

# Liquidator's Progress Report

# S.192

Pursuant to Sections 92A and 104A and 192  
of the Insolvency Act 1986

To the Registrar of Companies

Company Number

01971947

Name of Company

LMW Electronics Limited

I / We

Edward T Kerr, Pannell House, 159 Charles Street, Leicester, LE1 1LD

Ian J Gould, Pannell House, 159 Charles Street, Leicester, LE1 1LD

the liquidator(s) of the company attach a copy of my/our Progress Report  
under section 192 of the Insolvency Act 1986

The Progress Report covers the period from 14/04/2015 to 13/04/2016

Signed



Date 13 June 2016

BDO LLP  
Pannell House  
159 Charles Street  
Leicester  
LE1 1LD

Ref 00251458/ETK/IJG/KO/EH/RH/KB

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COMPANIES HOUSE

**LMW Electronics Limited**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 14/04/2015 To 13/04/2016
<b>ASSET REALISATIONS</b>		
800 00	Plant & Machinery	800 00
240 00	Furniture & Fixtures	240 00
620 00	Computer Equipment	620 00
5,000 00	Stock	1,673 34
NIL	Prepayments	NIL
NIL	Book Debts	NIL
	Insurance Refund	1,379 50
602 00	Cash at Bank	879 36
	Rates Refund	1,939 60
	Bank Interest Gross	4 63
		<u>7,536 43</u>
<b>COST OF REALISATIONS</b>		
	Agents Fees	678 86
		<u>(678 86)</u>
<b>PREFERENTIAL CREDITORS</b>		
(5,046 00)	Preferential Wages	NIL
(3,058 00)	Preferential Hol Pay	NIL
		<u>NIL</u>
<b>UNSECURED CREDITORS</b>		
(78,621 00)	Trade & Expense Creditors	NIL
(65,244 00)	Unsecured Employees	NIL
(66,307 00)	Director's Loan a/c (C Smith)	NIL
(26,624 00)	HM Revenue & Customs (PAYE/NIC)	NIL
(20,872 00)	HM Revenue & Customs (VAT)	NIL
		<u>NIL</u>
<b>DISTRIBUTIONS</b>		
(100 00)	Ordinary Shareholders	NIL
		<u>NIL</u>
<u>(258,610.00)</u>		<u><u>6,857.57</u></u>
<b>REPRESENTED BY</b>		
	Vat Input	135 77
	Bank 2 Current	7,388 46
	Vat Output	(666 66)
		<u>6,857 57</u>



Edward T Kerr  
Joint Liquidator



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Pannell House  
159 Charles St  
Leicester  
LE1 1LD

## Private and Confidential

To All Known Members and Creditors

10 June 2016

Our ref 00251458/ETK/HR/EH

Please ask for Ed Hamblin  
Direct line 0116 250 4443  
Email [ed.hamblin@bdo.co.uk](mailto:ed.hamblin@bdo.co.uk)

Dear Sirs

**LMW Electronics Limited - In Creditors' Voluntary Liquidation ("the Company")**  
**Registered Address: Pannell House, 159 Charles Street, Leicester LE1 1LD**  
**Registered number: 01971947**  
**Joint Liquidators: Edward Terence Kerr and Ian James Gould**  
**Joint Liquidators Address: BDO LLP, Pannell House, 159 Charles Street, Leicester LE1 1LD**  
**Date of Appointment: 14 April 2015**

As you are aware, Ian Gould and I were appointed Joint Liquidators of the Company on 14 April 2015.

We enclose for your information a progress report on the conduct of the Liquidation for the period from 14 April 2015 to 13 April 2016, in accordance with Rule 4.49C of the Insolvency Rules 1986.

We also enclose a Receipts and Payments account showing a balance in hand of £6,857.57.

### Progress of the Liquidation

During the period, we have dealt with the statutory obligations of the liquidation, realising the assets of the Company and investigations into the conduct of the directors prior to our appointment.

