

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE DEC 27 2018

SAINT LUCIA COMMERCIAL DIVISION

CLAIM NO. SLUHCM2018/0088



IN THE MATTER OF A PETITION FOR THE
WINDING UP OF HARLEQUIN BOUTIQUE
HOTEL LIMITED.

AND IN THE MATTER OF SECTION 385(a)
AND SECTION 387 OF THE COMPANIES ACT,
CAP 13.01 OF THE REVISED LAWS OF SAINT
LUCIA 2001

BETWEEN:

HARLEQUIN BOUTIQUE HOTEL LIMITED

Petitioner

REPORT OF THE PROVISIONAL LIQUIDATORS OF
HARLEQUIN BOUTIQUE HOTEL LIMITED

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**Harlequin Boutique Hotel Limited – in
Provisional Liquidation ('HBHL' or
'the Company')**

The First Report of the Joint Provisional
Liquidators

(Pursuant to Order of the Court dated
November 20, 2018)

KPMG

December 24, 2018

This report contains 13 pages and 5 appendices



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1. Important Notice

1.1 Basis of Report

By order of the Court dated November 20, 2018 (the 'Appointment Order'), Her Ladyship, The Honourable Madam Justice Cadie St. Rose-Albertini ordered that, *inter alia*:

1. Mr. Craig Waterman and Mrs. Lisa Ann Taylor be appointed the joint provisional liquidators (the 'Provisional Liquidators') of Harlequin Boutique Hotel Ltd. ('HBHL' or 'the Company'), company No. 2011/C243, pursuant to section 400(1) of the Saint Lucia Companies Act, Cap. 13.01 of the Revised Edition of the Laws of Saint Lucia ('the Act') effective immediately until the determination of the winding up Petition filed on October 5, 2018 or further order of the Court;
2. The Provisional Liquidators' powers be limited and restricted to the functions outlined in **Appendix 2** of this Report (the 'Powers');
3. The Powers may be exercised by each of the Provisional Liquidators individually;
4. The Provisional Liquidators be granted borrowing powers, as specified in the Order;
5. The Provisional Liquidators may apply to the Court for directions in relation to any matter arising in the provisional liquidation;
6. The Provisional Liquidators shall file an initial report to the Court on or before December 28, 2018;
7. The costs for the application appointing the Provisional Liquidators in the sum of \$2,500.00 and all fees, costs, charges and expenses of the provisional liquidation incurred by the Provisional Liquidators shall be payable out of the Company's assets in priority to all other claims, whether secured or otherwise; and
8. The Order be served on the Company and interestec creditors and lodged with the Registrar of Companies.

This report is intended to form the Joint Provisional Liquidators' First Report to the Court pursuant to the Appointment Order.

All amounts referenced in this Report are denominated in Eastern Caribbean Dollars ('XCD') unless otherwise stated.

A glossary of terms used in this Report is set out in **Appendix 1**.



1.2 Disclaimer

This report is prepared solely for the use and reliance of the Eastern Caribbean Supreme Court and the pursuant to and in accordance with the provisions of the Companies Act of St. Lucia.

This report may not be copied or disclosed to any third party or otherwise be quoted or referred to, in whole or in part, without the Joint Provisional Liquidators prior written consent. In the event that this report is obtained by a third party or used for any purpose other than in accordance with its statutory purpose, any such party relying on the report does so entirely at their own risk and shall have no right of recourse against the Joint Provisional Liquidators, KPMG, and its affiliated entities, its partners, directors, employees, professional advisers or agents.

Neither the Joint Provisional Liquidators, KPMG and its affiliated entities, its partners, directors, employees, professional advisers or agents accept any liability or assume any duty of care to any third party (whether it is an assignee or successor of another third party or otherwise) in respect of this report or the information contained therein.

Work undertaken to prepare this report has been based primarily on:

- Information obtained from the Company's books and records; and
- Information provided to the Joint Provisional Liquidators by creditors of the Company.

Some of the particulars contained in this report are based on information provided to the Joint Provisional Liquidators, by the Company. Whilst the particulars in this report have been presented with all due care, the Joint Provisional Liquidators and/or KPMG do not warrant or represent that information provided by the Company is free from errors or omissions. The Joint Provisional Liquidators make no warranty as to the content, accuracy or completeness of the information provided to them by the Company.

