

## **Rules for Admission of Firms and Persons for Taking-up Appointment of Liquidators or Special Managers in Non-Summary Court Winding-up Cases**

These Rules set out the provisions of the Official Receiver's Office's scheme ("the Scheme") to nominate for appointment accountants who are members of the Hong Kong Institute of Certified Public Accountants ("HKICPA") as liquidators or special managers in Court winding-up cases where the Official Receiver's Office ("ORO") is of the opinion that the property of the wound-up company is likely to exceed in value \$200,000 ("non-summary cases").

### General

In these Rules, except where the context requires otherwise, reference to "firm" shall include "sole proprietorship", "partnership" and "company"; reference to "partners" shall mean "directors" in the case of a company and "the sole proprietor" in the case of sole proprietorship; the singular shall include the plural and vice versa and a reference to one gender shall include all genders. The Annexes attached to these Rules shall form part of these Rules.

### I. Administrative Panel of Insolvency Practitioners for Court Winding-Up ("APIPCW")

Firms and HKICPA members meeting the qualification requirements stated in paragraphs 1 to 6 below and wishing to take up work under the Scheme are required to be admitted to the APIPCW.

#### Admission to the APIPCW - Firms and Appointment Takers ("ATs")

1. (i) A firm must have provided liquidation services in Hong Kong for at least three years immediately preceding its application.
- (ii) The requirement under paragraph (i) above may be regarded as having been met in the following circumstances -

- (a) in respect of a newly established firm, at least two ATs and three Insolvency Practitioners (“IPs”) of the firm have been admitted as such under the Scheme for not less than three years immediately preceding the establishment of the firm and at least one of the ATs/IPs has been involved, for not less than three years immediately preceding the establishment of the firm, in the management of a firm which provides liquidation services in Hong Kong. For the purpose of this sub-paragraph, a firm is a newly established firm if it has commenced its business not more than twelve months prior to its application for admission under the Scheme.
  
- (b) in respect of a merged firm, at least one of the merged firms is able to meet the requirement under paragraph (i) above immediately prior to the merger. For the purpose of this sub-paragraph, a firm is a merged firm if the merger took place not more than twelve months prior to its application for admission under the Scheme.
  
- (c) in respect of a firm that has established a new department or division on liquidation; e.g. the firm has taken on the liquidation section/personnel of another firm that has left the market, at least two ATs and three IPs of the new department or division of the firm have been admitted as such under the Scheme for not less than three years immediately preceding the establishment of the new department or division and at least one of the ATs/IPs has been involved, for not less than three years immediately preceding the establishment of the new department or division, in the management of a firm which provides liquidation services in Hong Kong. For the purpose of this sub-paragraph, a firm does not fall within the description under this sub-paragraph if its new department or division on liquidation has been established for more than twelve months prior to its application for admission under the Scheme.

2. A firm must have adequate minimum resources as follows -
  - (i) at least four directly employed full-time certified public accountants (i.e. members of the HKICPA) each of whom must have at least three years of post-qualification experience, and three of whom must be IPs with the qualifications stated in paragraph 6 below;
  - (ii) professional staff who have a good command of both English and Chinese;  
and
  - (iii) at least 16 directly employed full-time staff (including the certified public accountants/IPs referred to in (i) above) available to perform the service and deal with cases allocated to the firm under the Scheme.

For the purpose of assessing the minimum resources of a firm under this paragraph, a partner of the firm shall be regarded as being under the direct employment of the firm.

3. Appointments as liquidators or special managers should be in the names of at least two ATs of the firm, one of whom must be a partner, a director or the sole proprietor of the firm and the other AT must be a principal of the firm or hold a position above that at the firm. All ATs must be IPs. At least one AT must be contactable at any time and ATs must be available in Hong Kong when required by the Court, the ORO or creditors.
4. All ATs and IPs of a firm are required to be admitted to the APIPCW administrated by the ORO.

5. Each firm must sign an undertaking in the form attached to these Rules at Annex A with, inter alia, the following provisions -
- (i) to accept any case allocated to it by the Official Receiver (“OR”), except for special reasons acceptable to the ORO which preclude it from doing so;
  - (ii) to carry out to the best of the ability of every AT of the firm every insolvency case that is to be allocated;
  - (iii) to carry out statutory investigation;
  - (iv) to continue to handle a case to reach its reasonable conclusion;
  - (v) to accept and abide by all the terms of these Rules;
  - (vi) to inform the ORO of any change which affects APIPCW status, including any change in contact information and in AT/IP personnel within 14 days of the change;
  - (vii) to acknowledge and accept that the status of APIPCW firm may be removed if the firm is no longer able to satisfy any admission criterion, and a fresh application will have to be made if the firm wishes to be re-admitted; and
  - (viii) to accept any decision of the Appeal Panel as final in case of a dispute.

