

Official Receiver's Office
The Government of the Hong Kong Special Administrative Region

Tender for Taking up of Appointment as Provisional Liquidators under
Section 194(1A) of the Companies Ordinance

Terms of Tender (supplement)

(1) Tender Documents

These Tender documents identified as **OR/T/2001** consist of TWO complete sets of documents, comprising:

- a. Tender Form (GF 231 Parts 1-5)
- b. Interpretation (page 1-3 Annex 1)
- c. Terms of Tender (page 4-5 Annex 1)
- d. Schedule [Part I- Work Specification] (page 6-7 Annex 1)
- e. Schedule [Part II- Pre-qualification Criteria] (page 8 Annex 1)
- f. Schedule [Part III- Special Conditions] (page 9-13 Annex 1)
- g. Schedule [Part IV- General Conditions] (page 14-15 Annex 1)
- h. Quotation Sheet (page 16-17 Annex 1)

- (2) The tender and all accompanying documents must be submitted in the manner stipulated under 'Lodging of Tender' on the front page of the tender form GF231.

Official Receiver's Office
The Government of the Hong Kong Special Administrative Region

**TENDER FOR TAKING UP OF APPOINTMENT
AS PROVISIONAL LIQUIDATOR UNDER
SECTION 194(1A) OF THE COMPANIES ORDINANCE**

INTERPRETATION

In these Tender documents,

- “Allocation Period” means the period commencing from the date of acceptance of the offer referred to in Clause 5(a) of this Tender and ending on 31 March 2002.
- “Appointment Taker” means the person, who may be a partner, director or employee of the Tenderer, who will take up the appointment as joint and several provisional liquidators and/or liquidators in a Qualified Case, in accordance with Part I of the Schedule.
- “Contract” means the contract referred to in Clause 5(a) of the Terms of Tender and includes the Terms of Tender, the Schedule and the Quotation Sheet.
- “Firm” means the Tenderer whose Tender is accepted.
- “Government” means the Government of the Hong Kong SAR
- “Official Receiver” means the Official Receiver appointed under the Bankruptcy

Ordinance (Cap. 6).

“Professional Person”	means a person who meets the requirements under Clause 1(ii) of Part II of the Schedule.
“Qualified Case”	means the liquidation case of a company compulsorily wound up by the court and where Section 194(1A) of the Companies Ordinance (Cap. 32) applies.
“Recognised Professional”	means a person who is a registered member of one or more of the Recognised Professions.
“Recognised Professions”	mean the accounting profession, the legal profession, the company secretarial profession and any other profession which the Official Receiver may recognise in writing as Recognised Profession for the purpose of this Tender.
“Required Subsidy”	means the amount of Subsidy stated by a Tenderer in its Tender as the maximum amount of Subsidy it will demand from the Government for the performance and discharge of the Services when Appointment Takers of the Tenderer are appointed as joint and several provisional liquidators in a Qualified Case by the Official Receiver, and as liquidators thereafter under Section 227F of the Companies Ordinance.
“Schedule”	means the schedule attached to this Tender and includes the Quotation Sheet.
“Services”	means the work referred to in Part I of the Schedule.
“Subsidy”	means the subsidy payable by the Government in respect a

Qualified Case to meet the Appointment Takers' remuneration and fees for the performance and discharge by them of the Services when the net realised assets of the wound up company is insufficient for that purpose.

“Tender” means the tender hereunder.

“Tenderer” means the firm or the company who meets the criteria referred to in Part II of the Schedule, and who submits a tender in accordance with the terms and conditions of this Tender.

If the context permits or requests, the singular number shall include the plural, the masculine and neuter gender shall include the others of them.

TERMS OF TENDER

1. Invitation to tender

Tenders are invited for the taking up of appointments as joint and several provisional liquidators in Qualified Cases in two separate groups, namely, “Group A” and “Group B”, subject to and in accordance with the terms and conditions in these Terms of Tender, and the Schedule attached to this Tender.

