

FOURTEENTH SCHEDULE

COMPANIES (JUDICIAL MANAGEMENT) RULES

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FOURTEENTH SCHEDULE

(sections 149E, 149H, 149I, 149J, 149K, 149M, 149Q and 149T)

COMPANIES (JUDICIAL MANAGEMENT) RULES

Citation

1. These Rules may be cited as the Companies (Judicial Management) Rules.

Interpretation

2. Save where the context otherwise requires, in these Rules —

(a) references to section numbers are references to sections of the Companies Act;

(b) references to rule numbers are references to rules of the Companies (Judicial Management) Rules.

Application

3. (1) Rules 4 to 7 apply where a petition is presented by the Minister of Finance under section 149J and do not apply where a petition is presented by any other person under section 149K.

- (2) Rules 8 to 16 apply where a petition is presented by any person under section 149H and do not apply where a petition is presented by the Minister of Finance under section 149J.

- (3) Rule 17 applies where a petition is presented by the Minister of Finance or by any other person.

- (4) Save where otherwise expressly indicated, rules 18 to 40, 42, 44, 46 to 50 and 52 to 55 apply where a Judicial Management order is made on the petition of the Minister of Finance or of any other person.

Form of petition by Minister of Finance

4. (1) The petition shall state the company's name and address for service and shall specify the name and address of the person proposed to be appointed as Judicial Manager.

- (2) If the purposes or one of the purposes for which the Judicial Management order is sought is the promotion of the public interest, the petition shall specify that purpose.

FOURTEENTH SCHEDULE — *(continued)***Affidavit to support petition by Minister of Finance**

5. (1) An affidavit in support of the petition shall be sworn by or on behalf of the Minister of Finance or by any other person authorised to do so on his behalf.

(2) The affidavit shall state —

(a) the deponent's belief that the making of a Judicial Management order will be in the public interest;

(b) which of the purposes specified in section 149J(3) is expected to be achieved by the making of the order; and

(c) such other matters as the deponent considers will assist the Court in deciding whether to make a Judicial Management order.

Filing of petition by Minister of Finance

6. (1) The petition shall be filed in Court, with a sufficient number of copies for service and use as provided in rule 7(1).

(2) Each of the copies delivered shall have applied to it the seal of the Court and be issued to the Minister of Finance; and on each copy there shall be endorsed the date and time of filing.

(3) Subject to rule 7(2), the Court shall fix a date, time and place for the hearing of the petition and this shall be endorsed on each copy of the petition issued under sub-rule (2).

Service of petition and affidavit

7. (1) Subject to rule 7(2), the petition and affidavit shall be served not less than 5 days before the date fixed for hearing and shall be served upon —

(a) the company, by delivering the same to its registered office or to its last known place of business in Brunei Darussalam or to any of the directors at their proper or usual or last known address or in such other manner as the Court may direct;

(b) any person holding a charge over all or substantially all of the property of the company which, as created, was a floating charge; and

(c) if there is pending a petition for the winding up of the company, on the petitioner and on any provisional liquidator.

FOURTEENTH SCHEDULE — *(continued)*

- (2) Notwithstanding rule 7(1), the Court may, if it thinks fit —
- (a) hear the petition of the Minister of Finance immediately upon presentation thereof;
 - (b) dispense with service or abridge the time for service, on all or any of the persons specified in sub-rule (1); and
 - (c) make a Judicial Management order forthwith.

Affidavit to support petition under section 149H

8. (1) Where it is proposed to apply to the Court by petition under section 149K for a Judicial Management order to be made in relation to a company under section 149H, an affidavit complying with rule 10 must be prepared and sworn, with a view to its being filed in Court in support of the petition.

(2) If the petition is to be presented by the company or by the directors, the affidavit must 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.

(3) If the petition is to be presented by creditors, the affidavit must be made by a person acting under the authority of them all, whether or not himself one of their number. In any case there must be stated in the affidavit the nature of his authority and the means of his knowledge of the matters to which the affidavit relates.

Independent report on company's affairs

9. (1) There may be prepared, with a view to its being exhibited to the affidavit in support of the petition, a report by an independent person to the effect that the appointment of a Judicial Manager for the company is expedient.