Admission to the APIPCW - Individuals

6. Each IP of the firm must be a HKICPA member and a full-time employee/partner of the firm with -
  - (i) (a) minimum chargeable hours of relevant insolvency work (excluding Members' Voluntary Liquidations ("MVL") and bankruptcies) of -

600 in the last 3 years  
or 750 in the last 5 years

with a minimum of 100 hours in any one year. A pass in the HKICPA Professional Diploma in Insolvency Programme is equivalent to 50 hours of insolvency work; and
  - (b) involvement at senior and responsible positions in 10 unconnected non-summary insolvency cases (excluding MVL and bankruptcies) in the last five years; and
  - (ii) experience in managing insolvency cases and either holding the position of partner of the firm, or occupying a position of manager or above and reporting directly to the partner of the firm.
7. If the requirements in paragraph 6 above cannot be satisfied, the relevance of other professional qualifications and insolvency work including experience in handling overseas insolvency work may be considered under exceptional circumstances with strong justifications and will be determined by the Admission Committee at its sole discretion on the merit of each case.

## II. Enabling or General Bonds of Liquidators/Special Managers

8. Every AIPICW firm must be covered by current professional indemnity insurance and the ATs may be required to give separate security on individual case pursuant to rule 47 of the Companies (Winding-up) Rules (Cap. 32H) (“Cap. 32H”) to the satisfaction of the OR.

## III. Appointment of Liquidators

9. Following the making of a winding-up order, the OR becomes provisional liquidator by virtue of his office [section 194(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“Cap. 32”)]. If the property of the wound-up company is in the opinion of the OR not likely to exceed in value \$200,000, the OR may appoint other persons as provisional liquidator in his place in accordance with the provisions of section 194(1A) (Cap. 32). Unless the Court has made an order for the company to be wound up in a summary manner where the assets are not likely to exceed in value \$200,000 [section 227F (Cap. 32)], the provisional liquidator must summon separate meetings of creditors and contributories of the company within three months of the date of the winding-up order [section 194(1)(b) (Cap. 32) and rule 106 (Cap. 32H)] to appoint a liquidator.

### First Meeting of Creditors and Contributories

10. (i) In the first meeting of creditors and contributories in non-summary Court winding-up cases convened by the OR, the OR will explain the purposes of the meetings and first invite the persons attending to nominate and resolve to appoint a liquidator of their choice in place of the OR. The OR will explain in the meetings that an application will then need to be made to the Court for an appointment order.

- (ii) In the absence of any nomination by the creditors and contributories or prior appointment of any special manager from the APIPCW roster list, the OR will explain the Scheme and recommend the ATs of the next eligible firm on the APIPCW roster list to the creditors and contributories for appointment as liquidators.
  - (iii) If the creditors and contributories resolve to appoint liquidators of their own choice who happen to be ATs (or IPs) of an APIPCW firm on the roster list, then the appointment will not be counted as one appointment under the APIPCW roster.
  - (iv) The creditors and contributories may in some instances resolve to appoint the OR as the liquidator. The OR will inform them that it is the ORO's policy to have someone else appointed as liquidator in place of the OR. The OR will advise creditors and contributories that if they do resolve to appoint the OR as liquidator, the OR may apply to the Court to appoint liquidators or special managers from the APIPCW roster list.
11. If the OR has doubts about the suitability of a liquidator nominated by the creditors and contributories of their own choice, the OR may object to the appointment in the application to the Court for an appointment order and may recommend the ATs of the next eligible firm on the APIPCW roster list to the Court for appointment as liquidators.
12. By virtue of section 194(2) (Cap. 32), where the OR is the liquidator of the Company, he may, at any time, apply to the Court for the appointment of a person as a liquidator in place of the OR. The OR may nominate ATs of the next eligible APIPCW firm on the roster list in his application to the Court.

12A. Any appointment or nomination for appointment of a liquidator is subject to the disqualification and disclosure provisions under sections 262A to 262F (Cap. 32) and rule 155 (Cap. 32H).