2. Tender

- (a) This Tender relates to the appointment of the Firm’s Appointment Takers as the joint and several provisional liquidators in place of the Official Receiver in accordance with Section 194(1A) of the Companies Ordinance in Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period.
- (b) The maximum number of Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period under Group A and Group B will be as stated in Special Condition 3 in Part III of the Schedule.
- (c) A Tenderer may tender for Qualified Cases under Group A or Group B or both Group A and Group B. Each Tenderer must state in the Quotation Sheet under which group or groups his Tender was submitted.
- (d) The Tenders will be considered for acceptance on a group-by-group basis.
- (e) The Schedule issued with the Tender must not be altered by the Tenderer, and the Tenderer must not put in additional terms and conditions of his own or make his tender subject to any terms or conditions not being a term or condition in these Terms of Tender and the Schedule attached to this Tender. Figures should not be altered or erased; any alternation should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (f) Tenders are to be submitted in duplicate and are to be completed in ink or typescript; tenders not so completed may not be considered.

- (g) Tenders may not be considered if complete information is not given with the Tender or if any particulars and data asked for in the Schedule are not furnished in full.
- (h) Each Tenderer shall not submit more than one tender in this Tender.

3. Tenders to Remain Open

- (a) Tenders shall remain open for 60 days after the closing date of the Tender
- (b) Tender closing time in case of Typhoon/Rainstorm

In case a rainstorm black warning or typhoon signal No. 8 or above is hoisted between 7:00 a.m. and 9:00 a.m., the tender closing time will be extended to 9:00 a.m. on the next weekday (i.e. except Saturday and Sunday) other than public holiday.

4. Required Subsidy

The Required Subsidy should be shown in Hong Kong Dollars.

Tenderers should make certain that the Required Subsidy is correct and final before submitting their tenders. Under no circumstances will the Government accept any request for subsidy adjustment on grounds that a mistake has been made in assessing the Required Subsidy.

5. Acceptance

- (a) The Tender, if accepted, will be concluded as a contract with the Official Receiver. The Firm will receive a letter from the Official Receiver for acceptance of the offer. Tenderers which do not receive any notification within the validity period of their offer shall assume that their offers have not been accepted.
- (b) The Official Receiver is not bound to accept the lowest or any tender. The Official Receiver expressly reserves the right to accept more than one offer in this Tender.

SCHEDULE

Part I - Work Specifications

1. The Firm's Appointment Takers shall take up the appointment as joint and several provisional liquidators in place of the Official Receiver in Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period. The Firm shall have no right to reject or to refuse to accept any such allocation. At least one of the Appointment Takers must be a partner or director of the Firm, or a person who is acceptable to the Official Receiver as a partner or director equivalent of the Firm.
2. The Firm shall keep under its employment sufficient staff resources to ensure that all Qualified Cases allocated to the Firm are handled in a professional and expeditious manner.
3. The Firm's Appointment Takers shall in respect of a Qualified Case allocated to the Firm by the Official Receiver, perform with professionally acceptable standards, all such tasks and duties as are necessary or may be required of a provisional liquidator under Section 194(1A) of the Companies Ordinance; and all such tasks and duties as are necessary or may be required under the Companies Ordinances of a liquidator appointed under Section 227F thereof (when the Appointment Takers are so appointed) and such other tasks or duties as may be imposed on them by the Official Receiver pursuant to this Contract, including but not limited to the duty to convene the meetings of creditors and contributories under Section 194(1)(b) of the Companies Ordinance if the assets of the company turn out to be more than \$200,000 in value.
4. The Firm's Appointment Takers when appointed as joint and several provisional liquidators in a Qualified Case, shall apply to the court within 3 months of the date of the winding-up order of that company for a summary procedure order pursuant to Section 227F of the Companies Ordinance unless there is evidence that the value of the asset of the company will exceed \$200,000, in which case, they shall forthwith but in any event

not later than 8 weeks after the date of the winding-up order notify the Official Receiver of the same, and shall arrange to convene the meetings of creditors and contributories under Section 194(1)(b) of the Companies Ordinance.

