IN THE GRAND COURT OF THE CAYMAN ISLANDS

FSD 16 OF 2009 ASCJ

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

AND IN THE MATTER OF THE SPHINX GROUP OF COMPANIES (IN OFFICIAL LIQUIDATION) AS CONSOLIDATED BY THE ORDER OF THIS COURT DATED 6TH JUNE 2007

IN CHAMBERS
BEFORE THE HON. CHIEF JUSTICE
HEARD ON 27TH AND 28TH SEPTEMBER 2011
JUDGMENT RELEASED IN DRAFT ON 19 OCTOBER 2012
JUDGMENT RELEASED ON 13TH NOVEMBER 2012

Appearances: Ms. Thomas Lowe QC instructed by Ms. Cherry Bridges and Mr. Adam Zoubir of Ritch and Conolly for the Joint Official Liquidators of the SPhinX Group of Companies ("the JOLs")

Mr. Mark Phillips QC instructed by Ms. Andrea Dunsby and Mr. Mark Goodman of Turner & Roulstone for the Liquidation Committee ("the LC") (present with them Mr. Phillip Sykes of Moore Stephens, Fees Consultant)

JUDGMENT

1. The JOLs apply for approval of their fees charged to the liquidation estates for the period 1 January 2010 to 31 August 2010.

2. Their application is opposed by the LC on the basis that the fees are excessive and unreasonable. In support of their objection the LC relies on a report prepared by the accountancy firm Moore Stephens who were appointed on 9th September 2010, with the approval of the Court, as consultant to the LC for the appraisal of the JOLs' fee invoices. Moore Stephens' report has been submitted by Mr.

Phillip Sykes who is in attendance to speak to the report. Mr. Sykes also filed an affidavit in response to the JOLs critique of his report.

3. The amount claimed by the JOLs for the period is USD4,214,768 and the Moore Stephens Report recommends a reduction of between USD1,357,156 to USD1,515,912 or 32 to 36 percent. This is the reduction for which the LC now contends.

4. As a separate matter, the LC in its cross-summons also sought the appointment of Mr. Sykes by the Court on the ongoing basis as an independent fee assessor to assess whether the fees of the JOLs are reasonable. This would imply not only the LC relying on Mr. Sykes for those purposes, but the Court as well and, as no provisions appear in the Insolvency Practitioners Regulations ("the IPRs") to enable such an appointment, the question of the jurisdiction to make the appointment also arises. As it was eventually agreed that Mr. Sykes may continue to act as consultant to the LC for the purposes of the ongoing appraisal of the JOLs fees, it was acknowledged that I need not make the appointment as assessor or answer the jurisdictional question.

5. Nonetheless, as significant time and expense was taken in presenting the question to the Court, and as the question is likely to arise again, I will venture to provide an answer after dealing with the primary issue relating to the JOLs' fees.

Legal Principles

6. Section 104(2) of the Companies Law (2010 Revision) confers on this court a primary jurisdiction to assess and approve the remuneration of liquidators. The

Court exercises this jurisdiction pursuant to the IPRs, Regulation 10 of which provides:

> *"...an official liquidator is not entitled to receive any remuneration out of the assets of a company in provisional or official liquidation (including a liquidation under the supervision of the Court) without the prior approval of the Court."*

7. An official liquidator may, however, receive a payment on account, in advance of Court approval, of up to eighty percent of his remuneration sought in his report and accounts which must be also presented.

8. The JOLs have received payment on that basis and so, in effect, now seek the Court's approval before they might receive the remaining twenty percent and with the understanding that any net overpayment found to be the result, must be repaid to the estate.

9. Before seeking the Court's approval, the JOLs are obliged to seek the approval of the LC but, as mentioned above, that approval has not been forthcoming and hence this application.

10. In circumstances where the approval of the LC is not forthcoming, the JOLs bear the burden of proving that the remuneration sought is reasonable and justified.

11. This is all in keeping with IPR Regulation 12(2) which imposes the duty upon liquidators to provide a report and account to their liquidation committees upon which an informed decision about the reasonableness of the proposed basis of remuneration and the amount claimed can be made. It is to be remembered that this regime is intended to avoid but also to address concerns which may well arise

in the context of liquidations where liquidators are allowed to pay their own invoices from the funds which they control as officers of the Court and as fiduciaries.

12. As was observed by this court in ***In Re Liberty Capital*** (above) at p625:

> *"The liquidator must exercise his own best judgment and determine what has to be done and how to do it most effectively. In the liquidation field, he has extraordinary discretion and latitude. The liquidator must therefore satisfy the court (to which he is by law accountable in the interests of the creditors and shareholders), as its officer, that the time spent is reasonable in the circumstances, is necessary and has achieved a useful result."*

13. The respective roles of the court and the LC in scrutinizing the fees of the liquidator were the subject of further comments in the Privy Council case of ***Attorney General v Cleaver & Co. 2006 CILR 222,*** where, in upholding the earlier decision of this Court in ***In Re Liberty Capital*** (above) it was held, among other things, that while the court would attach weight to the LC's opinion, it was not obliged to adopt them but was obliged to ensure that the fees charged were fair and reasonable in the attendant circumstances.

14. Apropos the LC's argument for the appointment of Moore Stephens, it is said that the LC has not been and will not in future properly be able to scrutinize the invoices of the JOLs without the assistance of an expert. This assistance will be by way of advice as to whether the tasks undertaken are reasonably necessary, the allocation of staff respectively to those tasks appropriate and whether the amounts

charged to the liquidation estates are reasonable and proportionate. It is submitted that the Court itself faces a similar difficulty. This can indeed sometimes be the case and is well recognised. As Hoffman J acknowledged in ***Re Potter's Oils Ltd. No. 2 [1980] 1 WLR 201 at 207H***, in commenting on the remuneration of a receiver appointed by a debenture holder:

> *"...the court is ill-equipped to conduct a detailed investigation of receivers' charges on an itemized basis. A judge could not do so without being expensively educated by expert evidence."*

15. This dictum met with the express approval of the Privy Council in ***A.G. v Cleaver & Co.*** (above) (at p 246) and points heavily in favour of the ongoing engagement of Moore Stephens, given the complex nature of this liquidation.

