

Proposed amendments to QFC Authority Regulations



By David Salt and Louise Verrinder

As part of its commitment to creating a strong and transparent legal and regulatory environment for its firms, the QFC Authority ('QFCA') issued and circulated Consultation Paper No.1 of 2013 (the 'Consultation Paper') in October 2013 on its proposed amendments to Regulation No.5 of 2005 (the 'Regulations') with drafts of the proposed Regulations and the proposed Insolvency Rules ('Rules').

Note: Any undefined capitalised terms used herein shall have the meaning ascribed to them in the Rules and Regulations.

Amendments to the Regulations

Many of the proposed amendments are modifications to the language and terminology used in the Regulations, made in some instances to reflect changes to the process or merely seeking to clarify the existing Regulations. However, many of the amendments are more substantive and in this article we seek to highlight some of the 'headline' amendments.

Article 7- Purposes of administration: The revised Article 7 provides more clarity regarding the purpose of an administration and the objectives of the Administrator. It places a greater focus on rescuing companies where possible and achieving the best possible result for the creditors collectively.

Article 18 - Court Orders: New Article 18 (2) grants additional powers to the QFC Court which may, on hearing an application for an Administration Order, take a host of different actions including making the Administration Order subject to any conditions that the QFC Court considers appropriate.

Article 31 – General Powers: Previously the Administrator had the power to do all that was necessary for the proper management of the affairs, business and property of the company. Article 31(1)(A) now limits this power by the following caveat 'to the extent required to carry out the purpose(s) of the administration'.

Article 51 – Company Arrangements: Article 51 previously stated that an Administrator may make a proposal to the company's creditors for a composition in satisfaction of its debts ('Arrangement'). Now, the Arrangement statement shall include greater detail and should be sent to the Companies Registered Office ('CRO'), shareholders and all known creditors of the company. Furthermore, in order to call a meeting of the company's creditors, Article 52 now requires not less than 14 days' notice.

New Article 97A – Misconduct in the Course of Winding Up: New Article 97A broadens the instances when Article 105, which sets out

the remedies the QFC Court may order, shall apply to any past or present officers' of a company. Previously these remedies could be ordered in instances of fraud, false representations and fraudulent or wrongful trading. Article 97A broadens the scope to 'misconduct during a winding up' and includes acts such as not fully disclosing to the Liquidator all of the company's property and how it was disposed of and for what consideration.

New Sections 8 and 9 – Proof of Debts and Payment: Section 8 now requires creditors of a company wishing to recover their debts to submit their claim in writing. New Article 149A sets out the requirements for proving a debt. The proof submitted by a creditor may be approved in whole or in part, and a written statement of the reasons for the rejection must be sent to the creditor. A creditor may apply to the QFC Court for the decision to be reversed or varied.

Under new Article 9, before declaring a dividend to creditors who have proved their debts, a notice must be sent to all creditors who have not proved their debts, specifying 1) a date not less than 21 days from the date of that notice up to which further 'proofs' may be lodged, and 2) whether the dividend is final or interim and stating the intention to declare a dividend within 2 months.

Proposed Insolvency Rules

The QFCA has also issued a draft of the proposed Rules. The Rules focus on two areas:

1) The creation of a register for insolvency practitioners

Under the Rules, the CRO shall maintain a register of Insolvency Practitioners ('IPs').

Before the CRO can approve the IP to appear on the register, an applicant must first satisfy the CRO that he or she is 'fit and proper' as defined in Rule 2.1.3, holds adequate security within the meaning of 2.14 and meets any other requirements prescribed by the CRO or the QFCA.

2) Applying for Voluntary Strike-Off

The Rules provide for a regime whereby a company can voluntarily apply to be struck off the Register of Companies in limited circumstances without recourse to the usual insolvency or administration procedure. Notably, an application may not be made under this Rule if at any time since its incorporation the company has been authorised by the QFC Regulatory Authority to carry on Regulated Activities.

Clyde & Co LLP

Tel: (974) 4496 7434

Fax: (974) 4496 7412

Email: david.salt@clydeco.com

louise.verrinder@clydeco.com

www.clydeco.com