(2) The report may be by the person proposed as Judicial Manager or the Executive Manager, or by any other person having adequate knowledge of the company's affairs, not being a director, secretary, manager, member or employee of the company.

(3) The report shall specify the purposes which, in the opinion of the person preparing it, may be achieved for the company by the making of a Judicial Management order, being purposes particularly specified in section 149I.

FOURTEENTH SCHEDULE — *(continued)***Contents of affidavit**

10. (1) The affidavit shall state —

(a) the deponent's belief that the company is, or is likely to become, unable to pay its debts, or that the value of the assets of the company is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, and the grounds of that belief; and

(b) which of the purposes specified in section 149I is expected to be achieved by the making of a Judicial Management order.

(2) There shall in the affidavit be provided a statement of the company's financial position, specifying to the best of the deponent's knowledge and belief, assets and liabilities, including contingent and prospective liabilities.

(3) Details shall be given of any security known or believed to be held by creditors of the company.

(4) If any petition has been presented for the winding up of the company, details of it shall be given in the affidavit, so far as within the immediate knowledge of the deponent.

(5) If there are other matters which, in the opinion of those intending to present the petition for a Judicial Management order, will assist the Court in deciding whether to make such an order, those matters so far as lying within the knowledge or belief of the deponent shall also be stated.

(6) If a report has been prepared for the company under rule 9, that fact shall be stated.

Form of petition under section 149H

11. (1) If presented by the company or by the directors, the petition 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.

(2) If presented by a single creditor, the petition shall state his name and address for service.

(3) If the petition is presented by the directors, it shall state that it is so presented under section 149K; but from and after presentation it is to be treated for all purposes as the petition of the company.

FOURTEENTH SCHEDULE — *(continued)*

(4) If the petition is presented by two or more creditors, it shall state it is so presented, naming them; but from and after presentation, it is to be treated for all purposes as the petition of one only of them, named in the petition as petitioning on behalf of himself and other creditors. An address for service for that one shall be specified.

(5) The petition shall specify the name and address of the person proposed to be appointed as Judicial Manager.

(6) There shall be exhibited to the affidavit in support of the petition —

(a) a copy of the petition;

(b) a written consent by the proposed Judicial Manager to accept appointment, if a Judicial Management order is made; and

(c) if a report has been prepared under rule 9, a copy of it.

Filing of petition under section 149H

12. (1) The petition and affidavit shall be filed in Court, with a sufficient number of copies for service and use as provided by rule 13.

(2) Each of the copies delivered shall have applied to it the seal of the Court and be issued to the petitioner; and on each copy there shall be endorsed the date and time of filing.

(3) The Court shall fix a date, time and place for the hearing of the petition and this also shall be endorsed on each copy of the petition issued under sub-rule (2).

(4) After the petition is filed, it is the duty of the petitioner to notify the Court in writing of any winding up petition presented against the company, as soon as he becomes aware of it.

Service of petition

13. (1) In the following sub-rules of this rule, references to the petition are to a copy of the petition issued by the Court under rule 12(2) together with the affidavit in support of it and the document, other than the copy petition, exhibited to the affidavit.

(2) The petition shall be served —

(a) upon the Minister of Finance;

FOURTEENTH SCHEDULE — *(continued)*

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

(c) on the person proposed as Judicial Manager.

(3) If the petition for the making of a Judicial Management order is presented by creditors of the company, the petition shall be served on the company.

Manner in which service to be effected

14. (1) Service of the petition in accordance with rule 13 shall be effected by the petitioner, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 days before the date fixed for the hearing.

(2) Service shall be effected as follows —

(a) on the company, subject to sub-rule (3), by delivering the documents to its registered office;

(b) on any other person, subject to sub-rule (4), by delivering the documents to his proper address;

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

(3) If delivery to the company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in Brunei Darussalam or by serving any of the directors at their proper or usual or last known address or in such other manner as the Court may direct.

(4) For the purposes of sub-rule(2)(b), 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

15. (1) Service of the petition shall be verified by affidavit, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit, with a sealed copy of the petition exhibited to it, shall be filed in Court forthwith after service, and in any event not less than one day before the hearing of the petition.

