

香港高等法院
司法常務官內庭用箋



2551
REGISTRAR'S CHAMBERS
HIGH COURT
HONG KONG

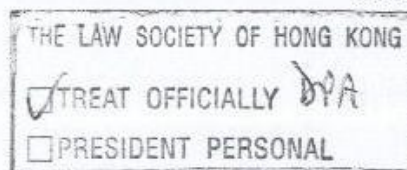
Our Ref.: L/M No. (7) to SC 101/16/28

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30 April 2003

Mr. IP Shing Hing
The President
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road Central
Hong Kong



Dear Sir,

**Taxation of the Bills of the Liquidators,
Provisional Liquidators and their agents**

As the number of winding-up cases steadily increase, more and more bills come to our hands for taxation. To discharge our duty in a more orderly and efficient manner it is mandatory to request practitioners to abide by the procedure as provided in the Companies Ordinance (Cap. 32) and its rules. The Judges and Masters in charge of insolvency cases have had deliberations on this subject and find it necessary to provide some procedural guides for practitioners to follow.

There are two different sets of procedural guides (enclosed):

— (a) for liquidators and provisional liquidators (hereinafter both are collectively referred to as "liquidators")

— and (b) for their agents including solicitors.

There are some subtle differences between the two procedures which I endeavour to explain with reference to the different parts set out below.

Part I – Introduction

It is often overlooked that liquidators' costs can be determined without taxation. Section 196(2) of the Ordinance states:

Christopher C. Chan 陳爵
High Court, 38 Queensway, Hong Kong
香港金鐘道38號高等法院

" Subject to subsection (1A), where a person other than the Official Receiver is appointed liquidator, he shall receive such remuneration by way of percentage or otherwise as is determined-

(a) where there is a committee of inspection, by agreement between the liquidator and the committee of inspection; or

(b) where there is no committee of inspection or the liquidator and the committee of inspection fail to agree, by the court,

and if two or more persons are appointed liquidators, their remuneration shall be distributed among them in such proportions as may be determined by the committee of inspection or the court, as the case may be."

The word "determine" can mean the process of gross sum assessment, fixing it with reference to percentage, or taxation. To facilitate the process, it is always advisable to provide sufficient information for the Master to decide. For the time being, even if the costs are not assessed by way of taxation we require the practitioners to follow the same procedure and supply the same information as in taxation.

As to liquidators' disbursements, according to Rules 169 and 179 of the Companies (Winding-Up) Rules (Cap. 32H) the bills must be taxed unless it is for a sum not exceeding \$3,000 in the aggregate (Rule 176).

Part II – Procedure

At present the bills are sent to the Judiciary Administrator. They are mixed with other correspondences of his. This causes delay and confusion.

The Registry will designate a special counter: Counter No. 8 at LG1 Floor for the purpose. The bills are to be lodged by hand delivery. A copy of it together with the Notice of Appointment will be returned to the person lodging the bill for him to take action as a date will be given forthwith for taxation or determination. Notice of appointment has to be served on parties concerned in appropriate cases (Rule 170).

Part III – Documents

Please note that there are different types of documents to be filed.

Document (A) – Notice of Appointment

There are two kinds of Notices of Appointment for the two types of taxation respectively. They are identical except the addressees. In the taxation of liquidator's bills, it is addressed only to the Official Receiver, Provisional Liquidator or Liquidator as the case may be. But, for the Agents' bills, there are more parties required to be served (Rule 170).

Document (B) – the source document

The main court file usually contains voluminous papers and is not readily available for taxation or determination purpose. Very often it is required by the judge in dealing with other matters.

It will be more convenient if the Liquidator prepares a source document in duplicate: one for taxation of the Liquidator's bills and the other for Agents' bills. It is required to be deposited once only, that is, for the first taxation of a bill after the guides have come into operation. No additional source documents are required to be lodged for subsequent taxations.

Document (C) – Information on the bills lodged

Please note the requirements for two types of bills are different. They are in line with the necessary materials and information for taxation as described in the Judgment by Mrs. Justice Le Pichon, as she then was, in *Re Peregrine Investments Holdings Ltd.* [1998] 2 HKLRD 670.

Document (D) – for solicitors' bills only

The information is sought as required by Rule 175 and also to facilitate taxation. We wish to draw your particular attention to Document (D) (i) i.e. a copy of the resolution or other authority sanctioning the employment, without which the bill of costs would be disallowed.