### Special Managers

13. When the OR is appointed as provisional liquidator, and he is of the opinion that the assets of the wound-up company is likely to exceed in value \$200,000, the OR may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, or there are other grounds therefor, require the appointment of special managers, apply to the Court to appoint ATs of an APIPCW firm as special managers under section 216 (Cap. 32). In that case, the appointment as special managers will be counted as one appointment under the roster. In the first meeting of creditors and contributories later convened by the OR, the OR will in the absence of any nomination by the creditors and contributories recommend the special managers to the creditors and contributories for appointment as liquidators. In that case, the appointment as liquidator will not be counted as another appointment under the roster.

13A. Any appointment or nomination for appointment of a special manager as liquidator is subject to the disqualification and disclosure provisions under sections 262A to 262F (Cap. 32) and rule 155 (Cap. 32H).

### Provisional Liquidators

14. (i) If the appointment of the provisional liquidator under section 193 (Cap. 32) is made from the APIPCW roster, then it will be counted as one appointment under the roster. If the provisional liquidator so appointed becomes liquidator under section 194 (Cap. 32), the appointment will not be counted as another appointment under the roster.



- (ii) Where the petitioner has successfully applied to the Court to appoint a firm which is an APIPCW firm to be the provisional liquidator prior to a winding-up order by the Court, and the appointment continues under section 194(1)(aa) (Cap. 32), the appointment will not be counted as one appointment under the roster.

14A. Any appointment or nomination for appointment of a provisional liquidator is subject to the disqualification and disclosure provisions under sections 262A to 262F (Cap. 32) and rule 155 (Cap. 32H).

#### The Roster System

15. Subject to the disqualification and disclosure provisions under sections 262A to 262F (Cap. 32) and rule 155 (Cap. 32H), the appointment will be given to the ATs of the first firm on the roster. Newly admitted or re-admitted firms will be placed at the end of the roster list for allocation of cases. Firms voluntarily withdrawn, previously suspended or removed will have to submit a fresh application if they wish to be re-admitted.

#### IV. Admission Committee

16. (i) An Admission Committee, comprising three ORO officers (one of whom shall serve as the Chairman) and three representatives from HKICPA or other professional bodies as determined by the OR as members, shall meet if required to consider any new application for admission, review admission status of admitted firms, ATs and IPs, review complaints on the performance of any firm, AT or IP or misconduct of any AT or IP in such capacity on the APIPCW and take any action including reprimand, suspension or removal of any firm, AT or IP from the APIPCW.

- (ii) The Chairman and two other members, one of whom must be a representative from the HKICPA and the other an ORO officer shall be a quorum for the meeting of the Admission Committee. Any meeting at which a quorum is present shall be competent to exercise all the functions and powers conferred upon the Admission Committee.
  - (iii) The Chairman may exercise a casting vote at any meeting at which no majority can be obtained.
  - (iv) The Secretary of the Admission Committee shall be provided by the ORO.
  - (v) Simple and straightforward applications for admission may be dealt with by written circulation instead of a physical meeting, provided that a physical meeting shall be convened if a request for such meeting is made by any member. Where an application does not clearly meet all the requirements of these Rules, a physical meeting should be convened.
17. The Admission Committee shall notify each applicant and any firm or member on the APIPCW of its decisions in writing.

V. Application Procedures

18. Every firm which wishes to join the APIPCW shall submit an Application Form A and Form B (a copy of which is attached at Annex B) to the ORO.
19. The ORO will invite the HKICPA or other relevant professional bodies as the case may be to verify the information declared in the application forms with its membership records to the extent of information held in those records and advise the ORO of any discrepancy.

20. The ORO may request the applicant to provide any further information that he may reasonably require, and shall place the application before the Admission Committee for its consideration.
21. If an application is not approved by the Admission Committee or the Appeal Panel, the applicant may submit a fresh application at any time.

VI. Remuneration of Provisional Liquidators, Liquidators and Special Managers

22. (i) Where there is a Committee of Inspection, the liquidator appointed according to the APIPCW roster list will be remunerated on such basis and at such rates as may be agreed between the liquidator and the Committee of Inspection [section 196(2)(a) (Cap. 32)]. If the agreement is for remuneration on a time-cost basis, the rates applied shall not be higher than the standard rates as at the date of the appointment as liquidator unless the Committee of Inspection or the Court agrees to different rates.
- (ii) Where there is no Committee of Inspection or the liquidators and the Committee of Inspection fail to agree, the liquidator appointed according to the APIPCW roster list will be remunerated on such basis and at such rates as may be directed by the Court [section 196(2)(b) (Cap. 32)]. If the remuneration is on a time-cost basis, the rates applied shall not be higher than the standard rates as at the date of the appointment as liquidator unless the Court agrees to different rates.
- (iii) The standard rates are the rates set out at Annex C. The standard rates of fees may be adjusted by the ORO where appropriate. APIPCW firms will be advised of the adjusted rates of fees as soon as practicable.