5. The Firm's Appointment Takers appointed as joint and several provisional liquidators in a Qualified Case shall (unless the Court orders otherwise) continue to act as the company's liquidators when the summary procedure order is granted by the court under Section 227F of the Companies Ordinance, and shall perform with professionally acceptable standards, all such tasks and duties as are necessary or may be required of a liquidator under and pursuant to the provisions of the Companies Ordinance, until the completion of the case and his obtaining a release order from the court under Section 205 of the Companies Ordinance.

Part II - Pre Qualification Criteria

A firm or a company must meet the following criteria in order to qualify as a Tenderer:

1.
 - (i) There must be in the firm or the company at least two persons who are Recognised Professionals.
 - (ii) At least one of the Recognised Professionals must be a Professional Person who must
 - (a) have at least 3 years of post-qualification experience
 - (b) have a minimum of 200 chargeable hours (“the Qualifying Chargeable Hours”) over the last 3 years
 - i) of which, at least 100 hours must be related to insolvency work (creditors or compulsory liquidations) or receiverships;
 - ii) the remaining hours may be on solvent liquidations [in which case, the chargeable hours counting towards the Qualifying Chargeable Hours would be reduced by 50%, so that two chargeable hours on solvent liquidation will be counted as one Qualifying Chargeable Hour]; and
 - iii) which must have been performed on a minimum of 4 separate winding-up cases of unconnected companies,
 - (c) be a current member of either one or more of the following professional bodies:
 - i) Hong Kong Society of Accountants
 - ii) Law Society of Hong Kong
 - iii) Hong Kong Institute of Chartered Secretaries
2. The firm or the company must have a minimum of two Appointment Takers. At least one of the Appointment Takers must be a Professional Person.

Part III - Special Conditions

1. **Total Services**

The services to be performed by the Firm under this Contract shall be as specified in the Work Specification in Part I of the Schedule and shall be carried out in respect of all Qualified Cases allocated to the Firm during the Allocation Period by the Official Receiver.

2. **Assignment**

The Firm is strictly prohibited from assigning or otherwise transferring this Contract or any part, share or interest therein and the performance of this Contract by the Firm shall be deemed to be personal to the Firm.

3. **Estimate of number of Qualified Cases to be allocated to the Firm**

(a) **Group A**

Up to 90 in number of Qualified Cases (which may be varied by the Official Receiver solely at his discretion up or down by 20 percent) may be allocated to the Firm during the Allocation Period but the number of Qualified Cases allocated to the Firm per month will not be more than 20.

(b) **Group B**

Up to 20 in number of Qualified Cases (which may be varied by the Official Receiver solely at his discretion up or down by 20 percent) may be allocated to the Firm during the Allocation Period but the number of Qualified Cases allocated to the Firm per month will not be more than 4.

(c) The numbers referred to in this Special Condition are just estimates and must be regarded as being given for the Firm's information only and not as figures which the Official Receiver binds himself to adhere.

(d) If the Official Receiver accepts more than one offer in Group A and/or Group B in this Tender, he is not bound to allocate an equal number of Qualified Cases to

each Firm. A larger number of Qualified Cases may be allocated to the Firm who has tendered the lower Required Subsidy per case.

4. Security

- (a) The Firm must be covered by professional indemnity insurance to the satisfaction of the Official Receiver.
- (b) The Firm may, in respect of the Qualified Cases allocated to it, be required to give separate security to the satisfaction of the Official Receiver.

5. Quotation Sheet

Tenderers are required to complete the Quotation Sheet. Failure to do so will render their tenders invalid and disqualified.