The investigations have now been concluded and one asset realisation remains outstanding. These matters are discussed in greater detail below.

Based on the current information, it is not anticipated that there will be sufficient realisations to enable a dividend distribution to the unsecured creditors.

It is anticipated that the final issues in the liquidation will be resolved before the next progress report, however, the case will need to remain open until the funds have been received for the outstanding assets.

### Investigations

The Joint Liquidators have a statutory duty to undertake an investigation of the financial affairs of the Company and the conduct of any person they believe to have been a director or shadow director of the Company in the 3 years prior to the commencement of the liquidation. The findings are submitted in a confidential report to the department for Business, Innovation and Skills within 6 months of the onset of the liquidation.

We can confirm that the investigations have been concluded and there are no further investigations or actions to be undertaken.

Details of the authorising bodies of the insolvency appointment takers of BDO LLP are available at [www.bdo.co.uk/services/business\\_restructuring/authorising\\_bodies\\_of\\_insolvency\\_appointment\\_takers](http://www.bdo.co.uk/services/business_restructuring/authorising_bodies_of_insolvency_appointment_takers)

BDO LLP, a UK limited liability partnership registered in England and Wales under number OC305127, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. A list of members' names is open to inspection at our registered office, 55 Baker Street, London W1U 7EU. BDO LLP is authorised and regulated by the Financial Conduct Authority to conduct investment business.



10 June 2016

**Receipts**

The receipts shown are largely self-explanatory, although we would comment specifically on the following

**Plant & Machinery, Furniture & Fixtures, Computer Equipment and Stock**

Agents, Knighton Evans ("KE") valued all of the assets of the Company. The Plant & Machinery was valued at £800, Furniture & Fixtures at £240, Computer Equipment at £620 and Stock at £5,000

The assets of the company were purchased for £7,000 plus VAT by G8 LMW (Consulting) Limited ("G8")

To date, £3,333 plus VAT has been received, which has been apportioned to the Plant and Machinery, Fixtures and Fittings, the Computer Equipment and a part payment for Stock. A further £1,000 is expected in June 2016

The Joint Liquidators continue to pursue G8 for the outstanding amount. It is understood that G8's sales have not reached the expected levels in order to pay the outstanding amount, however the balance will be paid as soon as the funds are available. Prior to the anniversary, our agents have advised it is not cost effective to remove the stock for re-sale in an auction.

**Insurance Refund**

A refund of £1,380 was received from Julie Price & Co Limited for the prepayment of insurance.

**Cash at Bank**

Cash at bank of £879 was transferred to the liquidation bank account, compared to £602 in the Statement of Affairs

**Rates Refund**

A refund of £1,940 was received from Hinckley & Bosworth Borough Council in respect of business rates refund. The Joint Liquidators were assisted by Goodman Nash Limited ("GN") in order to reclaim the rates refund

**Bank Interest**

Gross Interest of £4 63 has been received during the period on the funds held in the liquidation bank account

**Payments**

The costs of the liquidation are detailed on the attached Receipts and Payment account

GN was paid £679 for its assistance in collecting the business rate refund due to the Company

The choice of professional advisers is based upon their experience and ability to perform this type of work, the nature and complexity of the assignment and the basis of my fee arrangement with them

10 June 2016

**Future Prospects**Secured Creditors

Barclays Bank plc ("the Bank") have a debenture dated 12 June 1991 which gives them a fixed and floating charge over the assets of the Company. The Bank also has a legal charge dated 3 December 1993. The bank account was in credit and therefore there is no outstanding balance due to the Bank under their debenture.

Preferential Creditors

Preferential claims are estimated to be in the region of £8,012, of which £6,407 is due to the Redundancy Payments Services and £1,605 is due to the former employees in respect of arrears of wages and accrued holiday pay.

Current information indicates that, due to insufficient funds, it is unlikely that there will be a return to the unsecured creditors in this matter.