FOURTEENTH SCHEDULE — *(continued)***Hearing**

16. (1) At the hearing of the petition, any of the following may appear or be represented —

(a) the petitioner;

(b) the company;

(c) any person holding a charge over all or substantially all the property of the company which, as created, was a floating charge;

(d) any receiver or manager appointed over all or substantially all of the property of the company;

(e) any person who has presented a petition for the winding up of the company;

(f) the person proposed for appointment as Judicial Manager; and

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

(2) If the Court makes a Judicial Management order, the costs of the petitioner, and of any person appearing whose costs are allowed by the Court, are payable as an expense of the Judicial Management.

Effect of presentation of petition

17. (1) During the period beginning with the presentation of a petition for a Judicial Management order and ending with the making of such an order or the dismissal of the petition —

(a) no resolution may be passed or order made for the winding up of the company;

(b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire-purchase agreement;

FOURTEENTH SCHEDULE — (continued)

(c) no other legal proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the Court and subject to such terms as the Court may impose.

(2) In this rule, references to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

Notice and advertisement of Judicial Management order

18. (1) If the Court makes a Judicial Management order, it shall forthwith give notice to the person appointed as Judicial Manager.

(2) Forthwith after the order is made, the order shall be gazetted by the Judicial Manager or as the Court may otherwise direct.

(3) The Judicial Manager shall also forthwith give notice of the making of the order —

(a) if there is pending a petition for the winding up of the company, to the petitioner and also to the provisional liquidator, if any; and

(b) to the Registrar of Companies.

(4) Two sealed copies of the order shall be sent by the Court to the Judicial Manager, one of which shall be sent by him to the Registrar of Companies, and a copy of the same shall be supplied by the Judicial Manager to any Executive Manager.

(5) If under section 149J or 149K the Court makes any other order, it shall give directions as to the persons to whom, and how, notice of it is to be given.

Notice requiring statement of affairs

19. (1) Where the Judicial Manager determines to require a statement of the affairs of the company to be made out and submitted to him in accordance with section 149T, he shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.

(2) The persons to whom the notice is sent are referred to in this rule and in rules 20 and 22 as “the deponents”.

(3) The notice shall inform each of the deponents of the following—

FOURTEENTH SCHEDULE — *(continued)*

- (a) the names and addresses of all others, if any, to whom the same notice has been sent;
- (b) the time within which the statement must be delivered;
- (c) the effect of section 149U; and
- (d) the application to him, and to each of the other deponents, of section 149N.

Verification and filing

20. (1) The statement of affairs shall be in such form as the Judicial Manager may require, and shall be verified by affidavit by the deponents using the same form.

(2) The Judicial Manager may require any of the persons mentioned in section 149T(2) to submit an affidavit of concurrence, stating that he concurs in the statement of affairs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(4) The statement of affairs shall be delivered to the Judicial Manager by the deponent making the affidavit of verification or by one of them, if more than one, together with a copy of the verified statement.

(5) Every affidavit of concurrence shall be delivered by the person who makes it, together with a copy.

(6) The Judicial Manager shall file the verified copy of the statement, and the affidavits of concurrence, if any, in Court.

Limited disclosure

21. (1) Where the Judicial Manager thinks that it would prejudice the conduct of the Judicial Management for the whole or part of the statement of affairs to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.

FOURTEENTH SCHEDULE — *(continued)*

(2) The Court may, on the application, order that the statement or, as the case may be, the specified part of it, not be filed in Court, or that it is to be filed separately and not be open to inspection otherwise than with leave of the Court.

(3) The Court's order may include directions as to the delivery of documents to the Registrar of Companies and the disclosure of relevant information to other persons.

Expenses of statement of affairs

22. (1) A deponent making the statement of affairs and affidavit shall be allowed, and paid by the Judicial Manager out of his receipts, any expenses incurred by the deponent in so doing which the Judicial Manager considers reasonable.

(2) Nothing in this rule relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the Judicial Manager.