6. Fees and Remuneration

- (a) Subject to the Official Receiver's right to scrutinize the bill (and if necessary, taxation by the Court), the Firm's Appointment Takers when acting as joint and several provisional liquidators in a Qualified Case, shall be entitled to charge their fees and remuneration for the work they performed when acting as such provisional liquidators on a time-cost basis. The actual charge out rate per grade of staff shall in no circumstances be in excess of the rates set out by the Firm in the Quotation Sheet.
- (b) The Firm's Appointment Takers when acting as liquidators under Section 227F of the Companies Ordinance following from their appointment as joint and several provisional liquidators in a Qualified Case shall be entitled to charge such fees and remuneration as may be approved by the Court in the order appointing them, out of the assets of the winding-up company.
- (c) If the assets of the winding-up company are insufficient to meet the Firm's Appointment Takers' fees and remuneration as provided in Special Condition 6(a) and (b) above, the shortfall will be met from the Subsidy but only to the

extent of the Required Subsidy set out by the Firm in the Quotation Sheet and only at or below the charge out rates set out by the Firm in the Quotation Sheet.

- (d) The Subsidy and the Required Subsidy shall be calculated and payable strictly on a case by case basis. Under no circumstances will such Subsidy or Required Subsidy or any balance thereof be transferred between cases.
- (e) No Subsidy will be payable in respect of any Qualified Case allocated to the Firm unless a summary procedure order under Section 227F of the Companies Ordinance is made in respect of the Qualified Case. The Firm's Appointment Takers' fees and remuneration as joint and several provisional liquidators or liquidators in a case where no summary procedure order is made under Section 227F shall be paid out of the assets of the company in accordance with the provisions of the Companies Ordinance.
- (f) Subsequent rescission of the summary procedure order made under Section 227F of the Companies Ordinance in respect of a Qualified case shall not affect any payment of Subsidy already effected unless the summary procedure order was obtained by material non-disclosure or misrepresentation to the Court.

7. Performance of the Firm

- (a) The performance of the Firm will be closely monitored by the Official Receiver in terms of the time taken to complete the case, the quality of work, and also in accordance with Sections 203 and 204 of the Companies Ordinance and other relevant provisions therein.
- (b) The Firm's Appointment Takers, in respect of a Qualified Case allocated to the Firm by the Official Receiver, are expected to complete the case by obtaining a release order from the Court under Section 205 of the Companies Ordinance in an expeditious and professional manner. If a case cannot be completed within one year of the appointment, a report is required to be submitted by them to the Official Receiver before the expiration of the first year of their appointment giving explanations as to why the case cannot be so completed.

- (c) As joint and several provisional liquidators or as liquidators in a Qualified Case, the Firm's Appointment Takers are required to submit accounts to the Official Receiver pursuant to Section 203 of the Companies Ordinance and to submit together with the first accounts under Section 203, a progress report giving details on what has been done; what needs to be done and also an indication with reasons on whether or not the case can be completed within one year of the appointment.
- (d) If the Firm or its Appointment Takers when acting as joint and several provisional liquidators in a Qualified Case shall fail to carry out all or any of the Services, the Official Receiver may terminate the Contract at any time by giving 7 days notice in writing but without prejudice to the right of the Official Receiver to assign the balance of the uncompleted service to another firm. Any deficiency in fees and remuneration and/or in the Required Subsidy and all costs and expenses arising therefrom shall be borne by the original Firm and its Appointment Takers and recoverable by the Official Receiver as liquidated damages.
- (e) If the Firm or its Appointment Takers, when acting as liquidators following from its appointment as joint and several provisional liquidators in Qualified Case, shall fail to carry out all or any of the Services provided for in the Contract; or if the quality of the Services provided is considered unsatisfactory or if for any reason the Official Receiver considers it necessary and appropriate, the Official Receiver may, without prejudice to his other rights and duties under the provisions of the Companies Ordinance, be entitled to disallow any payment from the Required Subsidy.

