Rule 54.221 or (b) a direction under Rule 54.222 may be made without notice to any other party, but the Court may direct that notice shall be given to any person who would be affected by its decision.

Preliminary 54.226

54.226

The Rules in this Section relate to applications for a block transfer order.

Power to make a block transfer order 54.227 - 54.229

54.227

This Rule applies where an individual who is acting as an office-holder ("the outgoing office-holder"):

(1) dies;

(2) retires from practice; or

(3) is otherwise unable or unwilling to continue in office;

and it is expedient to transfer some or all of the cases in which the outgoing office-holder holds office to one or more office-holders ("the replacement office-holder") in a single transaction.

54.228

In a case to which this Rule applies the Court has the power to make an order, ("a block transfer order"), appointing a replacement office-holder in the place of the outgoing office-holder to be:

(1) liquidator or provisional liquidator in any winding up;

(2) receiver or administrative receiver in any receivership; or

(3) supervisor of a voluntary arrangement under Article 13 of the Law.

54.229

The replacement office-holder must be qualified to act as an insolvency practitioner.

Application for a block transfer order 54.230 - 54.237

54.230

An application for a block transfer order may be made to the Registrar for:

(1) the removal of the outgoing office-holder by the exercise of any of the powers in Rule 54.231;

(2) the appointment of a replacement office-holder by the exercise of any of the powers in Rule 54.232; and/or

(3) such other order or direction as may be necessary or expedient in connection with any of the matters referred to above.

54.231

The powers referred to in Rule 54.230(1) are those in:

(1) Articles 46 and 66 (winding up);

(2) Article 20 (receivership); and

(3) Article 13(6) of the Law (voluntary arrangement).

54.232

The powers referred to in Rule 54.230(2) are those in:

(1) Articles 33, 59 and 71 (winding up);

(2) Article 14 (receivership); and

(3) Article 13(4) and (5) of the Law (voluntary arrangement).

54.233

The application may be made by any of the following:

(1) the outgoing office-holder (if able and willing to do so);

(2) any person who holds office jointly with the outgoing office-holder;

(3) any person who is proposed to be appointed as the replacement office-holder;

(4) any creditor in a case subject to the application;

(5) the recognised professional body or recognised body by which the outgoing office-holder is or was authorised; or

(6) the Registrar of Companies appointed under the Companies Law 2009.

54.234

An applicant (other than the Registrar of Companies) must deliver notice of the application to the Registrar of Companies at least 5 business days before the hearing of the application.

54.235

The following must be made a respondent to the application and served by the applicant with it:

(1) the outgoing office-holder (if not the applicant or deceased);

(2) every person who holds office jointly with the outgoing office-holder; and

(3) such other person as the Registrar or Judge directs.

54.236

The application must contain a schedule setting out:

(1) the name of each case;

(2) the identity of the Court having jurisdiction when the application is made;

(3) the case number (if any); and

(4) the capacity in which the outgoing office-holder was appointed.

54.237

The application must be supported by evidence:

(1) setting out the circumstances as a result of which it was expedient to appoint a replacement office-holder; and

(2) exhibiting the written consent to act of each person who is proposed to be appointed as replacement office-holder.

Action following application for a block transfer order 54.238 - 54.241

54.238

The Registrar or Judge may in the first instance consider the application without a hearing and make such order as the Registrar or Judge thinks just.

54.239

In the first instance, the Registrar or Judge may do any of the following:

(1) if the documents are considered to be in order and that the matter is considered straightforward, make an order on the substantive application;

(2) give any directions which are considered to be necessary including (if appropriate) directions for the joinder of any additional respondents or requiring the service of the application on any person or requiring additional evidence to be provided; or

(3) if an order is not made on the substantive application, give directions for the further consideration of the substantive application by the Registrar or Judge .

54.240

In deciding to what extent (if any) the costs of making an application under this Rule should be paid as an expense of the insolvency proceedings to which the application relates, the factors to which the Court must have regard include:

(1) the reasons for the making of the application;

(2) the number of cases to which the application relates;

(3) the value of assets comprised in those cases; and

(4) the nature and extent of the costs involved.

54.241

Any appointment made under this Rule must be notified:

(1) to the Registrar of Companies as soon as reasonably practicable;

(2) to the creditors; and

(3) to such other persons as the Court may direct, in such manner as the Court may direct.