Prescribed Part

Section 176A of the Insolvency Act 1986 requires the Liquidators to set aside a prescribed proportion of the Company's 'net property' towards the satisfaction of unsecured, non-preferential claims. Net property is the amount of property that would otherwise be available to holders of debentures secured by, or holders of, any floating charge created by the Company after 15 September 2003.

Unsecured Creditors

Unsecured claims received total £59,204 compared to £257,668 in the Statement of Affairs.

Current information indicates that, due to insufficient funds, it is unlikely that there will be a return to the unsecured creditors in this matter.

As there will be no net property in the case, the provisions of the Prescribed Part will not be applied.

**Joint Liquidators' Remuneration**

At the meeting of creditors held on 14 April 2015, a resolution was passed that BDO LLP be paid £2,000 plus VAT plus disbursements in respect of the costs of convening the meeting of creditors, preparation of the Statement of Affairs and general assistance provided to the Company in the prior to Liquidation. This fee has not been paid in the period of this report, although it has been drawn after the period.

At the same meeting, it was also resolved that the Joint Liquidators' remuneration be fixed by reference to the time properly given in attending to matters arising in the Liquidation at BDO LLP's usual charge out rates.

The time costs in the period 14 April 2015 to 13 April 2016 amount to £10,743 and represents 55.4 hours at an average hourly rate of £194 per hour. During the period, no fees have been drawn.

A detailed analysis of the time costs incurred for the period that we are reporting is enclosed. Also enclosed is a document that outlines the policy of BDO LLP in respect of fees and disbursements.

10 June 2016

For guidance, we enclose a creditors' guide to liquidators' fees.

### Disbursements

Where disbursements are recovered in respect of precise sums expended to third parties there is no necessity for these costs to be authorised. These are known as category 1 disbursements

Category 1 disbursements incurred since my appointment to 13 April 2016 total £538 and are detailed as follows:

	Category 1 Disbursement £
Specific Bond	200
Statutory Advertising	338
	<hr/> 538 <hr/>

Liquidators often charge expenses for example postage, stationery, photocopying charges, telephone and fax costs, which cannot economically be recorded in respect of a specific case. Such expenses, which are apportioned to cases, require the approval of the creditors, before they can be drawn and these are also known as category 2 disbursements. The policy of BDO LLP is not to charge any of these category 2 disbursements.

### Statement of creditors' right to further information

We provide at the end of this report an extract from the Insolvency Rules 1986 setting out the rights of creditors to request further information and/or challenge the remuneration or fees within the Liquidation

The Insolvency Service has established a central gateway for considering complaints in respect of Insolvency Practitioners. In the event that you make a complaint to me but are not satisfied with the response from me then you should visit <https://www.gov.uk/complain-about-insolvency-practitioner> where you will find further information on how you may pursue the complaint

We trust the above provides you with sufficient information, but if you require further assistance, please contact Ed Hamblin on 0116 250 4443



Edward T Kerr  
Joint Liquidator  
10 June 2016

*Edward Terence Kerr and Ian James Gould are authorised by the Institute of Chartered Accountants in England & Wales in the UK to act as Insolvency Practitioners*

### Encs

- 1 An abstract of the Liquidators receipts and payments account for the period of the report.
- 2 Analysis of the time charged to the liquidation in the period of this report.
- 3 Summary of the policies of BDO LLP in respect of fees and expenses
- 4 Creditors' guide in relation to Insolvency Practitioners fees
- 5 An extract from the Insolvency Rules 1986 re Members and Creditors rights