VII. Performance of the Firm, AT or IP

23. (i) (a) If any firm, AT or IP on the APIPCW fails to carry out to the best of the ability of the firm, AT or IP in any insolvency case allocated to the firm according to the roster system; or
- (b) If the quality of the work carried out by any firm, AT or IP on the APIPCW is considered by the ORO as unsatisfactory; or
- (c) If there is any breach of any provision of these Rules by any firm, AT or IP on the APIPCW as determined by the Admission Committee; or
- (d) If any information provided by the firm or its ATs or IPs in their application for admission to the Scheme is found to be false in any material particular;

the Admission Committee may reprimand the firm, AT or IP, or suspend or remove them from the APIPCW where appropriate.

- (ii) In the event of any change in a firm, AT or IP which would result in the firm, AT or IP not being able to meet any of the criteria set out in paragraphs 2, 3 and 6 (other than sub-paragraph 6(i)) hereof and :

- (a) the firm fails to inform the ORO of such change within 14 days of the change; or
- (b) such firm, AT or IP remains unable to meet the criteria for a period of not less than 6 months;

the Admission Committee may suspend or remove such firm from the APIPCW.

24. Firms which have ceased to be on the APIPCW should not hold themselves out as being currently registered APIPCW firms, and practitioners who are registered ATs and/or IPs of a firm should not hold themselves out as being currently registered ATs and/or IPs after they have left the firm or after that firm has ceased to be an APIPCW firm.

VIII. Appeal Panel

25. An Appeal Panel, comprising the OR (as the Chairman), two members to be nominated by the HKICPA (at least one of whom shall be a member of the HKICPA Council or permanent staff) and two other members who are independent lay persons to be determined by the OR, will be set up to consider any appeal against the decision of the Admission Committee to reject application for admission, reprimand, suspend or remove any firm, AT or IP from the APIPCW. The Appeal Panel shall be constituted and shall operate in accordance with the Appeal Rules, which is set out in Annex D.

IX. Effective Date and Transitional Arrangement

26. These Rules will be effective on 23 August 2012.

27. (i) All firms, ATs or IPs which have been admitted to the APIPCW under the Rules that were in force from time to time before 23 August 2012 (“the previous Rules”) and remained to be on the APIPCW immediately before 23 August 2012 are required to satisfy all requirements as stipulated in these Rules. A grace period of six months up to 22 February 2013 will be given to such firms, ATs or IPs to demonstrate that they can satisfy all the requirements as stipulated in these Rules. During this grace period, new cases would continue to be allocated under the roster in the normal way. After the end of the grace period, any such firm or AT that cannot meet the new requirements will cease to be allocated any new cases or will not be appointed as liquidator or special manager, while remaining on the APIPCW (i.e. it will be by-passed on the roster if a new case comes up for allocation). At the expiration of two years after 23 August 2012, if any such firm, AT or IP still failed to satisfy the requirements under these Rules, it will be removed from the APIPCW and will need to apply afresh if it wishes to re-join in the future.
- (ii) (a) Notwithstanding the provision contained in paragraph 27(i) above, for those IPs and those ATs (who are also IPs) that were unable to meet all the admission criteria under the previous Rules but were admitted to the APIPCW on or before 30 April 2012 on the basis of a waiver of admission criteria under the previous Rules, insofar as those waived admission criteria remain to be applicable under these Rules, such admission criteria would continue to be waived and to this extent only, these ATs and IPs would be deemed to have satisfied such admission criteria under these Rules. For the avoidance of doubt, the grace period referred to in paragraph 27(i) above will continue to apply to all other requirements under these Rules.

(b) The waiver under sub-paragraph (a) above does not apply to future applications by such ATs and IPs under these Rules.