Part IV - Listing & Taxation

One of the drawbacks of the present system is that the Masters are not given time to do the taxation. They have to perform such duty after court hours when more urgent matters have taken priority. In accordance with Rule 170, court hours will be allocated for taxation or determination of the bills. Because of the volume, this new procedure will not guarantee an early day but at least a date for taxation is known as soon as the bill is lodged.

It is expected that if a representative is present at the hearing, he should be familiarized with the bill and be able to answer queries raised by the taxing officer.

After taxation, the bill will be endorsed in manner set out in paragraph 4.2 of the Guide or if the bill is not taxed because of time constraint or otherwise directions will be given. The bills or the directions will be available for collection at the designated Counter No. 8 in due course. Please note that if a representative is present at the hearing, no written direction will be given.

Part V - After taxation

Please note that there is a difference between the two types of taxation: the agents' bills require the filing of a certificate of taxation (Form 91). A modified form to include additional information is set out in Attachment 2. There is no such requirement for liquidators' bills.

Please give us your view and comment on the two procedural guides on or before **31 May 2003**.

Yours faithfully,



(Christopher C. Chan)
Registrar

Encls.

**Procedural Guide for the
Taxation / Determination of Bills of
Provisional Liquidators or Liquidators
by Master**

Part I – Introduction

1.1 This Guide applies to the taxation/determination of the remuneration of the Provisional Liquidators or Liquidators. It is expected to be followed by the Provisional Liquidators or Liquidators. In cases of non-compliance, the Court may issue appropriate directions to the person lodging the bill requiring him to remedy the default before proceeding with the taxation/determination process further.

Part II – Procedure

2.1 All bills of costs of the Provisional Liquidators or Liquidators shall be **lodged** by the Provisional Liquidators or Liquidators with the High Court Registry (counter no. 8 at LG1) instead of sending it to the Judiciary Administrator.

2.2 The Registry shall open a separate file bearing the same High Court winding-up case number as the main proceeding to hold the bills. Each bill lodged shall be assigned a bill number in accordance with the time it is lodged.

Part III - Documents

3.1 A bill of costs for taxation/determination shall be lodged with the Court in duplicate or in two copies duly signed by the receiving party. They shall be accompanied with the following documents:

(A) A Notice of Appointment in the form as set out in Attachment 1.

(B) In case it is the **first** bill lodged for taxation/determination:

- (i) a copy of the Court Order for the appointment of the Provisional Liquidators or Liquidators together with any other order relating to their remuneration;
- (ii) a source document prepared by the Provisional Liquidators or Liquidators with the following information:
 - (a) a brief paragraph containing an introduction to the company in question, e.g. incorporation, activity, size;
 - (b) a brief paragraph stating the main business activities carried on by the company before liquidation;
 - (c) the ground for winding-up (e.g. insolvency, just & equitable, etc.);
 - (d) if provisional liquidators were appointed, the grounds given for seeking appointment of provisional liquidators;
 - (e) an "Assets Schedule" showing
 - the nature
 - location
 - estimated value and
 - likelihood of recoveryof each of the company's assets (other than those with minimal value) at the commencement of the liquidation.

Where the first bill lodged for taxation/determination was prior to the date when this procedural guide came into operation, the first subsequent bill lodged for taxation/determination after the operation of this guide shall be accompanied by the above documents.

Please note that the above is designed to provide the taxing officer with an overview of the liquidation administration. Actual documents (e.g. time sheets or documents proving assets and realizations) are not to be produced, in the interests of cost-effectiveness. The actual

documents will be called for only if the taxing master needs to query any points.

(C) The following documents are required:

- (i) A written confirmation as to whether a Committee of Inspection has been appointed for the Liquidation, and if so, any agreement as to remuneration has been reached pursuant to s.196(2)(a) of the Companies Ordinance;
- (ii) a brief running narrative of the work done covered by the bill together with the value of assets recovered and the costs incurred for recovery;
- (iii) a list setting out the estimated value of the assets which forms the subject matter of the bill, the likelihood of recovery and explanation for pursuing or abandoning recovery effort, giving an update to the "Assets Schedule" in (B)(ii)(e) above. The "Assets Schedule update" should also include the following particulars:
 - a) the value of the assets recovered since the lodging of the last bill; and
 - b) the costs incurred for recovering the assets in (a);
- (iv) a list of the items of work done divided into different categories with the time spent (chargeable/non-chargeable) by the fee earners concerned in each item, their hourly charged-out rates and the amount charged;
- (v) a brief statement on whether there have been any write-offs, and whether disbursements have been charged at a mark-up, and if so, on which disbursements and at what rate of mark-up;
- (vi) a schedule of the **total** amount charged by each fee earner with the time spent and their charged-out rates in respect of the different categories of work undertaken.