16. The approach that the Court should take when assessing whether a liquidator's charges represent fair and reasonable remuneration for the work properly undertaken, has itself been the subject of frequent judicial commentary. Indeed in ***In Re Liberty Capital*** (above), this Court discussed a number of criteria which will guide the assessment. There is no need to repeat them in detail now. It will, I think, suffice to adopt the following summary from a latter discussion of them from ***In Re BCCI (O) 2007 CILR 300 at 314:***

> *"Factors of primary importance relevant to determining the levels of remuneration are classically identified in the English Insolvency Rules 1986, r.4.127, discussed in 7(3) Halsbury's Laws of England, 4th Ed. para 2256 at 1591 and adopted in the case law....They are worth repeating here:*

(i) *The time properly given by the liquidator and his staff in attending to the company's affairs;*

(ii) *The complexity (or otherwise) of the case;*

(iii) *Any respects in which, in connection with the company's affairs, there falls on the liquidator any responsibility of an exceptional kind or degree;*

(iv) *The effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties; and*

(v) *The value and nature of the property with which he has to deal.*

Some of these inevitably overlap. For instance, the more complex the case, the more time the liquidator and his staff will spend attending to it....

Equally, however, it has been the established practice to delegate downwards within the ranks of the staff, in keeping with descending orders of complexity. The less complex the assignment, the less experienced should be the staff member needed to do it."

17. The general rationale of the Court's approach was helpfully explained by Ferris J. in ***Re Mirror Group Newspapers [1998] BCC 324*** in dicta that has often since been cited: (at pp333-334):

"The essential point which requires constantly to be borne in mind is that office-holders are fiduciaries charged with the duty of

protecting, getting in, realizing and ultimately passing on to others assets and property which belong not to themselves but to creditors or beneficiaries of one kind or another.

They are appointed because of their professional skills and experience and they are expected to exercise proper commercial judgment in the carrying out of their duties. Their fundamental obligation is, however, a duty to account, both for the way in which they exercise their powers and for the property with which they deal.

Office-holders are nowadays not normally expected to act gratuitously. It is salutary to remember, however, that the rule that a trustee must not profit from his trust is a rule that apples to all kinds of persons who are in a fiduciary position (See Snell's Principles of Equity (28th Edn. Sweet and Maxwell) pp. 249-252). The allowance of remuneration in particular cases represents an exception to this rule, but it inevitably involves a conflict between the interests of the fiduciary who is to receive such remuneration and the interests of those to whom the fiduciary duties are owed, who will bear whatever remuneration is allowed. A consequence of this is that it must be for the office-holder who seeks to be remunerated at a particular level to justify his claim. As I see it, it is simply one aspect of his obligation to account. What he retains for himself out of the property which comes into his hands as

office-holder is not available for those towards whom he is a fiduciary. He cannot therefore account for it by paying it over. The only way in which he can account for it is by showing that he ought to be allowed to retain it for himself. But this is necessarily a matter for him to establish."

18. And later in his judgment Ferris J made the further observations:

"Thirdly the test of whether office-holders have acted properly in undertaking particular tasks at a particular cost in expenses or time spent must be whether a reasonably prudent man faced with the same circumstances in relation to his own affairs, would layout or hazard his own money on doing what the office-holder have done. It is not sufficient, in my view, for office holders to say that what they have done is within the scope of the duties or powers conferred upon them. They are expected to deploy commercial judgment not to act regardless of expense. This is not to say that a transaction carried out at a high cost in relation to the benefit received, or even an expensive failure, will automatically result in the disallowance of expenses or remuneration. But it is to be expected that transactions having these characteristics will be subject to close scrutiny".

19. A central issue to the present dispute over the JOLs' fees is that of proportionality – the amount of time and effort spent in proportion to the value of the exercise

undertaken to the estates and as a consequence, the issue of whether the services rendered justify the remuneration charged.

20. This is an issue that will often arise in the scrutinization of a liquidator's remuneration.

21. It is important to emphasise the need both for proportionality and for the provision of sufficient evidence to justify the liquidator's charges. What is needed (and thus required by the principles of proportionality) is the provision of sufficient information to enable creditors, investors or the court to have a clear view of what the office holder has done or intends to do and of the value he has achieved or protected for the creditors or investors.

22. But here too, there is a balance to be struck as recently advised by the English Court of Appeal in ***Brooks v Reid (trustee in Bankruptcy of the Estate of Helen Brook) [2011] B.C.C. 423*** (taken from the head note):

"The value of the office-holder's services, which had rightly been emphasized as the touchstone for an office-holder's remuneration and which was not measured by a mechanical totting-up of hours multiplied by charge-out rates, denoted more than the realisation and distribution of assets. They were features of central importance, but all the circumstances of the insolvency had to be considered, including statutory duties which had to be performed but did not increase the assets available for distribution, such as communicating with creditors and reporting on the events leading to the insolvency, with particular regard to the conduct of the bankrupt [(person)] or directors of an insolvent company....

The issue of proportionality was related to the circumstances of the bankruptcy. The number and size of claims and the number and value of assets were important, but not the only, elements in those circumstances. There were many ways in which costs could be incurred which were not related, principally or even at all, to the assets and liabilities of the estate."

23. In summary then, in considering whether work undertaken by the JOLs had sufficient value, it will be important to examine the task undertaken and the reasons why it was thought to be necessary, having due regard to the latitude that must be given to office-holders in the exercise of their own commercial judgment. The value of the work to the estate will be an important consideration, but it will also be important to consider whether the work was required by other factors not related directly to the enhancement of value.

24. Indeed, it is submitted on behalf of the JOLs here that that approach is especially appropriate in a complex, highly contentious and fractious liquidation such as the present. Thus, they say they are entitled to be especially cautious in the manner in which they carry out their duties. Accordingly, it is to be expected that their approach will be more than typically painstaking and commensurately more expensive.

25. That proposition may be acceptable, but not, in my view, to the extent that it implies the JOLs are entitled to incur expenses at the costs of the estates, for the sake primarily of protecting themselves from criticism. As fiduciaries, they are obliged to have foremost in mind what is in the best interests of those to whom

their duties are owed. Thus, in the final analysis, the test is that the remuneration sought must be fair and reasonable in all the circumstances attending the work.

Factual Background

26. The protocol by which it is agreed that the LC would review and approve the JOLs' remuneration ("Protocol") was negotiated and agreed by the JOLs and the LC and was sanctioned by the Court on 3 April 2007. The Protocol was complied with by the LC and the JOLs, and was the basis for reviewing and approving the JOLs' fees up until 31st December 2009.

27. In February 2010, the LC informed the JOLs that they were no longer in a position to review and approve the JOLs' fees as they were presented for approval in respect of the period commencing January 2010. This was despite the JOLs, from their point of view, having throughout the review periods provided the LC with the detailed information needed for the task.