Non-application of rules 24 to 26

23. Rules 24 to 26 do not apply where a Judicial Management order has been made on the petition of the Minister of Finance and the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

Judicial Manager's proposals

24. Where a Judicial Management order has been made, the Judicial Manager shall within 3 months of his appointment or such longer period as the Court may allow —

(a) formulate and send to all creditors of the company so far as he is aware of their addresses, a statement of his proposals for achieving the purposes for which the Judicial Management order was made; and

(b) lay a copy of the statement before a meeting of the creditors of the company summoned for that purpose on not less than 14 days' notice.

Statement to be annexed to proposals

25. (1) There shall be annexed to the Judicial Manager's proposals, when laid before the creditors' meeting to be summoned under rule 24, a statement by him showing —

(a) details relating to his appointment as Judicial Manager, the purposes for which a Judicial Management order was applied for and made, and any subsequent variation of those purposes;

FOURTEENTH SCHEDULE — *(continued)*

- (b) the names of the directors and secretary of the company;
- (c) an account of the circumstances giving rise to the application for a Judicial Management order;
- (d) if a statement of affairs has been submitted, a copy or summary of it, with the Judicial Manager's comments, if any;
- (e) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date which must, unless the Court otherwise orders, be a date not earlier than that of the Judicial Management order;
- (f) the manner in which the affairs and business of the company —
 - (i) have, since the date of the Judicial Manager's appointment, been managed and financed; and
 - (ii) will, if the Judicial Manager's proposals are approved, continue to be managed and financed; and
- (g) such other information, if any, as the Judicial Manager thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) Where the Judicial Manager intends to apply to the Court under section 149Q for the Judicial Management order to be discharged at a time before he has sent a statement of his proposals to creditors in accordance with rule 24, he shall, at least 10 days before he makes such an application, send to all creditors of the company, so far as he is aware of their addresses, a report containing the information required by sub-rule (1)(a) to (f)(i).

Meeting of creditors

26. (1) A meeting of creditors summoned under rule 24 shall decide whether or not to approve the Judicial Manager's proposals.

(2) The meeting may approve the Judicial Manager's proposals with modifications, but shall not do so unless the Judicial Manager consents to each modification.

(3) If the meeting approves the Judicial Manager's proposals, he shall manage the affairs, business and property in accordance with those proposals subject to such revisions as may from time to time be made.

FOURTEENTH SCHEDULE — (continued)

(4) If the meeting declines to approve the Judicial Manager's proposals, upon the application of the Judicial Manager, the Court may discharge the Judicial Management order and make such consequential provisions as it thinks fit, or make any other order that it thinks fit.

Judicial Management order under section 149J

27. (1) This rule applies to a Judicial Management order made on the petition of the Minister of Finance under section 149J where the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

(2) The Judicial Manager shall, as soon as practicable, formulate his proposals for the achievement of the purposes for which the Judicial Management order was made and lay the same before the Minister of Finance.

(3) If the Minister of Finance approves the proposals, the Judicial Manager shall manage the affairs, business and property of the company in accordance with the proposals.

(4) If the Minister of Finance declines to approve the Judicial Manager's proposals, the Court may discharge the Judicial Management order and make such consequential provision as it thinks fit, or make any other order that it thinks fit.

(5) If the Judicial Manager thinks fit, and if the Minister of Finance considers it expedient in the public interest and so directs, the Judicial Manager may —

(a) lay a statement of his proposals containing such of the information referred to in rule 25 as the Judicial Manager considers appropriate before a meeting of creditors of the company summoned for that purpose. The meeting of creditors shall not be entitled to vote on, approve, decline to approve, or modify the proposals, but the Judicial Manager may, if he thinks fit, have regard to any views expressed at such meeting; and

(b) publish in the *Gazette* a notice stating an address to which members of the company should write for copies of the statement of proposals to be sent to them free of charge.

Meeting to consider Judicial Manager's proposals

28. (1) Notice of the creditors' meeting to be summoned under rule 24 or, if such is summoned, under rule 27, shall be given to all the creditors of the company who are identified in the statement of affairs, or are known to the Judicial Manager and had claims against the company at the date of the Judicial Management order.

FOURTEENTH SCHEDULE — *(continued)*

(2) The notice shall specify the purpose of the meeting, contain a statement of the effect of rule 30 and with the notice summoning the meeting there shall be sent out forms of proxy.