8. Payment of Services

- (a) Payment of fees and remuneration shall be in accordance with Special Condition 6 and shall be paid out in the first instance from the net realised assets of the wound up company after all priority disbursements and charges have been paid as stipulated in Rule 179 of the Companies (Winding-up) Rules.

- (b) Subject to Special Condition 6, the Appointment Takers of the Firm shall as soon as possible and in any event not later than 12 weeks after their appointment, advise the Official Receiver if the net realised assets available are unlikely to be sufficient to fully pay his fees and remuneration. In which case, an interim payment of the Firm's time-cost charges may be paid out of the Required Subsidy to the Appointment Takers of the Firm up to a ceiling of 75 percent thereof. The application for the interim payment out of the Required Subsidy must be supported by a narrative history of the work undertaken so far together with details of the billable hours and the grade of staff employed on the liquidation. The balance of the Required Subsidy, if any, will be paid upon the completion of the case and the Appointment Takers obtaining a release order from the court under Section 205 of the Companies Ordinance. All claims for payment under this Special Condition shall be made in such form as the Official Receiver may prescribe. Any overpayment of the Required Subsidy shall be reimbursed to the Official Receiver.

9. Change in Pre-qualification Status

The Firm shall inform the Official Receiver in writing immediately of any change in or any factor which may affect its pre-qualification status. The Official Receiver reserves the right to review the Firm's pre-qualification status in the light of any new information relevant to its qualification.

Part IV - General Conditions

1. Personal and other Data Provided

- (a) Tenderer's personal data provided in the Tender will be used for tender evaluation and contract award purposes. If insufficient and inaccurate information is provided, the Tender may not be considered.
- (b) Tenderer's personal data provided in the Tender may be disclosed to the parties responsible for tender evaluation in other government departments and non-government organisations.
- (c) Tenderers have the right of access and correction with respect to personal data as provided for in Sections 18 and 22 Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the Tender.
- (d) Enquiries concerning the personal data collected by means of the Tender, including the making of access and corrections, should be addressed to Personal Data Privacy Officer of the Official Receiver's Office.

2. Consent to Disclosure

The Government shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise), without any further reference to the Tenderer, the name and address of the Tenderer and the Required Subsidy per case it stated in its Tender.

3. Completion of Tender

All Tender documents must be completed in English, signed and lodged to the Government Supplies Department Tender Box situated at G/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong, no later than the closing date of the Tender. Every Tender is a formal offer by the Tenderer for the appointment of the Tenderer's Appointment Taker as provisional liquidator by the Official Receiver

in Qualified cases on the terms and conditions set out in the Terms of Tender and the Schedule.

4. Notices

Any notice given under the Contract shall be in written English and deemed to be received as follows:-

- (i) Fax, on the date when sent
- (ii) Letter, 7 days after being sent in the post postage prepaid

5. Law and Jurisdiction

The Tender and the Contract shall be governed by and construed in accordance with the Laws of the Hong Kong SAR and the parties thereto shall submit to the jurisdiction of the courts of the Hong Kong SAR.

QUOTATION SHEET

Name of firm/company

*Tender under Group A or
Group B or both Groups*

Required Subsidy per case

(Group A) HKD

(Group B) HKD

*Hourly Charge out rate
per grade of staff*

*Number and grade of staff
available to perform
insolvency work*

*Details of the Recognised
Professionals (including
their names, professions
and length of post-
qualification experience)*

*Details of the Professional
Persons (including their
names and professions)*

*Signature of partner/director
authorised to sign the offer*

Date

Note: Subject to the terms and conditions set out in the Terms of Tender and the Schedule, tenders will be considered for acceptance to award to the tenderer who tenders the lowest Required Subsidy per case. Where two or more firms tender the same lowest subsidy per case, the number and grade of staff in the tenderer's firm or company available for insolvency work will be the determining factor.