28. In June 2010, the LC sought the JOLs' support and approval for the appointment – to be paid by the Liquidation Estates – of an independent fee assessor to assist in discharging the duties of reviewing and approving the JOLs' fees and expenses.

29. Despite the concerns over the jurisdiction of the Court to appoint an independent fee assessor, the JOLs consented to the appointment of Moore Stephens as a "consultant" on the basis that it would progress the issues in a timely and efficient manner, albeit at some additional expense to the Estates. This resulted in the order of 9th September 2010 granting liberty to the LC to retain the services of Moore Stephens as a consultant on the following terms agreed by the JOLs; that Moore Stephens would:

"...consider the invoices and time costs analysis issued by the (JOLs) of the SPhinX Group to the (LC) between the dates of 1 January 2010 to July 31, 2010 and comment upon the appropriateness of the time spent, the staff allocation and the activities undertaken by the JOLs in carrying out their duties."

30. Moore Stephens attended the JOLs' offices in Grand Cayman for three days at the end of September 2010. During this time, the JOLs responded to Moore Stephens' concerns and gave what Moore Stephens reported as "full co-operation", and were advised that the Moore Stephens report would be provided within the deadlines in the engagement letter. The deadline was however, not met and a number of draft reports were submitted to the LC before the final report. Despite their requests, the draft reports were provided to the JOLs without the need for an order of the Court made to that effect on 31 August 2011.

31. This is regrettable circumstances that gave cause for the JOLs' criticism of the Moore Stephens report as lacking in objectivity and impartiality, pointing to significant differences between the contents of the earlier drafts and the final report.

32. I have not, however, been drawn into that debate. Instead, my approach has been to consider the criticisms raised in the Moore Stephens report on the point by point basis, looking into the underlying information to see whether they are fairly and reasonably premised. My conclusions arise from that approach.

33. The Moore Stephens Report focuses on six (6) broad issues which I will consider in turn.

1. Inefficient location and use of the JOLs' staff

34. Moore Stephens found that the core skeleton of qualified staff working "permanently" (that is: from inception) on the SPhinX liquidation, was as many as 15 including the two JOLs. The number of staff involved rose to as many as 23 from time to time.

35. The average hourly charge-out rate of this core skeleton staff ranged between USD376 AND USD409. This structure they regarded as too "top heavy" as there is an "over-involvement" of senior personnel. This excessive staffing and top heavy structure was found to have given rise to a lack of task ownership by the individuals in the team leading to duplication of time and excessive internal administration by the liquidators.

36. A more appropriate structure would have comprised a team of 12 qualified personnel, with less direct involvement of the JOLs and senior management. This would have required certain individuals dedicating more of their time to working on the liquidations but, in turn, the greater task ownership would have created greater efficiencies in the work performed.

37. The Report observes that the top heavy nature of the staff structure could be due to the consistency of maintaining the same personnel working on the liquidation who have over the passage of time, been promoted to higher grades. However, where a particular task could have been performed by staff at a lower grade, the increased cost of maintaining consistency was being passed on to the estate by paying the promoted employee at the higher grade for continuing to perform the same tasks. An example of this was cited as involving a former senior accountant

promoted to manager but who charged an uplift of approximately USD18,200 per month, for work he had been doing as senior accountant.

38. Duplication of work within the team is another criticism, with finding of significant amount of overlap in tasks carried out. The result seems to have been a large amount of time incurred in discussions amongst the team, either by way of team meetings, management meetings, or general updates being provided on the same matter by several members of the team, each of whom having some involvement in the particular tasks.

39. There was also found to be duplication of work by senior management in reviewing the documentation received from third parties.

40. Particular examples of this were cited from the June 2010 time cost report of the JOLs where certain court pleadings (affidavits and a complaint), were each reviewed by at least four of the senior personnel working on the liquidations – a mass review of documentation which Moore Stephens found to be unnecessary, although it was recognised that the counter-argument could be raised on the basis of the important and intricate nature of the documents.

41. No counter-argument could be accepted however, in relation to the duplication found in relation to numerous telephone conferences during the first quarter of 2010, when there were often as many as seven or eight members of the JOLs' team participating resulting in an hourly cost to the Estate in excess of USD3,000.

42. Moore Stephens also noted that a significant amount of time was spent in internal meetings and discussions between senior management. This time it is believed, would have been reduced by a smaller team structure and greater levels of

ownership over the tasks involved. Moreover, given the top heavy staff structure, the Report also questions the need, as was the case, for both the JOLs to be working permanently throughout, rather than relying more on senior management.

43. Moore Stephens concluded on this issue by opining that the internal time management could be reduced by reducing the number of senior management personnel to a maximum of two and by the scaling back of the direct involvement to the JOLs themselves.

44. All in all, the Report advises that a more appropriate core skeleton of permanent personnel might consist of one managing director (that is: a JOL), two senior managers, one manager, six senior accountants and three junior accountants – a total complement of 13.

45. Having regard to their findings of inefficient staff allocation and the top heavy nature of the staff structure, Moore Stephens advises a reduction of USD649,082 for the period under review.

46. The JOLs dispute the validity of the findings made in the Moore Stephens Final Report on a number of grounds. First they say the criticism of the JOLs' work, and the rationale for recommending such significant discounts, is entirely misconceived. The JOLs ask the Court to bear in mind throughout, that the liquidation of the SPhinX Group of Companies (referred to hereafter as "SPhinX" or "Companies") is extremely complex and by its very nature is not "typical".

47. It is the case, and as this Court has commented previously, SPhinX ranks as one of the most complex engagements it has supervised. The structure comprises 22 companies with over 80 segregated portfolios, involving more than 400 broker

accounts, and which engaged in hundreds of thousands of transactions. The information and evidence catalogued and collected with respect to the United States litigation alone is in excess of 173 million pages.

48. This Court has been involved in hearing a debate of 23 Liquidation Issues surrounding distribution (the "Liquidation Issues"), which are the subject of proceedings for which representative parties ("RPs") have been appointed. Between 2007 and 2010, the JOLs were invited to take charge of deeply entrenched and tortuous discussions between all interests for schemes of arrangement, and which collapsed because the primary protagonists could not achieve a settlement between themselves that was acceptable to sufficient numbers of interest parties. Calculating the potential distributions, share classes and supervising the preparation of the scheme documents is said by the JOLs to have been a momentous task.

