

## CAYMAN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

***In the Matter of the Companies Law (2007 Revision) and In the Matter of the SPhinX Group of Companies (In Official Liquidation) Cause No. FSD 16 of 2009, Smellie, CJ, 19 October***

LIQUIDATION - APPROVAL OF LIQUIDATORS' FEES  
- COMPLEXITY OF THE MATTER AS A  
CONSIDERATION IN ASSESSING FEES -  
JURISDICTION TO APPOINT OF A PROFESSIONAL  
FEE ASSESSOR

A request for approval of Liquidators' fees was resisted by the Company's Liquidations committee on the basis that the fees were excessive. The Court acknowledged that the SPhinX liquidation is 'among the more complex' of such undertakings. However, the Court was concerned about the Liquidators' own implicit admission to being extremely cautious because of the 'fractious nature' of the liquidation.

The Court, in granting a proportionally modest discount, cautioned that a liquidator's attitude of self-preservation is no substitute for deliberate firmness in the conduct of the liquidation. In obiter, the Court noted that while the rules do not expressly provide for it, the Court should have the discretion to appoint a professional fee assessor in appropriate cases. This practice, common in England, would fall within the Court's inherent power and would be complementary to the existing rules. The role of the Court is to ensure that a liquidators' fees are justified as fair and reasonable. The appointment of a fee assessor will, in cases like this, likely assist the Court and liquidation committee without detracting in any way from the Court's primary jurisdiction and responsibility to approve fees.

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