Part IV – Listing & Taxation

4.1 After the documents in paragraphs 3 have been lodged, the Listing Officer shall designate a hearing time for the taxation/determination of the bill lodged. At the hearing, the master will hear representation and deal with the bill summarily if possible. The representative attending the hearing is expected to be familiarized with the bill lodged for taxation/determination and be able to answer queries raised by the Court. If it is unlikely that the taxation/determination can be finished within the allotted time, the case will be adjourned to a date to be fixed with such estimated length of time as the master may consider appropriate.

4.2 Upon taxation/determination of a bill, the master will endorse at the back of the bill the following:

Amount claimed	:	\$
Amount deducted	:	\$
Amount allowed	:	\$
Court fee	:	\$ _____
Amount allowed with Court fee :		_____

Dated the day of 200

(Master)

A copy of the bill with the endorsement will be returned to the Provisional Liquidators or Liquidators as the case may be. Upon receipt of the said duly endorsed copy bill, the Provisional Liquidators or Liquidators shall forthwith pay the Court fee.

Part V – After Taxation

5.1 The fee is calculated in accordance with item 19 in the First Schedule to the High Court Fees Rules.

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**Procedural Guide for
Taxation of Bills in Liquidation
(other than bills of Provisional Liquidators and Liquidators)
before Taxing Master**

Part I – Introduction

1.1 This Guide applies to taxation pursuant to Rule 169 of the Companies (Winding-up) Rules and is expected to be followed by the profession. In cases of non-compliance, the Court may issue appropriate directions to the person lodging the bill requiring him to remedy the default before proceeding with the taxation process further.

Part II – Procedure

2.1 All bills of costs (including those of the solicitor, manager, accountant, auctioneer, broker or any other person employed by the Official Receiver or the Liquidator but excluding the bills of the Provisional Liquidators and those of the Liquidators) shall be **lodged** by the Official Receiver or the Liquidator with the High Court Registry (counter no. 8 at LG1) instead of sending it to the Judiciary Administrator.

2.2 The Registry shall open a separate file bearing the same High Court Winding Up Case Number as the main proceeding to hold the bills. Each bill lodged shall be assigned a bill number in accordance with the time it is lodged.

Part III - Documents

3.1 A bill of costs for taxation shall be lodged with the Court in duplicate or in two copies duly signed by the receiving party. They shall be accompanied with the following documents:

- (A) A Notice of Appointment in the form as set out in Attachment 1 together with such number of copies for service as may be required.
- (B) In case it is the **first** bill lodged for taxation:
- (i) a copy of the Court Order for the appointment of the Liquidator;
 - (ii) a source document prepared by the Liquidator with the following information:
 - (a) a brief paragraph containing an introduction to the company in question, e.g. incorporation, activity, size;
 - (b) a brief paragraph stating the main business activities carried on by the company before liquidation;
 - (c) the ground for winding-up (e.g. insolvency, just & equitable, etc.);
 - (d) if provisional liquidators were appointed, the grounds given for seeking appointment of provisional liquidators;
 - (e) an "Assets Schedule" showing
 - the nature
 - location
 - estimated value and
 - likelihood of recoveryof each of the company's assets (other than those with minimal value) at the commencement of the liquidation.

Where the first bill lodged for taxation was prior to the date when this procedural guide came into operation, the first subsequent bill lodged for taxation after the operation of this guide shall be accompanied by the above documents.

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Please note that the above is designed to provide the taxing officer with an overview of the liquidation administration. Actual documents (e.g. time sheets or documents proving assets and realizations) are not to be produced, in the interests of cost-effectiveness. The actual documents will be called for only if the taxing master needs to query any points.