49. When these discussions broke down, the JOLs reinvigorated the process of resolving the Liquidation Issues, a process which was opposed by the LC and initially at least by Deutsche Bank as a main investor holding a blocking position. There were tortuous discussions about the order in which the issues were to be addressed and their potential impact on the liquidation. In order to resolve the question whether the assets had been commingled, the RPs and the JOLs agreed that the JOLs would produce a report on the assets and liabilities of the companies. This is addressed in further detail below. It is, however, to be noted for more general purposes, that it was on the eve of the trial of the commingling question that hfc (another blocking investor) and Deutsche Bank, finally managed

to reach a compromise which appears to have commended itself so far to many of the investors. This, say the JOLs, should be taken into account when considering the "value" of the work undertaken by them.

50. At the same time, the JOLs have endeavoured to make significant recoveries for the Estates by way of the pursuit of claims in the US action against the wrongdoers whose acts and omissions were claimed to have led to the demise of SPhinX. This is a complex piece of litigation against more than 50 defendants and the matter has been consolidated in the US Federal Court in New York. The US litigation further complicated aspects of the liquidation in that a number of the defendants are prospective Indemnity Claimants, with potential contingent claims that threaten to tie up future distributions.

51. The JOLs also say it should be noted that, in addition to undertaking the work and initiating the processes described above, they have continually kept the LC abreast of how their time is being utilised by means of (1) weekly updates, (an example of which can be seen at pp.6 and 7 of Exhibit PS1 to Phillip Sykes' First Affidavit), (2) monthly budgets, (3) reports on costs to investors and (4) meetings with the LC that take place *at least* once per month. It is therefore troublesome that Moore Stephens are now querying the value of work completed in the Review Period after the event, when the LC was made aware of precisely what steps would be taken in advance.

52. As to the issue of the JOLs' staffing structure, they respond specifically as follows.

53. The Moore Stephens Final Report suggests that an appropriate staff allocation would consist of one managing director, two senior managers, one manager, six senior accountants and three junior accounts. While the JOLs are aware of their duties to properly allocate the required work to the appropriate staff, the JOLs disagree that, in the context of this engagement, the staff contingent suggested would enable the JOLs to comply with their duties to the Court or to meet the standards and the expectations of the Court.

54. Since their appointment, the JOLs have seen seven LC members resign. Most are represented by large financial institutions and well-known law firms in the UK or the US. The scheme negotiated for 2½ years never reached the state of a convening hearing because the blocking and other investors could not agree on the distribution of the $500 million which the JOLs have collected in. The debate on the amount of an Indemnity Reserve to be set aside, has been extensive and complicated. Indeed, the LC has stated that the work carried out by the JOLs in relation to the liquidation is too complex for its members to review and that it is accordingly unable to approve the JOLs' fees.

55. Therefore, it is argued that the sheer complexity of this engagement warrants having more senior staff allocated to conduct and oversee the work. Comparisons to the staff allocations of PWC London as administrators of Lehman Bros International Europe (**"LBIE"**), are set out in Mr. Krys' 94th Affidavit. A chart comparing the allocation of staff by both the JOLs in SPhinX and the administrators of LBIE is to be found at Exhibit "KK156" to the 98th Affidavit. It is submitted that these comparisons demonstrate that the JOLs' staff allocation, in

terms of seniority and division of labour in SphinX, was wholly appropriate and commensurate with the many tasks they were required to undertake during the Review Period, bearing comparison with the allocation of work in the LBIE administration. Indeed 57.7% of the hours of work in SPhinX during the Review Period were completed by junior staff as compared with 49.3% in the LBIE administration.

56. The JOLs have taken great care to ensure that all matters are properly staffed by specifically designated people (referencing another chart exhibited at **"KK143"**). However, the interrelationship between the various issues in the case necessarily requires senior management to have an overall picture of what is happening generally in the liquidations, even though specific tasks are delegated downwards where possible. The complex issues relating to the Indemnity Reserve and the Scheme are not matters that could properly be delegated to a junior accountant.

57. It is accordingly submitted that Moore Stephens has erred in its conclusion that a reduction should be applied to the JOLs' fees on the basis of an inappropriate staffing structure:-

a) The complexities and vast range of issues in SPhinX required a staff comprising a proportionately experienced number of senior members.

b) Since each major decision on strategy in the SPhinX liquidations has to be debated with the interested parties and most notably the LC, it is both logical and cost-effective for the JOLs and their senior staff to be involved in this process.

c) Tasks were delegated to junior staff where appropriate, subject to the need for supervision by senior members.

d) The conclusion in the Final Report that the JOLs' team is "top heavy" amounts to little more than bare assertion and is not supported by accurate comparisons to the composition of other professional teams engaged in similar liquidations.

e) Comparisons with the LBIE administration as set out at paragraph 54 above are favourable to the JOLs, indicating an appropriate division of labour.

58. In the light of the above, the reductions suggested by Moore Stephens should not be applied by the Court.

Conclusion on the staffing issue

59. This exercise is by no means an exact science, as the Moore Stephens Report itself recognises. The SPhinX Liquidation is indeed among the more complex such undertakings. Work has and will continue, although less and less so, to vary from month to month. The JOLs have and will continue to be engaged on several fronts. Not least among them, I am bound to observe, from my ongoing experience as the judge supervising this liquidation, has been that engagement with the LC which can truly be described as among the most interventionist of LCs. The LC's approach, I am also obliged to observe, has doubtless been influenced by the presence of Deutche Bank within its ranks, Deutche Bank being at once the single largest investor in the SPhinX Group and the single party having the most to lose as a defendant to the New York proceedings.

60. In my view, too much of the JOLs' time is unproductively taken up having to deal with the LC in the conduct of this liquidation, but this is not a matter for which the JOLs must solely bear the costs.

61. That said, I am on the other hand, not convinced that the JOLs have been as strict with their time as their responsibilities require. An area of concern relates to their own implicit admission to being extremely cautious because of the fractious nature (no doubt reflecting also the attitude of the LC) of the liquidation. As noted earlier however, an attitude of self-preservation or self-protection, is no substitute for deliberate firmness in the conduct of the affairs of a liquidation – the kind of approach this court is accustomed to seeing from the most experienced office-holders and those advising them.

62. Nor am I fully persuaded by the JOLs' comparison of the SPhinX Liquidation with that in LBIE, as it is not clear on what basis the comparisons can be drawn other than the general notion of like complexity.