13 February 2017

To: The Official Receiver  
Official Receiver's Office  
10/F, Queensway Government Offices  
66 Queensway  
Hong Kong

### **UNDERTAKING**

In consideration of my firm (insert name of firm) being admitted to the Administrative Panel of Insolvency Practitioners for Court Winding-Up ("APIPCW"), I, (name), a partner/director\* of (name of firm), hereby undertake on behalf of my firm as follows:-

1. to accept and carry out to the best of the ability of every appointment taker of my firm in every insolvency case that is to be allocated to me and any other member of this firm as Special Managers or Liquidators according to the Official Receiver's Office (ORO)'s roster system or when I am or any other member of my firm is nominated by a petitioning creditor or when I am or any other member of my firm is appointed at a meeting of creditors;
2. subject to the agreement of the Committee of Inspection or the determination of the Court, to charge for any of the work in paragraph 1 on a time-cost basis and not higher than the standard rates as at the date of appointment as liquidator, or I and/or any other member of my firm as appointment taker may apply to the Committee of Inspection or to the Court to be remunerated at different rates;
3. to carry out statutory investigation into the affairs of the company by applying the standard of investigation as set out in Annex E to the Rules for the Admission of Firms and Persons to the APIPCW, and to compile an account in lieu of a statement of affairs and where applicable applying to Court for release as a liquidator, and reserving from distribution sufficient funds to carry out these functions;
4. to bring every such case to a reasonable conclusion to the satisfaction of the Official Receiver;





## Application for Admission as APIPCW Firm (Form A)

To: Official Receiver

I. Firm Name \_\_\_\_\_ (In English)  
 \_\_\_\_\_ (In Chinese)

II. Registered Address \_\_\_\_\_  
 \_\_\_\_\_

III.  Corporation  Partnership  Sole Proprietor

IV. HKICPA Member Firm:  Yes  No

**(Copy of certificate of incorporation is required for non-HKICPA Corporation)**

V. Particulars of the firm

(a) Limited Company                      Name of shareholders                      No. of issued shares held  
 (i) Issued share capital                      \_\_\_\_\_                      \_\_\_\_\_

\_\_\_\_\_                      \_\_\_\_\_  
 \_\_\_\_\_                      \_\_\_\_\_  
 \_\_\_\_\_                      \_\_\_\_\_

(ii) Directors:

Name of directors

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) Partnership

Name of partners

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(c) Sole proprietor

Name of sole proprietor

\_\_\_\_\_

VI. No. of full-time professionals of the firm \_\_\_\_\_  
 handling insolvency works

VII. No. of full-time non-professionals or \_\_\_\_\_  
 semi-professional supporting staff

VIII. Years of the firm dealing with \_\_\_\_\_  
 insolvency matters                      HK:                      to

\_\_\_\_\_                      Overseas:                      to

IX. Professionals listed below will apply for registration of Insolvency Practitioner (IP) and/or Appointment Taker (AT). Application Forms B for each of them are attached:

	<u>Name of Professional</u>	<u>Current Position</u>	<u>Length of service with the firm</u>	(please ✓)	
				<u>IP</u>	<u>AT</u>
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____
11.	_____	_____	_____	_____	_____
12.	_____	_____	_____	_____	_____
13.	_____	_____	_____	_____	_____
14.	_____	_____	_____	_____	_____
15.	_____	_____	_____	_____	_____

X. Does the firm have an international affiliation network? If so, please describe.

\_\_\_\_\_

\_\_\_\_\_

I confirm that the information listed above is true and correct and I am willing, if requested by the Official Receiver’s Office (“ORO”), to provide further information to support/clarify the above information. I understand that if any of the above information is found to be false in any material particular, the Admission Committee has the right to immediately remove the firm from the APIPCW.

Signed by:

\_\_\_\_\_  
 (Name of director/partner/sole proprietor)

\_\_\_\_\_  
 Firm Name in Print

\_\_\_\_\_  
 Company Chop

Date:

\_\_\_\_\_

**Application Form B**  
**Application for Appointment Taker**  
**and Insolvency Practitioner**

Personal Particulars

Name of Certified Public Accountant: \_\_\_\_\_ (In English)  
 \_\_\_\_\_ (In Chinese)

Application for:             Appointment Taker         Insolvency Practitioner  
 Firm Name: \_\_\_\_\_

Position in the firm: \_\_\_\_\_ (since MM/YYYY)

HKICPA Member                             Yes (since MM/YYYY)         No

Member of other professional body: (Copy of member certificate is required)

- a. Name of Professional body: \_\_\_\_\_  
 b. Membership No.: \_\_\_\_\_ (since MM/YYYY)

