

A MEMBERS' GUIDE TO LIQUIDATORS' FEES NORTHERN IRELAND

1. Introduction

- 1.1. When a Company goes into members' voluntary liquidation, the costs of the proceedings are paid out of its assets. A declaration of solvency is sworn by the directors indicating that the creditors will be paid in full with statutory interest from the Company's assets, with the remaining assets being distributed to the members. As a result, it is the members who have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as Liquidator. The insolvency legislation recognises this interest by providing a mechanism for members to fix the basis of the Liquidator's fees. This guide is intended to help members be aware of their rights to approve and monitor fees, explains the basis on which fees are fixed and how members can seek information about expenses incurred by the Liquidator and challenge those they consider to be excessive.

2. Liquidation procedure

- 2.1. Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a Company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority.
- 2.2. A solvent voluntary liquidation is called a members' voluntary liquidation (often abbreviated to 'MVL'). In this type of liquidation an insolvency practitioner acts as Liquidator throughout and the members appoint the Liquidator at a general meeting of the Company.
- 2.3. In an MVL all creditors must be paid in full with statutory interest within the period stated in the declaration of solvency otherwise the Liquidator will have to convene a meeting of creditors and convert it to a creditors' voluntary liquidation, i.e. an insolvent liquidation.

3. Fixing the Liquidator's remuneration

- 3.1. The basis for fixing the Liquidator's remuneration is set out in Rule 4.156 of the Insolvency Rules (NI) 1991. The Rule states that the remuneration shall be fixed:
 - as a percentage of the value of the assets which are realised or distributed or
 - both, or
 - by reference to the time properly given by the Liquidator and his staff in attending to matters arising in the liquidation.

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the Liquidator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the Liquidator.

- 3.2. It is for the members at a general meeting of the Company to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the members to determine the percentage or percentages to be applied and Rule 4.134(4) says that in arriving at their decision the members shall have regard to the following matters:
 - the complexity (or otherwise) of the case;
 - any respects in which, in connection with the winding up, there falls on the responsible insolvency practitioner (as liquidator) any responsibility of an exceptional kind or degree,
 - the effectiveness with which the Liquidator appears to be carrying out, or to have carried out, his duties; and
 - the value and nature of the assets with which the Liquidator has to deal.
- 3.3. A resolution specifying the terms on which the Liquidator is to be remunerated may be taken at the meeting which appoints the Liquidator.
- 3.4. If the remuneration is not fixed as described in 3.2 above, it will be in accordance with the Official Receiver's scale. The scale is set out in Regulation 22 of the Insolvency Regulations (Northern Ireland) 1991. Remuneration should not be drawn on the Official Receiver's scale without first attempting to obtain the agreement of the members to a basis for fixing the remuneration, nor as an interim measure pending the agreement of the members.
- 3.5. If the liquidator considers that the remuneration fixed for him by the company in general meeting, or as per under 3.4 above, is insufficient, he may apply to the court for an order increasing its amount or rate.

4. What information should be provided by the Liquidator?

- **When seeking fee approval**

- 4.1. When seeking agreement for the basis or bases of remuneration, the Liquidator should provide sufficient supporting information to enable the members to make an informed judgement as to whether the basis sought is appropriate having regard to all the circumstances of the case. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought.
- 4.2. If any part of the remuneration is sought on a time costs basis, the Liquidator should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.
- 4.3. The Liquidator should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the Liquidator or his staff.
- 4.4. If work has already been carried out, the Liquidator should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case. Where the proposed charge is calculated on a time costs basis, the Liquidator should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. The Liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Liquidator or his or her staff.

- **After the bases of remuneration have been fixed**

- 4.5. The Liquidator is required to hold members meetings at specified intervals under Article 79 of The Insolvency Order 1989. When reporting periodically to members the Liquidator should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed. Members should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the Liquidator must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate).
- 4.6. Where any remuneration is on a time costs basis, the Liquidator should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. The Liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Liquidator or his staff.

- **Disbursements and other expenses**

- 4.7. There is no statutory requirement for the members to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the Liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the Liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.
- 4.8. Costs met by and reimbursed to the Liquidator in connection with the liquidation should be appropriate and reasonable. Such costs will fall into two categories:
 - i. Category 1 disbursements: These are costs where there is specific expenditure directly referable both to the liquidation and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the Liquidator or his staff
 - ii. Category 2 disbursements: These are costs that are directly referable to the liquidation but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the liquidation on a proper and reasonable basis, for example, business mileage.

Category 1 disbursements can be drawn without prior approval, although the Liquidator should be prepared to disclose information about them in the same way as any other expenses. Category 2 disbursements may be drawn if they have been approved in the same manner as the Liquidator's remuneration. When seeking approval, the Liquidator should explain, for each category of expense, the basis on which the charge is being made.

- iii. The following are not permissible:
 - a. A charge calculated as a percentage of the amount charged for remuneration will not constitute either category 1 or category 2 disbursements;
 - b. Basic non-incident costs, including such items as time costs, office and equipment rental, depreciation, standing charges, finance charges, accounting and administration costs, may not be the subject of separate charges; and
 - c. Payments to outside parties in which the office holder or his firm or any associate (as defined by Article 4, Insolvency Order 1989) has an interest should be treated as category 2 disbursements.