63. Complexity by itself is no excuse for inefficiency or overly cautious waste of effort.

64. My conclusion on this issue, purely I must note in the end as a matter of impression from experience in the liquidation, while nonetheless having regard to the arguments and counter-arguments; is that some deduction is required, though not as large as that proposed by Moore Stephens.

65. I consider that a deduction under this head, of one-half that amount (that is: USD325,000) should be applied.

2. Lack of value and excessive work performed in preparing the analysis and report on the ownership of the assets and liabilities

66. The Moore Stephens Report criticizes the lack of value and excessive work performed in preparing the analysis and reports on the ownership of assets and liabilities within the SPhinX Group (the "A&L Report"). For this Moore Stephens proposes a reduction of USD 130,293 to the JOLs' charges for the review period and a further reduction of USD516,000 for the month of August 2010 immediately following.

67. The Report criticizes the A&L Report as adopting a flawed methodology, drawing conclusions which were not sustainable on the analysis performed, not adding value to the decision making process on Liquidation Issues 1-4 and failing to recognise at an earlier stage that the outcome would be inconclusive.

68. Liquidation Issues 1-4 are those from among the 20 Liquidation Issues identified by the Court in consultation with the parties, as arising for resolution by the court before distributions can be made to investors, barring an earlier compromise of them by a scheme of arrangements.

69. Central to issues 1-4 is the question of whether the assets of SPhinX were so inextricably commingled as to make the prospect of their strict allocation to the respective SPhinX companies to a hopeless exercise and so whether the pooling of all assets and their pari passu allocation, would be the only rational basis for the distribution of assets in the liquidation.

70. The objective of the A&L Report was to assist the JOLs, the RPs, and the Court to arrive at a reliable view of which of those competing premises was correct.

71. Moore Stephens do not believe that the cost of the A&L Report, at some USD1.3 million, reflects the fair value of the report to the estate.

72. While the A&L Report concludes that the books and records of the SPhinX Group are sufficiently inaccurate to establish which of the Group companies are respectively the rightful owners of the assets and liabilities, it does not attempt to address whether and if so, how this particular problem could be overcome through an independent forensic rebuilding process. Rather, it arrived at the conclusion that merely confirmed the state of affairs that was already apparent.

73. This finding, says Moore Stephens, arose from the JOLs' decision not to engage forensic accountants for the exercise, having decided to undertake it themselves. Not themselves having the expertise, the end product did not provide a solution to the disentanglement of the accounts. Moreover, the lack of expertise resulted in the magnitude and true nature of the problems being recognised much later, and after much more effort, than it should have required.

74. Moore Stephens concludes that it would not be unreasonable to deduct 50% (or USD650,000) from the time costs incurred and billed by the JOLs in respect of the A&L Report.

75. For the billing period actually under review, this would involve the deduction of USD130,293 mentioned above.

76. The JOLs respond by first noting that the A&L Report was undertaken pursuant to the specific directions of this Court given on 10th June 2010 to assist the Court and the RPs appointed by the Court to debate and resolve Liquidation Issues 1-4. They say that for those purposes the A&L Report is a comprehensive, detailed

account of the accounting issues confronting the SPhinX Companies in liquidation. The complexity and significance of the A&L Report has been recognised by the Court and a number of the experienced counsel involved in the case.

77. In preparing the A&L Report, the JOLs conducted a detailed analysis of the books and records of the Companies that focused on the largest components of the Companies' assets being cash and securities as well as the liabilities, the largest of which were the intercompany transactions. The accounting in SPhinX was further complicated by a number of transactions and the allocation of expenses. In particular, there were the unique and complex accounting issues resulting from the Refco fraud (that which lies at the heart of the US Action) and the issue of the Temporary Restraining Order that had been obtained in relation to it. The JOLs had regard to over 400 issues raised by the former auditors.

78. I am invited to accept that the reviews of the books and records for the Companies' cash and securities and intercompany accounts were particularly difficult and time consuming aspects of the JOLs' analysis, primarily as a result of the state of the books and records and given the large volume of transactions because:

a) the JOLs had to allocate substantial time and resources to locating and identifying the relevant records to conduct their sample testing.

b) The JOLs had to conduct numerous searches for the missing bank and broker statements from millions of Derivative Portfolio Management and PlusFunds records that were organised in a completely inconsistent

manner, making the process and the subsequent analysis both time consuming and extremely difficult.

c) Having obtained the necessary information, the JOLs conducted a detailed investigation and reconciliation of numerous transactions and entries so as to ascertain their accuracy and completeness.

79. The JOLs' analysis of intercompany transactions was aimed at establishing the accuracy of significant intercompany balances recorded in the books of the Companies as well as ascertaining the economic value of these transactions. Intercompany accounts were used by the Companies to record numerous and complex transactions resulting from the monthly rebalancing and capital allocation activities, to record intercompany expenses and to account for the transactions resulting from the Refco fraud, including the issue of "S-shares" and the preference settlement that gave rise to them. The analysis and tracing of the intercompany entries made in respect of these transactions was a complicated and time consuming exercise that required the attention of senior, more qualified and experienced staff members.

80. As a result of the A&L Report, the RPs were able to determine the answers to Liquidation Issues 1 and 2, concluding *"that the JOLs did not need to undertake any further steps in order to establish the ownership of the assets and liabilities of the companies"*. Further questions were, however, put forward by the RPs on the matters discussed in the A&L Report and the JOLs responded to these. Subsequently, the Grand Court made directions for the determination of Liquidation Issues 3 and 4.

81. It is true that ultimately Deutsche Bank maintained that the A&L Report did not address the questions it should have addressed and criticised it. They were of course completely self-interested in doing so. Deutsche Bank, however, had refused, say the JOLs, to explain to them what further work should have been done. Instead they wanted to take the position that hfc – the RP contending to the contrary of Deutsche Bank's position as another RP for pooling of assets – had simply not proved its case. In the circumstances little weight can be placed on Deutsche Bank's criticisms.

82. In fact Deutsche Bank had completely misunderstood the JOLs' own position, which was agnostic as to what solution should be adopted. Indeed, critically for commingling purposes, the JOLs concluded on the inter-company position that, after stripping out the S Shares, there was only a small balance which was unaccounted for. They were critical of the records in general and did point to heavy discrepancies in the asset reports between actual positions and those shown in records. The real reason why there is a problem in SPhinX, say the JOLs, is a legal one: it is because internal redemptions were never effected in accordance with the Articles.