**LMW Electronics Limited**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 14/04/2015 To 13/04/2016	From 14/04/2015 To 13/04/2016
	<b>ASSET REALISATIONS</b>		
800 00	Plant & Machinery	800.00	800 00
240 00	Furniture & Fixtures	240 00	240 00
620 00	Computer Equipment	620 00	620 00
5,000.00	Stock	1,673.34	1,673 34
NIL	Prepayments	NIL	NIL
NIL	Book Debts	NIL	NIL
	Insurance Refund	1,379.50	1,379.50
602 00	Cash at Bank	879.36	879.36
	Rates Refund	1,939 60	1,939.60
	Bank Interest Gross	4 63	4.63
		<u>7,536 43</u>	<u>7,536 43</u>
	<b>COST OF REALISATIONS</b>		
	Agents Fees	678.86	678 86
		<u>(678.86)</u>	<u>(678 86)</u>
	<b>PREFERENTIAL CREDITORS</b>		
(5,046.00)	Preferential Wages	NIL	NIL
(3,058 00)	Preferential Hol. Pay	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
	<b>UNSECURED CREDITORS</b>		
(78,621.00)	Trade & Expense Creditors	NIL	NIL
(65,244.00)	Unsecured Employees	NIL	NIL
(66,307.00)	Director's Loan a/c (C Smith)	NIL	NIL
(26,624.00)	HM Revenue & Customs (PAYE/NIC)	NIL	NIL
(20,872 00)	HM Revenue & Customs (VAT)	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
	<b>DISTRIBUTIONS</b>		
(100.00)	Ordinary Shareholders	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
<u>(258,610.00)</u>		<u>6,857.57</u>	<u>6,857.57</u>
	<b>REPRESENTED BY</b>		
	Vat Input		135.77
	Bank 2 Current		7,388.46
	Vat Output		(666 66)
			<u>6,857.57</u>



Edward T Kerr  
Joint Liquidator

LAW Electronics Limited In Liquidation

Summary of time charged and rates applicable for the period from 14 April 2015 to 13 April 2016

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		TOTAL		AVERAGE HOURLY RATE £ P/H
	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	
A Pre appointment matters	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
B Steps on appointment	-	-	0 10	27 10	-	-	3 20	585 60	-	-	-	-	3 30	612 70	185 67
C Planning and Strategy	-	-	0 60	176 00	-	-	-	-	-	-	-	-	0 60	176 00	293 33
D General administration	0 50	230 50	1 50	399 30	-	-	19 15	3,566 55	2 40	252 45	0 85	60 35	24 40	4,509 15	184 80
E Asset and realisations/dealing	0 10	48 40	0 80	237 00	0 20	36 60	7 85	1,470 75	-	-	-	-	8 95	1,792 75	200 31
F Trading related matters	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
G Employee matters	-	-	11 05	2,243 15	-	-	3 00	549 00	0 60	70 00	0 40	41 10	15 05	2,903 25	192 91
H Creditor claims	-	-	-	-	0 60	115 20	1 30	244 20	-	-	-	-	1 90	359 40	189 16
I Reporting	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
J Distribution and closure	-	-	0 10	31 00	-	-	-	-	-	-	-	-	0 10	31 00	310 00
K Other work	-	-	1 10	358 80	-	-	-	-	-	-	-	-	1 10	358 80	326 18
<b>TOTAL</b>	<b>0 60</b>	<b>278 90</b>	<b>15 25</b>	<b>3,472 35</b>	<b>0 80</b>	<b>151 80</b>	<b>34 50</b>	<b>6,416 10</b>	<b>3 00</b>	<b>322 45</b>	<b>1 25</b>	<b>101 45</b>	<b>55 40</b>	<b>10,743 05</b>	<b>193 92</b>





## LMW Electronics Limited - In Liquidation

In accordance with best practice we provide below details of the policies of BDO LLP in respect of fees and expenses for work in relation to the above insolvency

The current charge out rates per hour of staff within our firm, who may be involved in working on the insolvency, follows. This in no way implies that staff at all such grades will work on the case

GRADE	£
Partner	374-484
Director/Senior Manager	285-335
Manager	213-242
Assistant Manager/Senior Executive	192
Executive	163-181
Administration Assistant	104-145
Junior Administrator	82
Support staff/Secretary	57-66

The rates charged by BDO LLP are reviewed in December and July each year and are adjusted to take account of inflation and the firm's overheads.