(3) Notice of the meeting shall also, unless the Court otherwise directs, be given by advertisement in the *Gazette*.

(4) Notice to attend the meeting shall be sent out at the same time to any directors or officers of the company including persons who have been directors or officers in the past, whose presence at the meeting is, in the Judicial Manager's opinion, required.

(5) The meeting may be adjourned, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence.

Chairman at meetings

29. At any meeting of creditors summoned by the Judicial Manager, either he shall be chairman or a person nominated by him in writing to act in his place.

Entitlement to vote

30. (1) Subject as follows, at a meeting of creditors in Judicial Management proceedings, a person is entitled to vote only if —

(a) he has given to the Judicial Manager, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which he claims to be due to him from the company and the claim has been duly admitted under the following provisions of this rule; and

(b) there has been lodged with the Judicial Manager any proxy which he intends to be used on his behalf.

Details of the debt must include any calculation for the purposes of rules 32 to 34.

(2) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with sub-rule (1)(a) if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The Judicial Manager or, if other, the chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

FOURTEENTH SCHEDULE — *(continued)*

(4) Votes are calculated according to the amount of a creditor's debt as at the date of the Judicial Management order, deducting any amounts paid in respect of the debt after that date.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman decides to put upon the debt an estimated value for the purposes of entitlement to vote and admits the claim for that purpose.

Admission and rejection of claims

31. (1) At any creditors' meeting, the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chairman's decision under this rule, or in respect of any matter arising under rule 30, is subject to appeal to the Court by any creditor.

(3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on an appeal, the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the Court may order that another meeting be summoned, or make such other order as it thinks just.

(5) In the case of the meeting summoned under rule 24 to consider the Judicial Manager's proposals, an application to the Court by way of appeal under this rule against a decision of the chairman shall not be made later than 28 days after the date of the meeting.

(6) Neither the Judicial Manager nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the Court under this rule, unless the Court makes an order to that effect.

Secured creditors

32. At a meeting of creditors, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security as estimated by him.

FOURTEENTH SCHEDULE — *(continued)***Holders of negotiable instruments**

33. A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing to —

(a) treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a receiving order has not been made or, in the case of a company, which has not gone into liquidation, as a security in his hands; and

(b) estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

Retention of title creditors

34. For the purposes of entitlement to vote at a creditors' meeting in Judicial Management proceedings, a seller of goods to the company under a retention of title agreement shall deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in the possession of the company.

Hire-purchase, conditional sale and chattel leasing agreements

35. (1) Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company as at the date of the Judicial Management order.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the presentation of the petition for a Judicial Management order or any matter arising in consequence of that, or the making of the order.

Resolutions and minutes

36. (1) Subject to sub-rule (2), at a creditors' meeting in Judicial Management proceedings, a resolution is passed when a majority, in value, of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the company. A person is connected with a company if —

FOURTEENTH SCHEDULE — *(continued)*

(a) he is —

- (i) a director of the company;
- (ii) a person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- (iii) a husband or wife or relative of such person referred to in subparagraph (i) or (ii); or

(b) if he is entitled directly or indirectly to exercise or control the exercise of one-third or more of the voting power at any general meeting of the company.

(3) The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

(4) The minutes shall include a list of the creditors who attended, personally or by proxy, and if an informal creditors' committee has been established, the names and addresses of those appointed or elected to be members of the committee.

Notices to creditors

37. (1) Within 14 days of the conclusion of a meeting of creditors to consider the Judicial Manager's proposals, the Judicial Manager shall send notice of the result of the meeting including, where appropriate, details of the proposals as approved, to every creditor who received notice of the meeting under these Rules, and to any other creditor of whom the Judicial Manager has since become aware.

(2) Within 14 days of the end of every period of 12 months beginning with the date of approval of the Judicial Manager's proposals, the Judicial Manager shall send to all creditors of the company a report on the progress of the Judicial Management.

(3) On vacating office, the Judicial Manager shall send to creditors a report on the Judicial Management up to that time. This does not apply where the Judicial Management is immediately followed by the company going into liquidation, nor when the Judicial Manager is removed from office by the Court.

