

A CREDITORS GUIDE TO INSOLVENCY PRACTITIONERS' FEES VOLUNTARY ARRANGEMENTS

1. Introduction

- 1.1 In a voluntary arrangement, as in other types of insolvency, the amount of money available for creditors is likely to be affected by the level of costs, including the remuneration of the insolvency practitioner appointed to implement the arrangements. This guide explains how fees are fixed in voluntary arrangements, how the creditors can affect the level of fees, and the information which should be made available to them regarding fees.

2. The Voluntary Arrangement Procedure

- 2.1 Voluntary arrangements are available to both companies and individual debtors. Company voluntary arrangements are often referred to as CVAs, partnership voluntary arrangements as PVAs, and individual voluntary arrangements as IVAs.
- 2.2 The procedure is similar for CVAs, PVAs, and IVAs and enables the company, partnership, or individual to put a proposal to their creditors for a composition in satisfaction of their debts or a scheme of arrangement of their affairs. A composition is an agreement under which creditors agree to accept a certain sum of money in settlement of the debts due to them. A CVA, PVA or IVA may be used as a stand alone procedure or as an exit route from an insolvency proceeding. It may also be used where a company or partnership is in liquidation, but this is extremely rare. The proposal will be made by the directors, the administrator or the liquidator, depending on the circumstances. A proposal for an IVA may be made by a debtor whether or not he is already subject to bankruptcy proceedings. The proposal will be considered by creditors at a meeting convened for that purpose. The procedure is extremely flexible and the form which the voluntary arrangement takes will depend on the terms of the proposal agreed by the creditors. In CVAs, PVAs and IVAs the proposal must provide for an insolvency practitioner to supervise the implementation of the arrangement. Until the proposal is approved by the creditors, the practitioner is known as the nominee. If the proposal is approved, the nominee (or if the creditors choose to replace him, his replacement) becomes the supervisor.

3. Fees, Cost and Charges – Statutory Provisions

- 3.1 The fees, costs, charges and expenses which may be incurred for the purposes of a voluntary arrangement are set out in the Insolvency (Northern Ireland) Rules 1991 (Rule 1.28 for CVAs and PVAs, and Rule 5.31 for IVAs). They are:
- any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services agreed between himself and the company (or the administrator or liquidator, as the case may be) or the debtor (or the official receiver or trustee, where the debtor is subject to bankruptcy proceedings);
 - any fees, costs, charges or expenses which:
 - are sanctioned by the terms of the arrangement (see below), or
 - would be payable, or correspond to those which would be payable, in an administration, winding up or bankruptcy (as the case may be).
- 3.2 The Rules also require the following matters to be stated or otherwise dealt with in the proposal (Rule 1.03 for CVAs and PVAs, and Rule 5.04 for IVAs):
- The amount proposed to be paid to the nominee by way of remuneration and expenses, and
 - The manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed.

4. The Role of the Creditors

- 4.1 It is for the creditors meeting to decide whether to agree the terms relating to remuneration along with the other provisions of the proposal. The creditors meeting has the power to modify any of the terms of the proposal (with the consent of the debtor in the case of an IVA), including those relating to the fixing of remuneration. The nominee should be prepared to disclose the basis of his fees to the meeting if called upon to do so. Although there are no further statutory provisions relating to remuneration in voluntary arrangements, the terms of the approval may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration.

5. What information should the creditors receive?

- 5.1 Where the supervisors fees are to be agreed by a committee of creditors, the supervisor should provide sufficient supporting information to enable the committee to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case, and should always make available an up to date receipts and payments account. Where the fee is to be charged on a time basis the supervisor should be prepared to disclose the amount of time spent on the case and the charge out value of the time spent, together with such additional information as may reasonably be required having regard to the size and complexity of the case.
- 5.2 Where the supervisor makes, or proposes to make, separate charge by way of expenses and disbursements to recover the cost of facilities provided by his own firm, he should disclose those charges to the committee when seeking approval of his fees, together with an explanation of how those charges are made up and the basis on which they are arrived at.
- 5.3 Where the basis of the remuneration of the supervisor as set out in the proposal does not require any further approvals by the creditors or any committee of creditors, the supervisor should specify the amount of remuneration he has drawn in accordance with the provisions of the proposal in his subsequent reports to creditors on the progress of the arrangement. Where the fee is based on time costs he should also provide details of the time spent and charge out value to date and any material changes in the rates charged since the arrangement was approved.