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. Units of time can be as small as 3 minutes. BDO LLP records work in respect of insolvency work under the following categories:-

- Pre Appointment
- Steps upon Appointment
- Planning and Strategy
- General Administration
- Asset Realisation/Management
- Trading Related Matters
- Employee Matters
- Creditor Claims
- Reporting
- Distribution and Closure
- Other Issues

Under each of the above categories the work is recorded in greater detail in sub categories. Please note that the 11 categories provide greater detail than the six categories recommended by the Recognised Professional Bodies who are responsible for licensing and monitoring insolvency practitioners.

Where officeholders' remuneration is approved on a time cost basis, the time invoiced to the case will be subject to VAT at the prevailing rate

Where remuneration has been approved on a time costs basis a periodic report will be provided to any committee appointed by the creditors or in the absence of a committee to the creditors. The report will provide a breakdown of the remuneration drawn and will enable the recipients to see the average rates of such costs.



## **Other Costs**

Where expenses are incurred in respect of the insolvent estate they will be recharged. Such expenses can be divided into two categories

### **Category 1**

This heading covers expenses where BDO LLP has met a specific cost in respect of the insolvent estate where payment has been made to a third party. Such expenses may include items such as advertising, couriers, travel (by public transport), land registry searches, fees in respect of swearing legal documents etc. In each case the recharge will be reimbursement of a specific expense incurred.

### **Category 2**

Insolvency practice additionally provides for the recharge of expenses such as postage, stationery, photocopying charges, telephone, fax and other electronic communications, which cannot be economically recorded in respect of each specific case. Such expenses, which are apportioned to cases, must be approved by the creditors in accordance with the Insolvency Rules 1986, before they can be drawn, and these are known as category 2 disbursements.

Where applicable, all disbursements will be subject to VAT at the prevailing rate

BDO LLP

**1 Introduction**

- 1 1 When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope to recover some of their debts out of the assets, therefore 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 mechanisms for creditors to fix the basis of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees and explains the basis on which fees are fixed.

**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. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.
- 2 2 Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.
- 2 3 In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and a member of The Insolvency Service, an executive agency within the Department of Business Innovation & Skills. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by the Secretary of State for Business Innovation & Skills. Where an insolvency practitioner is not appointed the official receiver remains liquidator.
- 2 4 Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator.

**3 The Liquidation Committee**

- 3 1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.
- 3 2 The liquidator must call the first meeting of the committee within 3 months of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

**4 Fixing the Liquidator's Fees**

- 4 1 The basis for fixing the liquidator's remuneration is set out in Rule 4.127 - 4.127B of the Insolvency Rules 1986. The Rule states that the remuneration shall be fixed either
- 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 insolvency.

It is for the liquidation committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage to

be applied. Rule 4.127 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case,
- any responsibility of an exceptional kind or degree which falls on the liquidator in connection with the insolvency,
- the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties,
- the value and Nature of the assets which the liquidator has to deal with.

- 4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as the committee would. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator. If the remuneration is not fixed in any of these ways, it will be in accordance with the scale laid down for official receivers.

## **5 What Information should be Provided by the Liquidator?**

### **5.1 When seeking fee approval**

- 5.1.1 When seeking agreement to his fees the liquidator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought;
- the stage during the administration of the case at which it is being sought; and
- the size and complexity of the case.