83. Moreover, the A&L Report was subject to extensive review by two experts retained by the RPs who would have spent a great deal of time analysing the work conducted by the JOLs. One expert suggested the work done was sufficient and that the JOLs' decision to cease doing any further work at the time they did was appropriate. The other expert proposed additional work she would have undertaken and a different approach to deal with the issues being debated. Her

fees in this regard were themselves – at some $800,000 – a very significant cost to the Estate.

84. Neither expert found the work conducted by the JOLs unreasonable or of little value, seemingly undermining the assertion to the contrary in the Moore Stephens Final Report.

85. I find the JOLs' counter-arguments to be persuasive. While – as Mr. Phillips QC on behalf of the LCs contends – the Court did not direct how the JOLs should go about the exercise for the A & L Report; it was recognised by all sides that the exercise would have been time-consuming and expensive. But the factual basis – the state of the accounts of the companies as they had fallen – needed to be lain, as the basis upon which to resolve Liquidation Issues 1-4. The question whether there should be pooling or not could not be decided in a vacuum.

86. However, the Court did not direct the JOLs to undertake the kind of forensic accounting exercise that could then only speculatively have led to the ultimate unraveling of the accounts. There was already a firm view that any attempt to reconstitute the individual corporate accounts and the interrelated corporate accounts with the hope of determining the true specific ownership of assets and liabilities, would have been a prohibitively expensive exercise.

87. The question whether an independent forensic expert should have been engaged was discussed when the Court directed the JOLs to conduct the work. It was then the view of the JOLs, the Court and the RPs that, given their extensive and detailed involvement and knowledge of the SPhinX companies and the Liquidation Issues, the JOLs were better placed to carry out the exercise.

Conclusion on the A&L Report

88. Questions of effectiveness and value to the Estate aside, no one questions the amount of time and effort taken by the JOLs and their staff in the production of the A&L Report.

89. Simply as a matter of proportionality, it must be observed that one of the two experts engaged by the RPs, and who conducted extensive reviews of the A&L Report, presented an invoice for her work in the order of some USD800,000; arguing against pooling and for the reconstruction of the accounts. Yet the reconstruction was itself an exercise to be separately undertaken.

90. The other expert, (at the not insignificant cost of some USD135,000) concurred with the findings of the JOLs but was less agnostic about the question of pooling, arguing positively in support of it.

91. Proceedings had reached the stage of the Court having to decide Liquidation Issues 1-4 in which context, the A&L Report, as reviewed by the two experts, would have been of fundamental importance.

92. It was then, however, that two of the RPs, the blocking investors Deutsche Bank and hfc, resolved to promote a scheme of arrangement (the second to be promoted during the course of the liquidation) which would compromise Liquidation Issues 1-4 and had the potential of a complete compromise all of the liquidation claims. Thus, the Court has not reached the stage of pronouncing upon the final value of the A&L Report to the liquidation estate. But its initial value, as the basis for the trial and resolution of Liquidation Issues 1-4 should not be ignored.

93. With all the foregoing considerations in mind, I conclude that it would be inappropriate to deny the JOLs any of their fees in relation to the production of the A&L Report.

3. Remuneration volume discounts

94. The Moore Stephens Report proposes that the JOLs' fees should be subject to a discount in the range of 10% - 15% of the rates charged on the basis that *"the Sphinx liquidations possess the characteristics of an assignment where the liquidator might reasonably be asked to apply a discount to the usual standard hourly rates charged by his firm"*.

95. The characteristics cited by the Report are:

- the assignment requires a significant amount of the JOLs' staff to be working on the case on almost a permanent basis;
- the work is likely to span several years without significant reduction in the amount of time costs being incurred (here the work has already spanned six years);
- the estate is cash rich and therefore the JOLs can raise invoices on a monthly basis throughout the duration of the assignment and those invoices will be paid on a timely basis (here the Estate has had liquidity of more than US$500 million for a number of years); and
- the assets are such that they guarantee a full recovery of time costs incurred by the JOLs.

96. It is accepted by the JOLs that these characteristics could form the basis for a volume discount of some 5%; citing the well-known position in the BCCI Liquidation. (See for instance as discussed in ***In Re BCCI*** *at page 303 (above).)*

97. The JOLs nonetheless would object to a proposed retroactive application of any discount. They refer to what they regard as the discount of 7% already applied to their charge out rates and to the fact that they must await the IPRs' requirement of Court approval before they can draw down the final 20% of their fees, which they regard as a form of "subsidy" of the Estate, as that money earns interest for the Estate in the meantime.

98. I consider the JOLs to be wrong in both of these points of view.

99. In the first place, the rates set by the Court in November 2011 at some 7% lower than those claimed, was not a discount to those rates but were set as the appropriate rates from within the ranges allowed by the IPRs.

100. The difference in the rates therefore reflected the conclusion that the JOLs' rates then sought were too high.

101. Secondly, the retention of 20% of the invoiced fees in keeping with the IPRs, is not, as the JOLs implicitly suggest, the retention of the JOLs' money. There is no entitlement to the retained sum (or indeed to any of the invoiced fees) until the sanction of the Court is obtained. As explained above, the 20% retention is a practical buffer against possible overcharging to the Estate. Any entitlement in the JOLs to the amount retained comes about only after the sanction of the Court is obtained and until then the amounts retained are the Estate's money. The

notion that it affords a form of subsidy to the Estate from the JOLs is therefore rejected.

102. The question of whether a retroactive application of a discount would be unfair to the JOLs, must be considered in the context of the volume of work and fees generated to date.

103. This assignment has been undoubtedly profitable for the JOLs. Between the date of their appointment in 2006 and 31 December 2010, the JOLs have invoiced and been paid the total sum of USD25,228,577 (as reported in their 10th Interim Report). They have billed between USD500,000 to USD700,000 per month.

104. While the volume of work going forward from the period under review could be reduced if the second scheme of arrangement succeeds in the resolution of liquidation claims, the assignment itself will likely continue for at least a few more years. Among the reasons for this is the ongoing New York action which is still only in its interlocutory stages. It is a complex action and the trial itself could alone run for many months. And, even assuming the Second Scheme succeeds and the New York action is settled, given that there are some 22 different classes of claims, the settlement and payment of claims will itself likely involve a significant amount of work remaining to be done.

105. All in all then, it is safe to conclude that the SPhinX liquidation will remain a very worthwhile source of work and revenue for the JOLs for some time to come.