- (C) In case it is a bill of costs or charges of a solicitor, manager, accountant, auctioneer, broker or other persons employed by the Official Receiver or Liquidator,
- (i) a certificate of employment in writing, signed by the Official Receiver or Liquidator, as the case may be, setting forth whether any, and if so what, special terms of remuneration have been agreed to pursuant to Rule 175 of the Companies (Winding-up) Rules;
 - (ii) a brief running narrative of the work done covered by the bill;
 - (iii) if applicable, a list of the items of work done in chronological order with the time spent by the fee earners concerned in each item, their hourly charge-out rates and the amount charged.
 - (iv) if applicable, the estimated value of the asset which forms the subject matter of the bill, the likelihood of recovery and explanation for pursuing or abandoning recovery effort, giving an update to the "Assets Schedule" in (B)(ii)(c) above as and when required;
 - (v) a brief statement on whether there have been any write-offs, and whether disbursements have been charged at a mark-up, and if so, on which disbursements and at what rate of mark-up; and
 - (vi) a certificate of scrutiny duly signed by the Official Receiver or Liquidator together with evidence that he has scrutinized the bill

of costs lodged including but not limited to setting out the queries raised by the Official Receiver or Liquidator together with explanations received, if any. The Official Receiver or Liquidator shall state his decisions on such queries raised.

(D) In case it is a bill of costs or charges of a solicitor employed by the Official Receiver or Liquidator, in addition to the documents required under (C) above, the following documents:

- (i) a copy of the resolution or other authority sanctioning the employment as required under Rule 175. If no such resolution or authority is produced, the bill of costs or charges of the solicitor would be disallowed;
- (ii) the instructions given to the solicitor as required under Rule 175;
- (iii) the year of admission of the solicitors concerned; and
- (iv) a schedule of the **total** amount charged by each fee earner with the time spent and their charged-out rates.

Part IV – Listing & Taxation

4.1 After the documents in paragraphs 3 have been lodged, the Listing Officer shall designate a time for hearing the taxation. At the hearing, the taxing officer will hear representation and deal with the bill summarily if possible. Any representative attending the hearing is expected to be familiarized with the bill lodged for taxation and be able to answer queries raised by the taxing officer. If it is unlikely that the taxation can be finished within the allotted time, the case will be adjourned to a date to be fixed with such estimated length of time as the taxing officer may determine.

4.2 Upon conclusion of the taxation of a bill, the taxing officer will endorse at the back of the bill the following:

Amount claimed : \$
Amount deducted : \$
Amount allowed after taxation : \$
Taxing fee : \$ _____
Amount allowed with taxing fee : _____
Dated the day of 200

Taxing Officer

A copy of the bill with the endorsement will be returned to the party presenting the bill for taxation...

Part V – After Taxation

5.1 The Official Receiver or Liquidator shall prepare a Certificate of Taxation in Form 91 (Attachment 2) and **file** it with the bill of costs endorsed by the taxing officer as aforesaid with the Registry.

5.2 When the Certificate of Taxation is filed, the Official Receiver or Liquidators shall pay the taxing fee. The Registrar shall not issue the Certificate of Taxation unless the taxing fee is paid.

5.3 The taxing fee is calculated in accordance with item 19 in the First Schedule to the High Court Fees Rules.

I hereby appoint _____ day, the _____ day of _____, 200() at _____ o'clock in the fore / after noon before Master _____ in Chambers at the High Court of Hong Kong to tax the Bill of Costs (the particulars of which are contained in Schedule hereto) pursuant to [(the Order of _____ dated _____) / (Section _____ of the Companies Ordinance) / (Rule _____ of the Companies (Winding-up) Rules)].

Dated this _____ day of _____ 200().

Registrar

To: (1) The Provisional Liquidator / Liquidator
Official Receiver (in case of winding-up by Court)
(2) Person to or by whom the bill is to be paid

(Note: Please state the full name and address of the persons to be served with this Notice)

Schedule

[illegible]

CERTIFICATE OF TAXATION

(Title)

I hereby certify that I have taxed or assessed the bill of costs [*or charges*] [*or expenses*] of Mr. C.D, [here state the capacity in which employed or engaged] [*where necessary add* "pursuant to an order of the court dated the _____ day of _____, 200 ____"], and have allowed the same at the sum of \$_____ [*where necessary add* "which sum is to be paid to the said C.D. by _____ as directed by the said order"].

Dated this _____ day of _____ 200().

Registrar

Amount claimed	:	\$
Amount deducted	:	\$
Amount allowed after taxation	:	\$
Taxing fee	:	\$ _____
Amount allowed with taxing fee	:	_____