Informal creditors' committee

38. (1) The Judicial Manager may at any time he considers it appropriate, establish an informal creditors' committee for the purposes of the Judicial Management.

(2) The informal creditors' committee shall assist the Judicial Manager in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

FOURTEENTH SCHEDULE — *(continued)***Fixing of remuneration**

39. (1) Subject to the powers of the Court under section 149L(1)(c), the remuneration of the Judicial Manager shall be fixed in accordance with this rule.

(2) The remuneration of the Judicial Manager shall be determined by the Court, having regard to the time properly given by the Judicial Manager and his firm, employees or agents in attending to matters arising in the Judicial Management.

(3) In arriving at that determination, the Court shall have regard to the following matters —

(a) the complexity or otherwise of the case;

(b) any respects in which, in connection with the company's affairs, there falls on the Judicial Manager any responsibility of an exceptional kind or degree;

(c) the effectiveness with which the Judicial Manager appears to be carrying out, or to have carried out, his duties as such; and

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

(4) If the Judicial Manager is an accountant or advocate and solicitor and employs his own firm, or any partner in or employee of it, to act on behalf of the company, profit costs shall be paid unless the Court otherwise orders.

Disposal of charged property etc.

40. (1) The Judicial Manager is entitled to —

(a) dispose of any property of the company subject to a security as if the property was not subject to the security;

(b) dispose of any goods in the possession of the company under a hire-purchase agreement as if all rights of the owner under the hire-purchase agreement were vested in the company; and

(c) require any receiver or manager of all or any part of the property of the company to vacate office.

FOURTEENTH SCHEDULE — *(continued)*

(2) Where property is disposed of under sub-rule (1), the holder of such security or owner of the goods has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security or in respect of the goods.

(3) Save where the Judicial Manager requires to employ all or part of the proceeds of a disposal under sub-rule (1) for the purposes of the trading of the company, the net proceeds of such disposal shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(4) If the Judicial Manager requires to employ all or part of the proceeds of a disposal under sub-rule (1) for the purposes of the trading of the company, the holder of the security or owner of the goods has the same priority in respect of any other property of the company as he would have had under sub-rule (2) as if such other property of the company had directly or indirectly represented the property disposed of.

(5) In this rule, references to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

Application of rule 40

41. Rule 40 applies to disposals of property by an Executive Manager of a company pursuant to section 149E(4) as if the expression “Executive Manager” were substituted for the expression “Judicial Manager” wherever the latter appears in rule 40.

Sums payable in respect of contracts of employment

42. (1) For the purposes of section 149M(4), sums payable in respect of contracts of employment adopted by the Judicial Manager are only such sums as are payable in respect of qualifying liabilities under such contracts.

(2) For the purposes of sub-rule (1), qualifying liabilities are only those liabilities which are —

(a) liabilities to pay a sum by way of wages or salary or contribution to an occupational pension scheme; and

(b) in respect of services rendered after the adoption of the contract,

and there shall be disregarded so much of any qualifying liability as represents liability or payment in respect of services rendered before the adoption of the contract.

FOURTEENTH SCHEDULE — (continued)

Application of rule 42

43. Rule 42 applies to sums payable pursuant to section 149E(6) as if —

(a) the expression “Executive Manager” were substituted for the expression “Judicial Manager” wherever the latter appears in rule 42; and

(b) the expression “section 149E(6)” were substituted for the expression “section 149M(4)” wherever the latter appears in rule 42.

Unenforceability of liens

44. (1) Where a Judicial Management order has been made, a *lien* or other right of possession of any of the documents of the company is unenforceable to the extent that its enforcement would deny possession of any such documents to the Judicial Manager.

(2) This applies to a *lien* on documents which give a title to property and are held as such.

(3) In this rule, “document” has the meaning given by section 149G(3).

Application of rule 44

45. Rule 44 applies where an Executive Manager has been appointed as if —

(a) the expression “where an Executive Manager has been appointed” were substituted for the expression “where a Judicial Management order has been made” in rule 44(1); and

(b) the expression “Executive Manager” were substituted for the expression “Judicial Manager” in rule 44(1).