106. With all the foregoing in mind, the fairness of a discount is fully indicated.

107. While the JOLs have acknowledged (in Mr Krys' 94th Affidavit at paragraph 56) that a 5% discount (á lá *BCCI)* would be appropriate, Moore Stephens suggest a discount of 10% to 15%.

108. For the period under review, a discount of 5% would result in a reduction of USD159,078; 10%, a reduction of USD318,156 and 15%, a reduction of USD477,2234. This last, as submitted by Mr. Phillips QC for the LC at paragraph 27 of his skeleton arguments, is the proper discount.

109. Having regard to the history of this matter, including the fact that no discount has been applicable in the past and the levels of fees earned and paid, I consider that a discount of 10% to be applied to the period under review and going forward, would be fair and appropriate.

4. Travel

110. The Moore Stephens Report suggests that charging for travel time at full hourly rates cannot be reasonably justified, and recommends that travel time be charged at 50% of hourly rates. This would result in a recommended discount over the Review Period of USD43,029.

111. In response the JOLs refer to discussions that took place with the LC at the time the Protocol was signed. As the result JOLs do not charge for commute time, lost time at airports, checking in, waiting in airports and so on. They charge only for flying time when, where possible, they work on the SPhinX file while travelling. The JOLs also point to the fact that the LC itself approves all travel time for professionals whom they engage.

112. I accept the JOLs' position on this issue.

5. Credit note revised remuneration rates

113. The Report (at pages 33-34) discusses certain charges raised in the JOLs' invoice for the period under review which do not reflect the rates approved by the Court in November 2010. These items have been agreed by the JOLs resulting in a reduction in the fees invoiced for the period of USD129,381.

6. Specific other maters identified in the Moore Stephens Report

114. The Report raised four other criticisms over fees totaling USD87,859. The JOLs agree to a reduction of USD3,881, leaving a disputed balance of USD83,978.

115. The criticised areas are:

(i) **Cash management staffing**, in which regard the Report suggests that 65% of the work completed in this area by a manager should have been delegated to a junior accountant: this would have saved the Estate USD38,000. The JOLs reject this, pointing out that they must actively manage the large sum of over USD500 million which is under their control and which is the most valuable asset of the Estate. While a substantial amount of the work in this area is performed by a junior accountant, significant oversight and involvement of a manager and general review and sign off by a senior manager are essential elements of the cash management process.

Moreover, the LC had itself requested an increased focus on the JOLs' cash management function in 2008 and 2009, seeking independent verification of the cash position, more stringent controls and policies in

relation to this function and the retention of an external investment advisor.

I accept the JOLs' explanation on this issue.

(ii) **Scheme of Arrangement time cost review:** Moore Stephens preferred a line-by-line review of all time costs incurred in relation to the First Scheme during the first quarter of 2010 and listed a number of tasks with a total value of USD21,327 which they suggest should be discounted from the JOLs' fees.

The JOLs have responded to each of these queries and have agreed a small discount of USD428. The JOLs' explanations are in a detailed schedule at item 2 of Exhibit "KK144" to Kenneth Krys' 94th Affidavit. I accept these explanations.

(iii) **Temporary contractors (proposed discount of USD14,588).** The Report is critical of the JOLs' engagement of temporary staff from overseas for work on the A&L Report. These were accountants whose engagement the JOLs had determined was appropriate and reasonable given the tight timeframe allowed for the exercise, the strict immigration requirements of the Islands for the engagement of permanent staff and the need to have staff often on an immediate basis.

I accept the JOLs' explanation.

(iv) **June time cost review** (proposed discount of USD13,944): Moore Stephens conducted a line-by-line review of the time incurred and the narrative explanation of the work performed in all areas of the liquidation

for the month of June 2010 and recommended a total discount of USD13,944. As they correctly point out on page 17 of the Report, that sum represents "a very small proportion of the total invoiced remuneration for the period of USD549,000".

The JOLs have agreed to discount this time cost by USD3,453, leaving a disputed balance of USD10,491. They have explained at pp6-8 of Exhibit "KK144" to the 94th Affidavit of Mr. Krys; the reason why they think the remaining charges should not be discounted. These are explanations which I accept.

116. In sum, then, the invoiced fees of USD4,214,768 for the period under review will be approved as discounted as follows:

		USD
1.	Staffing:	325,000
2.	A & L Report: No discount	-
3.	Remuneration volume discount	318,156
4.	Travel: no discount	-
5.	Credit note revised remuneration rates:	129,381
6.	Other matters:	
	(i) Cash Management: no discount	-
	(ii) Scheme of Arrangement: no discount	-
	(iii) Temporary contractor: no discount	-
	(iv) June 2010 time costs:	3,453
	Total discounts:	**USD775,990**

~~The continued engagement~~ of Moore Stephens

117. As noted at the outset of this ruling, this question has been resolved by agreement between the LC and the JOLs allowing for Moore Stephens' continued engagement as consultant to the LC for the reasonable fee of circa USD6,000 per month.

118. That therefore renders the jurisdictional question, whether the court can appoint a fee assessor to itself, moot.

119. It was in any event, I am bound to note, in the context of this matter, a purely academic question because the Report has been placed before the Court with the consent of the JOLs for the court's consideration and if thought suitable, adoption. And, as discussed above, some important aspects have been adopted. The need for the appointment of a fee assessor at the Court itself was on that basis only, avoided.

120. And so the outcome itself also illustrates the sterile nature of the debate over jurisdiction: surely, if the Court can have regard to the report of an independent consultant appointed to the LC in its determination of the JOLs' entitlement to remuneration, it must itself be able to engage the assistance of an independent assessor that it might appoint towards the same ends. The perceived difficulty arises from the fact that there is no provision in the Companies Winding Up Rules ("CWR") or IPRs that allows the appointment of a fee assessor. It is also clear that there is no rule of the Grand Court Rules which can more generally be invoked for the purpose.

121. The English Practice and Procedure is put beyond doubt by section 70 of the Senior Courts Act 1981 (formerly the Supreme Court Act 1981) which provides as follows:

> *"70. (1) In any cause or matter before the High Court the court may, if it thinks it expedient to do so, call in the aid of one or more assessors specially qualified, and hear and*

dispose of the cause or matter wholly or partially with their assistance.

(2) The remuneration, if any, to be paid to an assessor for his service under sub-section (1) in connection with any proceedings shall be determined by the court, and shall form part of the costs of the proceedings."

(Subsections (3) and (4) apply to scientific advisors only and are irrelevant for present purposes).

122. The English Civil Procedure Rules 1998 provide, at CIPR 35.15 as follows:

"35.15 (1) This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981 ... as an assessor.