Professional Diploma in Insolvency: Year of completion: YYYY / Not yet completed or attended \*  
 (organized by HKICPA)                            Result: Pass / Credit / Distinction \*

**Chargeable Hours**

Part 1:

Period from 1 January to 31 December	<u>Chargeable Hours in Insolvency Work</u>	<u>At the Rank of</u>	<u>No. of months at that rank</u>
Year 1 _____	<input type="text"/>	_____	_____
Year 2 _____	<input type="text"/>	_____	_____
Year 3 _____	<input type="text"/>	_____	_____
Total in Past 3 years	<input type="text" value="T3"/>		
Year 4 _____	<input type="text"/>	_____	_____
Year 5 _____	<input type="text"/>	_____	_____
Total in Past 5 years	<input type="text" value="T5"/>		

\* Please delete as appropriate.

Part 2 (a): Breakdown of chargeable hours mentioned in Part 1 into the following categories

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>(a) Categories of Insolvency Work (Note)</b>	<b>hrs</b>	<b>hrs</b>	<b>hrs</b>	<b>hrs</b>	<b>hrs</b>
1. Creditors Voluntary Liquidations					
2. Compulsory Liquidations					
3. Appointment of Special Managers					
4. Court Appointed Receivers					
5. Receivers and Managers under Debentures					
6. Others ( please specify )					
<b>(b) No of hours in (a) worked for</b>					
HK cases					
Overseas cases					

Part 2 (b) Please provide details in relation to the chargeable hours mentioned in Part 2(a)

	Case Name #	Brief Description of tasks performed	Performed (from MMY to MMY)	Position held

# : If case name cannot be released due to confidential reason, please specify the nature of business of the case

**Part 3:** Please provide the number of appointments (singly or jointly) as appointment takers in each of the following categories

	last 3 years	HK/ overseas	last 5 years	HK/ overseas
<b>Categories of Insolvency Work (Note)</b>				
1. Creditors Voluntary Liquidations				
2. Compulsory Liquidations				
3. Appointment of Special Managers				
4. Court Appointed Receivers				
5. Receivers and Managers under Debentures				
6. Others (Please specify )				

I confirm that the information provided above is true and correct and I am willing, if requested by the Official Receiver’s Office (“ORO”), to provide further details to support the above information. I understand that if any of the above information is found to be false in any material particular, the Admission Committee has a right to immediately remove me from the APIPCW.

Signed by Applicant: \_\_\_\_\_

Applicant’s Name: \_\_\_\_\_

HKICPA Membership Number: \_\_\_\_\_

Date: \_\_\_\_\_

**Note:** Please note that the relevance of other professional qualifications and insolvency work including experience in handling overseas insolvency work may be considered under exceptional circumstances with strong justifications and will be determined by the Admission Committee on the merit of each case. The categories of work listed in item 1 to item 5 are generally recognised by the ORO as relevant insolvency work. Applicant may report the time spent on other nature of work in item 6. However, applicants must specify adequate details in respect of each nature of work listed in item 6 for members of the Admission Committee’s consideration.

**Standard Rates of Fees Approved by the  
Official Receiver in consultation with  
the Hong Kong Institute of Certified Public Accountants in 2012**

<u>Rank</u>	<u>Hourly Rate (\$)</u>
Partner/Principal	6,124
(Senior) Manager 3	4,983
Manager 2	3,848
Manager 1	2,944
Senior Staff 2	2,255
Senior Staff 1	1,595
Trainee 2	1,120
Trainee 1	904
Clerical	566

## Appeal Panel

### 1. Constitution

The Appeal Panel (“the Panel”) shall consist of the Official Receiver (“OR”) (as the Chairman), two members to be nominated by the HKICPA (at least one of whom shall be a member of the HKICPA Council or permanent staff) and two other members who are independent lay persons to be determined by the OR. Any meeting at which the Chairman and all members present shall be competent to exercise all the functions and powers conferred upon such a panel. The Chairman may exercise a casting vote at any meeting at which no majority can be obtained.

### 2. Responsibilities

The Panel shall be responsible for hearing and determining any appeal against the decisions of the Admission Committee of the Administrative Panel of Insolvency Practitioners for Court Winding-up (“APIPCW”) in accordance with the Rules to reject application for admission, reprimand, suspend or remove any firm, AT or IP from the APIPCW.

