

A first step in capping liquidator's costs?

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Yesterday the Royal Court of Guernsey issued practice direction 3 of 2015 ("the Practice Direction"). The purpose of the Practice Direction was to address the issue of the costs in administrations and compulsory liquidations in Guernsey.

Prior to the Practice Direction proposed administrators or liquidators only had to provide the Court with their firms' hourly charge-out rates, the Commission would then assess the costs of an administration or liquidation at the conclusion of the matter. Now, pursuant to the Practice Direction, all proposed administrators or liquidators will have to confirm one of the following:

1. an estimate of the total fees to be charged by the Administrator or Liquidator and any other expenses likely to be incurred from other professional service providers such as Advocates; or
2. confirmation that a creditor is prepared to underwrite the fees and expenses without charge to other creditors; or
3. an explanation as to why it is impossible to estimate all or some of the fees and expenses at this stage.

It should be noted that the Practice Direction envisages that it will only be in exceptional circumstances that an administrator or liquidator will not be able to provide an estimate of costs and specifically references where it is difficult to estimate legal expenses to be incurred, presumably when the administrator or liquidator considers that they may need to pursue litigation.

The Practice Direction also allows for an administrator or liquidator to apply to the Court for directions to vary the estimate should additional information come to light which will make a significant difference to the work involved. The Practice Direction does not make it clear what the sanctions will be if an administrator or liquidator does not make an application to vary the estimate, we can only assume at this stage that the Court may refuse to award any additional costs incurred.

Collas Crill senior associate, James Tee, said: "The Practice Direction seems to strike a balance between giving some comfort and certainty to creditors in respect of the costs that may be incurred in an administration or liquidation, whilst giving the administrator or liquidator the flexibility to seek directions to amend the estimate if he/she discovers that there is potentially more work to be done than initially thought."

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