(2) An assessor will take such part in the proceedings as the court may direct....

....

....

(5) The remuneration to be paid to an assessor is to be determined by the Court and will form part of the costs of the proceedings."

123. As to whether this wide discretion vested in the High Court in England allows for the appointment of an assessor specifically in the insolvency context, has been ~~answered by such an appointment in~~ ***In Re Independent Ins. Co. Ltd. (in Provisional Liquidation (No. 1) [2004] B.C.C. 919.***

124. In making that appointment, Ferris J. noted (at paragraph 37), the different position that might have applied in the context of an official liquidation where (in England unlike the position in Cayman) the liquidation committee is responsible for fixing the liquidators' remuneration, with the Court responsible for reviewing that decision in an appellate capacity. The situation then before Ferris J in the context of a provisional liquidation where the Court was primarily responsible for sanctioning fees, is more akin to the position in Cayman under the Companies Law and IPRs (as discussed above); where this Court will have regard to but is not bound to follow, the views of the liquidation committees.

125. As Mr. Phillips helpfully explained in his submissions, the appointment of fee assessors in the context of insolvency proceedings is now so commonplace in England and Wales as to have become the subject of a practice statement which came into force in 2004. Section 4.2 of the Practice Statement on the Fixing and Approval of the Remuneration of Appointees (2004) provides:

> *"On the hearing of the application* [to fix and approve remuneration] *the court shall consider the evidence then available to it and may either summarily determine the application or adjourn it giving such directions as it thinks appropriate. Such directions may include a direction that: (1) an assessor or a Costs Judge prepares a report to the court in respect of the remuneration which is sought to be fixed and approved...."*

126. The status of that Practice Statement was considered by David Richards J. in ***Brook v Reed*** (Above) at para. 45. There he confirmed that the Practice

Statement, having been the subject of consideration and approval of judgments of the High Court (by Registrars and district judges in the Chancery Division District Registries), has acquired authoritative status as a statement of guiding principles.

127. Section 18(2) of the Grand Court Law provides as follows:

> *"(2) In any matter of practice or procedure for which no provision is made by this or any other law or by any Rules, the practice and procedure in similar matters in the High Court in England shall apply so far as local circumstances permit and subject to any directions which the court may give in any particular case."*

128. This very useful provision has been invoked in the past to allow for the importation of the English practice and procedure in circumstances where important gaps have been found in the local rules. One such example in the context of insolvency proceedings appears in this cause (as reported in ***Re SPhinX 1010(2) CILR 1***) and in which section 18(2) of the Grand Court Law was invoked to allow for the appointment of the RPs to argue the competing sides of the Liquidation Issues and the basis upon which Deutsche Bank and hfc were appointed as mentioned above.

129. That gap in the rules perceived in ***Re SPhinX*** came about as a consequence of the disapplication of the GCR to companies winding up proceedings in deference to the CWRs and IPRs, both of which are silent on the subject of representative parties; even while the GCR themselves contain provisions for those purposes to be applied to proceedings other than insolvency proceedings. The recourse then

my view, prima facie meet the test laid down in section 18(2) of the Grand Court Law.

132. The issue therefore becomes whether the appointment of a fee assessor by the court would involve, in the words of the Privy Council, a "*different approach*" which results in a "*different outcome*" from the fee approval regime laid down by the IPRs or whether, in the words of the Court of Appeal, such an approach would be "*(inconsistent) with the scheme of winding up of companies laid down*" by the local rules.

133. On the contrary, it is to be expected – as has been amply demonstrated by the consensual involvement of Moore Stephens here – that such an appointment would be complementary to the existing rules.

134. The role of the Court is to ensure that Liquidators' fees are justified as fair and reasonable. As this case shows, the high level of fees being charged in liquidations and generated across a range of complex issues, makes it increasingly difficult for the Court (and indeed liquidation committees) to review the fees and expenses in the comprehensive and objective manner required.

135. The appointment of a fee assessor will in cases such as these, likely assist the Court and liquidation committee in the process of reviewing the liquidator's remuneration without detracting in any way, from the Court's primary jurisdiction and responsibility to approve fees.

136. The appointment of a fee assessor in the appropriate case and within appropriate parameters, will be complementary to the spirit and intention of the rules and is a

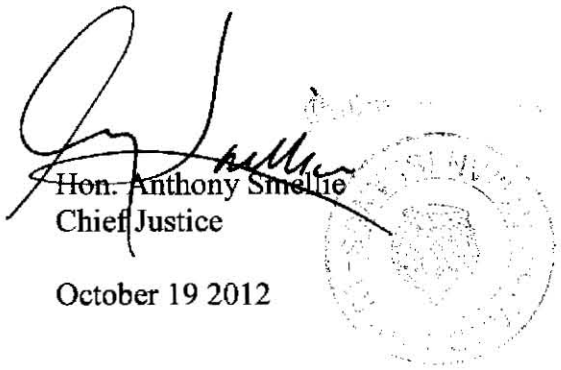
taken to the English practice and procedure was analogous to reliance on the inherent jurisdiction of the Court to determine the appropriateness of its own practice and procedure. The resort to the reserve of an inherent jurisdiction had received the approval of the Privy Council in ***Texan Management Limited and others v Pacific Electric [2009] UK PC 46*** even while emphasizing that:

> *"the modern tendency is to treat the inherent jurisdiction as inapplicable where it is inconsistent with the CPR, on the basis that it would be wrong to exercise the inherent jurisdiction to adopt a different approach and arrive at a different outcome from that which would result from an application of the rules....*
>
> *...although the inherent jurisdiction may supplement rules of court, it cannot be used to lay down procedure which is contrary to or inconsistent with them...."*

130. The test for resort to the inherent jurisdiction was also discussed in ***HSH Cayman v ABN Amro 2010 (1) CILR 114*** where it was stated by the Court of Appeal that this Court was only entitled to invoke the inherent jurisdiction to fill a lacuna in the clear absence of the power to deal with defects and irregularities in winding up proceedings. Thus, the inherent power would have to be used consistently with the scheme for the winding up of companies as laid down in the CWRs and IPRs.

131. Here, the gap in the CWRs and IPRs is complete, given the absence of any applicable provisions in the GCR, the CWR or the IPRs dealing with the appointment of a fee assessor in insolvency proceedings. These circumstances, in

process that this Court should consider itself capable of adopting as the need arises.



Hon. Anthony Smellie
Chief Justice

October 19 2012