This information has not been subject to an audit. Where indicated, certain figures in this report are estimates, which may be subject to change, including possible adjustment, in the future. Any listed assets and liabilities represent the most accurate data currently available to the Joint Provisional Liquidators.

This document should be treated as strictly confidential, and is not suitable for further disclosure or release.

Neither the Company's Directors nor Company Management have confirmed the factual accuracy of this report.



2. Background and events leading to the Appointment of Joint Provisional Liquidators

2.1 Background

Company Name	Harlequin Boutique Hotel Limited ('HBHL')
Company Number	2011/C243
Nature of Business	Property Developer and Hotel Operator
Year of Incorporation	2011
Country of Incorporation	Saint Lucia
Directors	David Ames
Shareholder	Harlequin Hotel and Resorts Limited ('HHRL') – In Liquidation
Ultimate Beneficiary	David Ames

2.2 Events leading to the Appointment of Joint Provisional Liquidators

The Company is the owner of property situate at Reduit Beach, Rodney Bay, Gros Islet registered at the Land Registry of Saint Lucia as Block and Parcel Numbers 1256B 25 and 26 and the hotel known as the Blu Hotel (the "Hotel") constructed thereon (the "Property"). The Hotel is a 72-room, 3-star hotel in the popular Rodney Bay area. Rodney Bay is an area within Saint Lucia well known for its high foot traffic for tourists and vacationers. Investors entered into contracts with HBHL to purchase a hotel room in the Hotel.

The Company's sole shareholder is Harlequin Hotel and Resorts Limited ("HHRL"), an entity registered in the Cayman Islands, which entered liquidation on September 11, 2018 by Order of the Grand Court of the Cayman Islands.

A petition for the winding up of the Company was filed on October 5, 2018 (the "Petition") by the joint official liquidators of HHRL on behalf of the Company on the grounds that the Company had passed a special resolution resolving that the Company be wound up in the Court in accordance with section 385(a) of the Act. An affidavit of Mr. Kris Beighton was filed in support thereof.

The Petition was set down for hearing on November 20, 2018,



On November 16, 2018, the United Kingdom Financial Services Compensation Scheme (the "FSCS") filed an Application in Support of the Application to appoint a liquidator. The FSCS is one of the largest known creditors of the estate. The FSCS' affidavit references the Company's inability to pay its debts.

Harlequin Resorts (St. Lucia) Limited ("HRSL"), a separate entity, entered into contracts with numerous individual investors for the sale and purchase of property at the Hotel. By response to correspondence from the FSCS, the Company acknowledged that the contracts relating to Blu Hotel were entered into by HRSL on the Company's behalf and that the Company is fully responsible for all obligations under the contracts.

The Company has failed to complete its obligations under the contracts in line with the Target Completion Dates which range from December 31, 2012 to December 31, 2015 and is incapable of fulfilling its contractual obligations to complete on the contracts given the substantial registered and unpaid judgement debts and other liabilities.

The FSCS issued demand notice to HBHL on July 9, 2018 for the amount of GBP1.2 million or XCD\$4.2 million. The demand notice relates to amounts invested by 24 individuals. Mr. Ames responded on July 31, 2018 stating that he refutes the amount of the demand.

On November 20, 2019, an Application Without Notice for the Appointment of Provisional Liquidators was filed by the Company (the "Provisional Liquidator Application"). The Provisional Liquidator Application was supported by an affidavit sworn to by Mr. Jeffrey Stower and filed the same date.

On November 20, 2018, the Petition came on for case management. In relation to same, the Court ordered that, *inter alia*:

1. The Company cause notice of the Petition to be advertised in two successive issues of the Official Gazette and one newspaper of wide circulation in Saint Lucia by December 19, 2018;
2. The Company file and serve a further affidavit by December 19, 2018;
3. The interested creditors may file a brief affidavit regarding the appointment of liquidators by December 19, 2018; and
4. The matter be adjourned to January 14, 2019.

2.3 Appointment of the Joint Provisional Liquidators

On November 20, the Provisional Liquidator Application came on for hearing. On hearing counsel for the Company, counsel for the Financial Services Compensation Scheme, an interested creditor, and counsel for Mr. Christopher McNamara, an interested creditor, the Court made the Appointment Order appointing the Provisional Liquidators.