### 3. Powers

The Panel shall have all the powers of the Admission Committee of the APIPCW in discharging its responsibility in accordance with the Rules for consideration of applications for admission, review of complaints and taking of any actions including reprimands, suspension or removal of any firm, AT or IP from the APIPCW and may exercise its discretion in any such matter brought before it as an appeal.

### 4. Appeal Procedure

- (a) An applicant aggrieved by any decision of the Admission Committee of the APIPCW notified to him may appeal to the Panel within 21 days after the date of issuing the notice of the decision by giving notice to the OR.



- (b) A written statement (“Statement”) setting out the circumstances in which the appeal is made and the matters or facts relied upon by the Appellant, the submissions of the Appellant, the decision or requests to which the Appellant objects shall be submitted by the Appellant to the Panel together with a statutory declaration verifying the facts set out in the Statement.
- (c) The appeal shall be without oral hearing unless the Panel so directs. If the Panel directs that there will be an oral hearing, such direction shall be made in writing and a written notice of such direction shall be served on the Appellant within seven days of the Panel’s decision to direct an oral hearing by post. The notice shall set out the date and place of the oral hearing. There shall be at least 21 days between the date of the Panel’s decision to direct an oral hearing and the date of the oral hearing.
- (d) The appeal shall be determined or heard as soon as practicable but in any event within three months from the date of the lodging of the Statement.
- (e) If the appeal is determined without oral hearing, the Panel may determine the appeal on the basis of the documents before it or require further documentation to be produced.
- (f) If the appeal is by oral hearing, the Appellant may appear at the hearing in person or by a solicitor, counsel or other representative. The Appellant shall notify the Panel at least 14 days prior to the hearing how he proposes to appear.

- (g) The Panel may make such order as it sees fit in respect of the appeal, including any costs of the appeal, and shall give the Appellant a written statement of its reasons for the making of such order.
- (h) Any such order shall be signed by the Chairman of the Panel and shall be filed with the ORO and notified to the HKICPA or any other relevant professional bodies to be determined by the OR. The ORO and the HKICPA or the other relevant professional body to be determined by the OR shall forthwith on the filing of the order take all steps as may be necessary to give effect to the said order.
- (i) The procedure to be adopted in relation to any appeal shall, subject to the foregoing paragraphs, be such as the Panel shall in its absolute discretion determine.

5. Power to Suspend Operation of Decision Pending Appeal

- (a) The Panel in its absolute discretion shall have the power to suspend the operation of any decision made by the Admission Committee of the APIPCW pending the hearing and determination of any appeal.
- (b) Where the operation of a decision of the Admission Committee of the APIPCW is suspended pending appeal and that decision is confirmed on appeal, then it shall take effect on the date of the decision of the Panel.

## **Statutory Investigation into the Affairs of an Insolvent Company Wound-Up by the Court**

The liquidator of an insolvent company is under a duty to carry out statutory investigation of the affairs of a company wound-up by the Court.

The purpose of an investigation is to determine the assets and liabilities of the company and to review the conduct, decisions and actions of the directors. If, during the course of the investigation any apparent right of action comes to light, the liquidator should determine, if necessary with the benefit of legal advice, whether or not any particular action can be taken.

The extent and nature of the investigation work will vary from company to company but should include the following -

### PROCEDURE

#### 1. Questioning the management

At the outset of the winding up, all relevant directors, including directors who held office during the last three years, the company secretary and other senior officials should be questioned as to the company's affairs, including the reasons for failure. The onus is on the liquidator to consider carefully which directors (officers, former directors or shadow directors) are relevant having regard to their accessibility and the information which he believes they may have. The liquidator may also invite creditors to bring his notice to any particular matters which they consider require further investigation.

#### 2. Records

The records of the company covering the period since the date of the last audited financial statements should be examined to ensure that transactions in the final period of trading were made in the normal course of business.

#### 3. Validity of charges

Details of all security held by banks and other parties should be obtained and the liquidator should check registration and consider the possible invalidity of any charge. Where liquidation follows receivership, the validity of the receiver's appointment should also be assessed.

#### 4. Comparison of assets with last balance sheet

For the purposes of discovery of assets, the statement of affairs/supplementary affidavit(s) should be compared with the last audited financial statements. The liquidator should satisfy himself that material movements in fixed and current assets can be properly explained. Where no statement of affairs is provided, the most recent audited financial statements and management accounts should form the starting point for identifying assets owned by the company.

5. Trading losses

Consideration should be given to the preparation of a deficiency account, and possibly also trading, profit and loss accounts, in any case where there is a material difference between the deficiency disclosed in the statement of affairs/supplementary affidavit(s) and the last audited financial statements, after taking into account matters such as writing down asset values.