Where, at any creditors' or committee meeting, the liquidator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

- 5.1.2 Where the liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the liquidator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, and professional guidance has been provided setting out a minimum of 6 category headings under which the work done by the officeholder and his staff should be analysed. As a firm BDO LLP operates a computerised time recording system which analyses work done under the following categories -

- Pre Appointment Matters
- Steps upon Appointment
- Planning and Strategy
- General Administration
- Asset Realisation/Management
- Trading Related Matters
- Employee Matters
- Creditor Claims
- Reporting
- Distribution and Closure
- Other Issues

Professional guidance suggests the following categories as a basis for analysis by grade of staff, but this will be subject to whether each grade is engaged in working on the liquidation

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the liquidator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain

- Any significant aspects of the case, particularly those that affect the amount of time spent
- The reasons for subsequent changes in strategy
- Any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement
- Any existing agreement about fees
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases

- 5 1 3 Where the fee is charged on a percentage basis the liquidator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a liquidator or his staff

**5 2 After fee approval**

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution. 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 for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 5 1 3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 5 1 4 above regarding work which has been sub-contracted out.

**5 3 Expenses and disbursements**

There is no statutory requirement for the committee or the creditors 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.

**5 4 Realisations for secured creditors**

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 8 1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

**5 5 Reporting in compulsory liquidations**

It should be borne in mind that in compulsory liquidations there is no statutory requirement for the liquidator to report to creditors until the conclusion of the assignment. In most such cases, therefore, creditors will receive no information during the course of the liquidation unless they specifically request it.

**6 What if a creditor is dissatisfied?**

6 1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.

6 2 If a creditor believes that the liquidator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not out of the assets of the insolvent company.

**7 What if the Liquidator is dissatisfied?**

If the liquidator considers that the remuneration fixed by the committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors or in accordance with the official receiver's scale is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

**8 Other matters relating to fees**

8 1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with the scale laid down for the official receivers. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

8 2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.

8 3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.

8 4 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

**9 Provision of information - additional requirements**

In any case where the liquidator is appointed on or after 1 April 2005 he must provide certain information about time spent on a case, free of charge, upon request by any creditor, director or shareholder of the company. The information which must be provided is -

- the total number of hours spent on the case by the liquidator or staff assigned to the case,
- for each grade of staff, the average hourly rate at which they are charged out;

- the number of hours spent by each grade of staff in the relevant period

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office, the date that he vacated office

The information must be provided within 28 days of receipt of the request by the liquidator, and requests must be made within two years from vacation of office

ETK/IJG/EH/LMW/CVL/C11

## **Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Liquidators' fees and expenses:**

### **Rule 4.49E Creditors' and members' request for further information**

**(1) If-**

- (a) within the period mentioned in paragraph (2)-
  - (i) a secured creditor, or
  - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
  - (iii) members of the company in a members voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
- (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)-
  - (i) any unsecured creditor, or
  - (ii) any member of the company in a members' voluntary winding up,

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter[s] in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108

**(2) The period referred to in paragraph (1)(a) and (b) is-**

- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
- (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case

**(3) The liquidator complies with this paragraph by either-**

- (a) providing all of the information asked for, or
- (b) so far as the liquidator considers that-
  - (i) the time or cost of preparation of the information would be excessive, or
  - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
  - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information, giving reasons for not providing all of the information

### **Rule 4.131 Creditors' claim that remuneration is or other expenses are excessive**

- (1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4)
- (1A) Application may be made on the grounds that-
  - (a) the remuneration charged by the liquidator,
  - (b) the basis fixed for the liquidator's remuneration under Rule 4.127, or
  - (c) expenses incurred by the liquidator,





is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate

- (1B) The application must, subject to any order of the court under Rule 4 49E(5), be made no later than 8 weeks (or, in a case falling within Rule 4 108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4 49D, which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report")

- (2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application, but it shall not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least 5 business days notice but which is without notice to any other party.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly

- (3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it

- (4) If the court considers the application to be well-founded, it must make one or more of the following orders-

- (a) an order reducing the amount of remuneration which the liquidator was entitled to charge,
- (b) an order fixing the basis of remuneration at a reduced rate or amount,
- (c) an order changing the basis of remuneration,
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation;
- (e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report

- (5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the liquidation