3. Progress of the Provisional Liquidation

3.1 Appointment of professional advisors

Pursuant to the Appointment Order the Provisional Liquidators were given the power to appoint professional advisors to assist with the administration of the liquidation.

The Provisional Liquidators have instructed Lex Caribbean and Amicus Legal to act as their legal representative on this matter.

In addition, the Provisional Liquidators have instructed BCQS International ("BCQS") to act as valuation experts for the property.

3.2 Notification of appointment

The Provisional Liquidators were instructed to lodge a copy of the Appointment Order with the Registrar of Companies and serve same on the Company and its interested creditors. However, attorneys for the Provisional Liquidators have informed us that the perfected version of the Appointment Order has not yet been received. Once received, the Appointment Order will be lodged with the Registrar of Companies and served on the Company and the interested creditors.

Although not mandated by the Order or the Act, the Joint Provisional Liquidators also notified the following parties of their appointment:

- Dave Ames – sole director of HBHL;
- Various tour operators – who the Company transacted with;
- St. Lucia Electricity Services Limited;
- Ministry of Infrastructure, Ports, Energy and Labour; and
- Ministry of Tourism, Information and Broadcasting.

3.3 Company records

On November 23, 2018 the Provisional Liquidators had a discussion with Mr. David Ames, as the sole director of the Company, to request various company records which would assist in understanding the Company's affairs. Mr. Ames informed the Provisional Liquidators that he has not been involved in the day-to-day operations of the Company for the last two years and had very limited information relating to the Company.

When the Provisional Liquidators first took possession of the property, a number of discussions were held with staff regarding any Company records that may be located at the Hotel. The General Manager informed the Provisional Liquidators that historically accounting and management support was provided by Harlequin Management Services (South East) Limited ("HMSSE"); an affiliated company incorporated in the United Kingdom, which served as the sales and marketing agent of the Harlequin Group.



HMSSE entered into liquidation during 2014 and consequently the Company has not received any accounting support. The Provisional Liquidators are currently in communication with the Liquidator of HMSSE regarding accessing the relevant records.

The information held at the Hotel solely related to employee records and information related to various trade creditors. We have not been able to assume control over records related to the sale of units or accounting information.

3.4 Funding

The Provisional Liquidators also inquired with Mr. Ames regarding funds to the continue trading operations as we were informed that the Company had no local bank accounts. Mr. Ames informed the Provisional Liquidators that he does not hold or maintain any bank accounts that held funds relating to the Hotel's operations.

In the absence of further Company records being available, the Provisional Liquidators will continue to investigate the level of indebtedness of the Company and some information has been obtained regarding the level of indebtedness from the FSCS. This information will be useful to the liquidator in understanding the creditor base of the Company.

3.5 Operations

Upon appointment the Provisional Liquidators took control of the asset and inquired of management into the affairs of the Company. The Provisional Liquidators held discussions with the General Manager and Reservations Manager to understand the level of the Company's indebtedness, the day-to-day operations of the Hotel and the level of current revenue. Based on these discussions, the Provisional Liquidators were informed that revenue from bookings through online tour operators was sent to a bank account in the United States. The management of the Hotel has no control over funds in that account.

Funding for operations were obtained through direct bookings which were paid for at the hotel site. Any cash received was used to settle wages, purchase supplies for the food and beverage operations and make some payments to suppliers.

After having discussions with management and discussions with Mr. Ames regarding operational funding as outlined above, the Provisional Liquidators determined that it was necessary to cease operations at the hotel. The hotel was trading with no insurance and the Provisional Liquidators understand that the hotel did not hold the requisite health and safety certificates.

The Provisional Liquidators made the decision to close the hotel late on November 23, 2018 and immediately undertook the necessary steps to arrange for one of the Provisional Liquidators and four colleagues to attend the hotel on Saturday November 24, 2018 to effect the closure.

Upon attending the hotel a meeting was held with all staff onsite to explain the situation and to advise them that the hotel was closing, at the time of my attendance there were 11



occupied rooms. Each of the 11 occupied rooms were notified that the hotel would be closing with immediate effect and the Provisional Liquidator provided the necessary documentation to effect possible refunds via tour operators. Guests were also provided with a list of other available accommodation in the vicinity of Blu Hotel.