6. Transactions with persons connected with the company

The books and records of the company should be examined to ensure that any transactions with persons connected with the company were carried out at arm's length and material transactions should be examined in detail. Particular attention should be paid to transactions involving directors, including any reduction in loan accounts and/or reduction in overdrafts supported by personal guarantees. Repayment terms of director loans should be noted and any material acquisitions of assets by or disposals to directors and related parties (including any person connected with the company), or transactions which might constitute the giving of any unfair preference or transaction at an undervalue to that director or related party (including any person connected with the company) should be investigated in detail to determine whether the transactions occurred on commercial terms.

7. Statutory books

The statutory books of the company should be examined, together with the minute book, and compared with a search obtained from the Companies Registry. Particular attention should be given to the identity of directors who held office during the last three years.

8. Conduct of Directors/Offences

- (a) If the liquidator's investigation into the affairs of the company should reveal any offence by any past or present officer (or member) of the company, this should be reported to the Official Receiver ("OR"). The liquidator of a company is required to submit either a report or a return (known as a "Form D1" and "Form D2" respectively) to the OR, concerning the conduct of the directors of the company, within six months of appointment. The OR has issued the following memoranda elaborating on the requirements, ORO Circular No. 6/2014 – *Prosecution of Insolvency Offences* (supplemented by ORO Circular No. 5/2017 - *Prosecution of Insolvency Offences – Supplemental to ORO Circular No. 6 of 2014*) and Circular No. 6/2017 – *Disqualification of Directors*, and the liquidator should refer to these memoranda, any new memorandum on the same subject as well as amendment or supplement to the existing memoranda that may be issued by the ORO from time to time for detailed guidance in completing reports or returns.
- (b) In this respect, the liquidator shall give consent to the OR, as and when required to do so by the OR, for the purposes of any investigation of the company and/or its officers or members, to write directly to any organizations for obtaining information or records in relation to such company and/or its officers or members.

GENERAL

9. The liquidator's investigations into the affairs of the company should aim to identify any rights of action which the company or the liquidator may have against third parties, and the liquidator's attention is drawn to, inter alia, the following provisions:

Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

Sections 47A – 48*	Financial assistance
Section 121*	Failure to keep or preserve any books of accounts
Section 156*	Bankrupt acting as a director
Section 157J*	Criminal penalties for contravention of Section 157H (Prohibition of loans, etc., to directors and other persons)
Section 182	Avoidance of dispositions of property of the company after commencement of winding up
Section 190(5)#	Failure to comply with requirements under section 190
Sections 212-214	Uncalled capital
Section 265D#	Transactions at an undervalue (as defined in section 265E)
Section 266#	Unfair preferences (as defined in section 266A)
Sections 266/266B#	Fraudulent / unfair preferences
Section 271	Offences by officers of companies in liquidation
Section 272	Falsification of books
Section 273	Frauds by officers of companies which have gone into liquidation
Section 274#	Failure to keep proper records
Section 275	Fraudulent trading
Section 276#	Misfeasance and misapplication etc. of property
Section 277	Prosecution of delinquent officers and members

\* repealed but continue to apply by virtue of Schedule 11 to the Companies Ordinance (Cap. 622) or section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) or both

# for the transitional and savings provisions regarding amendments made by the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016, see Schedule 26 to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) or both

Companies Ordinance (Cap. 622)

Sections 205-207, 274-275, 277-282, 286- 289	Financial assistance
Sections 373, 374, 377	Failure to keep or preserve accounting records
Section 480	Bankrupt acting as a director

Conveyancing and Property Ordinance (Cap. 219)

Section 60

Voidability of dispositions to defraud creditors

Consideration should also be given to whether any other rights of action are available, for example, in relation to the common law fiduciary duties of directors, breach of constructive trust, etc.

10. The liquidator should obtain the sanction of the Committee of Inspection or the Court in respect of any decision to bring or defend any action or other legal proceedings in the name of and on behalf of the company, which may be appropriate following the outcome of the above investigation work. This sanction is a statutory requirement in a compulsory winding up, and in all cases, the overriding consideration will be the likelihood of any tangible benefit to the creditors.
11. The liquidator should submit a preliminary report to the Court under section 191 of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) -
  - (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
  - (b) if the company has failed, as to the causes of failure; and
  - (c) whether in his opinion, further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.