Abstract of receipts and payments

46. (1) The Judicial Manager shall —

(a) within 2 months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months; and

(b) within 2 months after he ceases to act as Judicial Manager,

send to the Court, and to the Registrar of Companies, the requisite accounts of the receipts and payments of the company.

FOURTEENTH SCHEDULE — *(continued)*

(2) The Court may, on the Judicial Manager's application, extend the period of 2 months mentioned in sub-rule (1).

(3) The accounts are to be in the form of an abstract showing —

(a) receipts and payments during the relevant period of 12 months; or

(b) where the Judicial Manager has ceased to act, receipts and payments during the period from the end of the last 12 month period to the time when he so ceased. Alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as Judicial Manager.

Resignation

47. (1) The Judicial Manager may give notice of his resignation on grounds of ill health or because there is some conflicts of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of Judicial Manager.

(2) The Judicial Manager may, with the leave of the Court, give notice of his resignation on grounds other than those specified in sub-rule (1).

(3) The Judicial Manager must give to the persons specified below at least 7 days' notice of his intention to resign, or to apply for the Court's leave to do so if —

(a) there is a continuing Judicial Manager of the company, to him;

(b) there is no such Judicial Manager, to the informal creditors' committee;
and

(c) there is no such Judicial Manager and no informal creditors' committee, to the company and its creditors.

Judicial Manager deceased

48. (1) Subject as follows, where the Judicial Manager has died, it is the duty of his personal representatives to give notice of the fact to the Court, specifying the date of the death.

(2) This does not apply if notice has been given under any of the following sub-rules.

FOURTEENTH SCHEDULE — *(continued)*

(3) If the deceased Judicial Manager was a partner in a firm, notice may be given by a partner in the firm.

(4) Notice of the death may be given by any person producing to the Court the relevant death certificate or a copy of it.

Vacancy

49. If a vacancy occurs by death, resignation or otherwise in the office of Judicial Manager, the Court may by order fill the vacancy.

Release

50. The Judicial Manager has his release —

(a) where he has died, at the time notice is given to the Court under rule 49;

(b) in any other case, at such time as the Court may determine.

Application of rules 47 to 50

51. Rules 47 to 50 inclusive apply to the resignation, death and release of an Executive Manager of a company as if the expression “Executive Manager” were substituted for the expression “Judicial Manager” wherever the latter appears.

Protection of interests of creditors and members

52. (1) At any time when a Judicial Management order is in force, a creditor or member may apply to the Court by petition for an order under this rule on the ground that —

(a) the company’s affairs, business and property are being or have been managed by the Judicial Manager in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or some part of the creditors or members including at least himself; or

(b) any actual or proposed act of the Judicial Manager is or would be so prejudicial.

(2) On an application for an order under this rule the Court may make such order as it thinks fit for giving relief in respect of the matters complained of, or make any other order that it thinks fit.

(3) An order under this rule shall not prejudice or prevent —

FOURTEENTH SCHEDULE — *(continued)*

(a) the implementation of any compromise or arrangement sanctioned by the Court under section 151; or

(b) where the application was made more than 28 days after the approval of proposals under rule 26, the implementation of those proposals.

Non-application and application of rule 52

53. (1) Rule 52 does not apply where a Judicial Management order has been made on the petition of the Minister of Finance and the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

(2) Rule 52 applies where a Judicial Management order has been made on the petition of the Minister of Finance and the sole purpose for the achievement of which the order was made was one or more of the purposes specified in section 149I, but in such case no application under rule 50(1) may be made except with the prior written consent of the Minister of Finance and subject to such terms, if any, as he may require.

Extension of time

54. (1) The Court may, in any case where it sees fit, extend or abridge the time appointed by these Rules or fixed by any order of the Court for doing any act.

(2) In all proceedings before the Court, or any Registrar or officer thereof, or over which the Court has jurisdiction under these Rules, where no other provision is made by these Rules, the practice and procedure shall be in accordance with the rules and practice of the Court unless in any particular proceedings the Court otherwise directs.

Petition etc. to be sealed

55. In any case where it thinks fit, the Court may direct that all or any part of any petition, affidavit, report or other document, or copy thereof, is to be sealed and not open to inspection by any person save with the leave of the Court and on such terms as the Court may impose.