Upon appointment, the Provisional Liquidators obtained a quote for insurance and have now effected insurance Fire and Perils and Public Liability insurance for the property.

Since appointment, the Provisional Liquidators have engaged a security firm; Guardsman (St. Lucia) Limited to secure the Hotel. The Provisional Liquidators have also hired a few members of the former hotel staff to assist with various matters at the hotel.

3.6 Assets

Blu Hotel

The only known asset of HBHL is the Property, which, as previously stated, is located at 419 Reduit Beach Ave, Rodney Bay, Gross Islet, St. Lucia and registered as Block No. 1256 B Parcel Nos. 25 and 26 and comprises of land in area 29,110 square feet or approximately 0.3 hectares and 28,770 square feet or approximately 0.25 hectares respectively. The Hotel is constructed on the land.

The Provisional Liquidators have commissioned BCQS, to provide valuation services with regards to the Blu Hotel. BCQS is currently finalising their report on value. The Provisional Liquidators expect to receive the final report by December 28, 2018.

Cash and cash equivalents

Upon appointment, the Joint Provisional Liquidators have not discovered any cash held by the Company and it is their understanding that the Company did not hold a bank account in its name. The proceeds of bookings from overseas tour operators were deposited in a bank account, not in the Company's name, with Chase Bank in the United States of America ("USA"). Tour operators included Expedia.com and Booking.com. The management team informed the Provisional Liquidator that they had no control or access to these funds. The Provisional Liquidators are unaware of the specifics of the arrangements with the account held in the USA.

The management team of the hotel were responsible for covering day to day expenses of the Company and the management team operated on a cash basis, by requesting guest pay for their stay by cash. Any cash received was used to settle small expenses.

It is also the understanding of the Provisional Liquidator that the General Manager at the Resort has personally funded some wage payments for October.. The Provisional Liquidator further understands that while NIS and PAYE deductions were made, these amounts were not paid over to the relevant authorities.

During times when cash was significantly limited, the management team would request funds from Mr. Ames who occasionally sent funds via Western Union. For larger payments



e.g. utility companies, Mr. Ames made direct wire transfers to the supplier. For wages, the Provisional Liquidators have been made aware that Mr. Ames would send these funds via Western Union for settlement of the monthly wages.

3.7 Interested parties

Upon appointment, the Provisional Liquidators were made aware of a signed Sale and Purchase Agreement ("SPA") for the Hotel between St. Louise Property Limited ("St. Louise") and the Company for the consideration of US\$3.15 million. The Provisional Liquidators have requested a legal opinion from their attorneys to determine the validity and enforceability of the current signed SPA.

The Provisional Liquidators were also made aware that discussions had advanced to a draft SPA with another interested party; the Bay Gardens group.

Since appointment, the Provisional Liquidators have been approached by two other parties regarding their interest in the property. At this stage we have merely noted their interest and provided basic information regarding the opportunity. Once we have received the formal legal opinion of Lex Caribbean regarding the enforceability of the St. Louise contract we will be in a position to determine the way forward with these parties.

The Provisional Liquidators remain in contact with each of the interested parties in order to facilitate any possible due diligence and to continue to advance these purchaser discussions. Given the limited funding, whoever is appointed Liquidator in January will need to move expeditiously to conclude a sale as a prolonged sales process would incur additional expenditure.

3.8 Liabilities

Investor creditors

The Provisional Liquidators have been made aware that HRSL contracted with investors to sell individual units at Blu Hotel. The Company acknowledged that the contracts related to Blu Hotel were entered into by HRSL on the Company's behalf and that the Company is fully responsible for all obligations under the contracts.

The FSCS in their affidavit of support for the appointment of Liquidators have claimed against the estate GBP1.2 million or approximately US\$1.54 million. The Provisional Liquidators are also aware of the existence of other investor creditors outside of the FSCS and from the limited records the Provisional Liquidators have seen, the amount outstanding to other investor creditors is at least GBP4.9 million or US\$6.3 million. Once a Liquidator is appointed, a formal claims process will be conducted.

Bota McNamara claim

The Provisional Liquidators are aware of a claim from Mr. Bota McNamara for outstanding legal fees. Mr. McNamara has obtained a judgement against the property. The Provisional



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Liquidators have had preliminary discussions of this judgement and charge against the property with their legal counsel.

Trade creditors

From the limited Company records obtained, the Provisional Liquidators are aware that outstanding liabilities to trade creditors are at least US\$393,000.

JP Services Corporation claim

The Provisional Liquidators understand that the Company entered into a management contract with JP Services Corporation ("JP Services"). Through discussions with staff, the Provisional Liquidators are aware that JP Services provided management services to the Company for approximately one month. JP Services has filed a claim against the Company for breach of contract and is claiming damages in the amount of XCD\$14.4 million or US\$5.2 million.

The matter has been stayed upon the appointment of the Provisional Liquidators. However, the Provisional Liquidators have commenced preliminary discussions with legal counsel surrounding the claim. Once a Liquidator is appointed, the liquidator will adjudicate the claim with the guidance of the Court.

Claims by Government agencies

The Provisional Liquidators are aware of a number of debts outstanding to various Government agencies in respect of taxes including employee taxes and National Insurance Contributions ("NIC") and Value Added Tax ("VAT"). At present the amount outstanding for Government agencies is US\$843,000.



4. Costs of the Provisional liquidation to date

4.1 Receipts and Payments

To date, there has been no cash receipts since the appointment of the Provisional Liquidators. All payments thus far have been settled directly by the Provisional Liquidators from their own resources.

As noted earlier, upon appointment there were no cash assets available to the Provisional Liquidators. The Provisional Liquidators however were made aware of a group of guest staying at the hotel, who completed their stay before the hotel ceased operations. These funds are due to be paid to local counsel for the Provisional Liquidators.

The lack of funds will have a significant impact on the Provisional Liquidators to market the property; if this option needs to be pursued.

4.2 Funding of future costs

The Provisional Liquidators are in the process of approaching the FSCS with regards to a funding request.

Provisional Liquidators have presently provided US\$24,000 to fund the expenses necessary to secure the Hotel.

It is envisaged that a sum of approximately US\$65,000 will be required to continue securing and maintaining the property until January 31, 2019. At this stage the Provisional Liquidators are committed to continue providing funding.

Further details of the budgeted cost is available in **Appendix 3**.

4.3 Joint Provisional Liquidators' fees and disbursements

Joint Provisional Liquidators' fees

The Provisional Liquidators fees have been charged on a time cost basis and are based on time properly incurred by the Provisional Liquidators and their staff at an hourly rate commensurate to the level of the staff member undertaking the activity.

For the purpose of cost efficiencies, throughout the engagement, the Provisional Liquidators will allocate tasks cost-effectively among senior and junior staff.

In the period November 20, 2018 to December 15, 2018 the Provisional Liquidators and their staff have incurred time costs of US\$78,456. This represents 248.25 hours at an average rate of US\$316.04 per hour.

Further details of the time incurred is available in **Appendix 4**.

Joint Provisional Liquidator's disbursements

The Provisional Liquidators have incurred XCD\$10, 784 in out of pocket expenses in the period since appointment.

Further details of the disbursements are available in **Appendix 5**.



5. Future action to be taken by the Provisional Liquidators

Below the next steps to be taken by the Provisional Liquidators:

- Request funding for the continued funding of operation from the FSCS;
The Provisional Liquidators have made a request to the FSCS for funding of the continued limited operations at the property. These funds will be used to continue to secure and protect the assets of the Company. The Provisional Liquidators will also consider other sources of funding.
- Continue to secure the property;
The Provisional Liquidators will continue their duties to protect and secure the property, through the continuation of one-site 24 hour security. In addition, a member of the Provisional Liquidators team will make regular visits to the property.
- Interested parties;
The Provisional Liquidators expect to be in receipt of the legal opinion of the enforceability of the St. Louise contract by December 21, 2018. Once this has been received, further discussions will be held with the interested parties.
- Application to Court for sale of property;
Once the Provisional Liquidators have received the legal opinion from Lex and are able to complete negotiations, the Provisional Liquidators will file an application to Court for the sale of the property.
- Liaise with Company Directors;

In accordance with the Joint Provisional Liquidator's obligations to the Eastern Caribbean Supreme Court in Saint Lucia., we hereby file this report for and on behalf of the Joint Liquidators.

Craig Waterman
Joint Provisional Liquidator
December 24, 2018



Appendices

Appendix 1 - Glossary

Act	The Companies Act of Saint Lucia Cap.13.01
BCQS	BCQS International
FSCS	Financial Services Compensation Scheme
GBP	Pound Sterling
HBHL or the Company or the Hotel	Harlequin Boutique Hotel Limited.
HMSSE	Harlequin Management Services (South East) Limited
HRHL	Harlequin Resorts Hotel Limited
NIC	National Insurance Contributions
USA	United States of America
USD	United States Dollar
VAT	Valued Added Tax
XCD	Eastern Caribbean Dollar



Appendix 2 – Functions empowered upon the Joint Provisional Liquidators

- a) To locate, protect, secure, take possession of, collect and get in all of the property or assets of the Company to which the Company is or appears to be entitled, such assets and property not to be distributed or parted with by the Joint Provisional Liquidators until further order except pursuant to the functions contained in this order.
- b) To locate, protect, secure, take possession of, collect and get in the books, papers and records of the Company including the accounting and statutory records of the Company;
- c) To investigate the affairs of the Company;
- d) To carry on the business of the Company;
- e) To do all such things as may be necessary or expedient for the protection of the Company's property or assets;
- f) To employ such professional advisors as may be necessary to assist in the performance of their duties;
- g) To appoint an agent to do any business which they are unable to do themselves or which can more conveniently be done by an agent;
- h) To retain and operate the existing bank accounts of the Company and to open and operate new accounts and to pay any necessary expenses incurred on behalf of the Company in carrying out their powers and duties from such accounts;
- i) To negotiate, enter into and or terminate any contracts or transactions relating to the Company as may be necessary;
- j) To do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal;
- k) To sell, distribute or part with or otherwise dispose of the assets of the Company, with the approval of the Court;
- l) To make any arrangement or compromise on behalf of the Company with the approval of the Court;
- m) To retain, dismiss, or otherwise deal with employees of the Company as may be necessary;
- n) To maintain insurances;
- o) Other than as provided for at paragraph (k) above, to deal with real property of the Company of all kinds including leases, as may be necessary;



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- p) Without prejudice to the generality of the foregoing , to bring or defend or proceed with any action or other legal proceedings on behalf of the Company and in its name or his name as appropriate; and
- q) To do all such things necessary or incidental to the carrying out of the functions and duties as set out in this order.



Appendix 3 – Budgeted expenditure

The Provisional Liquidators have created a budget of expenditure required to continue the maintenance and security of the property till January 31, 2019.

Operating budget	
Item	Cost
Insurance	40,567.50
Payroll - Nov 20 - 30	13,120.64
Payroll Dec	6,821.81
Payroll Jan	6,776.90
Security Nov 20 - Jan 31	105,120.00
Pool maintenance	6,000.00
Landscaping	4,800.00
Pest control	1,800.00
Utilities Nov 20 - Jan 31	10,000.00
Contingency	5,000.00
Total in XCD	\$201,239.85



Appendix 4 – Joint Provisional Liquidators time detail

Joint Liquidators fees (for the period November 20, 2018 to December 15, 2018)

November 20, 2018 to December 15, 2018							
Workstream	Total time costs per workstream	Total hours per workstream	Liquidator	Senior Manager	Manager	Senior Associate	Associate
Administration	56,443.75	194.75	17.50	12.50	88.50	-	76.25
Asset Realisation	5,093.75	12.75	2.25	2.75	7.25	-	0.50
Creditors	4,262.50	12.25	1.75	2.25	6.00	-	2.25
Investigations	-	-	-	-	-	-	-
Trading	-	-	-	-	-	-	-
Strategy and legal	12,656.25	28.50	7.75	6.75	14.00	-	-
Total	78,456.25	248.25	29.25	24.25	115.75	-	79.00



Appendix 5 – Joint Provisional Liquidators Disbursements

Disbursements	Cost XCD
Accommodation	1,620
Travel	9,164
Total disbursements	10,784

