

## 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

04295590

Name of Company

Abcellute Limited

✓ We

Ian J Gould, New Guild House, 45 Great Charles Street, Queensway, Birmingham

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

The Joint 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 08/10/2014 to 07/10/2015

Signed

Date

11.11.15

BDO LLP  
Pannell House  
159 Charles Street  
Leicester  
LE1 1LD

Ref 04022828/IJG/ETK/KO/DC/HD/CB/KB

THURSDAY



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12/11/2015

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COMPANIES HOUSE

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

Statement of Affairs		From 08/10/2014 To 07/10/2015	From 08/10/2012 To 07/10/2015
<b>GENERAL FIXED CHARGE</b>			
25,000 00	Patent/Trade Mark	NIL	NIL
(287,593 00)	Finance Wales Investments (5) Limited	NIL	NIL
(499,396 00)	Fusion IP	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
<b>ASSET REALISATIONS</b>			
9,000 00	Furniture & Equipment	NIL	4,510 00
4,451 00	Book Debts	NIL	3,335 40
14,845 00	Cash at Bank	NIL	NIL
	Bank Interest Gross	3 40	34 39
	Bank Interest Net of Tax	NIL	4 89
		<u>3 40</u>	<u>7,884 68</u>
<b>COST OF REALISATIONS</b>			
	Auctioneers Fees	NIL	1,120 33
	Agents/Valuers Fees	NIL	1,500 00
	Storage Costs	NIL	459 81
	Statutory Advertising	NIL	201 38
		<u>NIL</u>	<u>(3,281 52)</u>
<b>PREFERENTIAL CREDITORS</b>			
(850 00)	Employees Wage Arrears/Holiday Pay	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
<b>UNSECURED CREDITORS</b>			
(7,031 00)	Trade & Expense Creditors	NIL	NIL
(31,696 00)	HSBC Bank Plc	NIL	NIL
(3,851 00)	HM Revenue & Customs - PAYE/NI	NIL	NIL
(801 00)	HM Revenue & Customs - VAT	NIL	NIL
(693,736 00)	Abcellute Tissue Bank	NIL	NIL
(11,000 00)	Employee Redundancy and PILON	NIL	NIL
(1,685 00)	Accruals	NIL	NIL
(8,400 00)	Fusion IP	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
<b>DISTRIBUTIONS</b>			
(3,677 00)	Ordinary Shareholders	NIL	NIL
(1,137,034 00)	Share Premium	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
<b>(2,633,454 00)</b>		<u><b>3 40</b></u>	<u><b>4,603 16</b></u>
<b>REPRESENTED BY</b>			
	Bank 1 - Current		4,603 16
			<u><b>4,603 16</b></u>

*Handwritten signature*

TO ALL KNOWN CREDITORS

11 November 2015

Our ref 04022828/IJG/KOR/DC

Please ask for Dr Chapman  
Telephone 0116 2504477  
Email Diane.Chapman  
@bdo.co.uk

Dear Sirs

**Abcellute Limited - In Liquidation ("the Company")  
Report to creditors on the progress of the Liquidation pursuant to Rule 4.49C of the Insolvency  
Rules 1986**

I write to give you a progress report on the conduct of the Liquidation for the period from 8 October 2014 to 7 October 2015 ("the period").

The following schedules are attached to this report:

- 1 Statutory information
2. An abstract of the Joint Liquidators' receipts and payments account for the period of the report and since the commencement of the liquidation on 8 October 2012.
3. An analysis of the time charged to the liquidation estate in the period and for the whole of the liquidation period commencing 8 October 2012.
- 4 Summary of the policies of BDO LLP in respect of fees and expenses for work in relation to the Joint Liquidators
5. Creditors' guide in relation to Insolvency Practitioners Fees.
6. An extract from the Insolvency Rules 1986 regarding Members and Creditors Rights.

**General overview**

This is the third progress report on the conduct of the Liquidation and details the progress for the period from 8 October 2014 to 7 October 2015.

The Company was incorporated in September 2001, its trading activities being research and development.

Its main business was the development and marketing of applications for 'SureTran' a gel which extends the life of human and other cells for biomedical research.

The directors mainly attribute the decline in business as being due to;

- The decline in tissue supply and corresponding fall in tissue sales,
- Failure to secure new contracts for kidney cell services;
- Inconclusive trials with a global leader in cell preservation for the application of SureTran in a number of projects that were subsequently removed from current portfolio requirements

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





## **Progress of the Liquidation**

During the period I have dealt with the statutory obligations of a Liquidator.

I would advise that all of the Company's assets have been realised and I am now in the process of commencing closure of the case

## **Asset Realisations**

### **Bank Interest**

The only asset realisation received during the period that I am reporting on is a small amount of bank interest amounting to £3

### **Costs incurred other than Liquidators' expenses**

No expenses have been charged during the period.

## **Creditor Claims**

### **Secured Creditors**

Finance Wales Investments (5) limited holds full fixed and floating charge Debentures dated 17 December 2008 and 9 November 2009. In total, loans amounting to approximately £287k are outstanding and due from Abcellute Holdings Limited, but secured by way of cross guarantee from the Company

Fusion IP Cardiff Limited holds full fixed and floating charge Debentures dated 17 December 2008 and 20 August 2009. Fusion IP Cardiff Limited is owed in excess of £499k.

There is no likelihood of a distribution to the secured creditors.

### **Preferential Creditors**

As you are aware the Company's employees were made redundant immediately prior to my appointment. A number of employees had claims for outstanding wages and holiday pay. As a consequence a preferential claim has been received from the Redundancy Payments Office in the sum of £799.

Based on current information, there will not be a distribution to preferential creditors.

### **Unsecured Creditors**

According to the books and records in our possession the Company's liabilities to non preferential creditors as at the date of appointment totalled £758,200. Claims received to date equate to £37,520

Based on present information, there is no likelihood of a distribution to unsecured creditors of the Company.



## **Prescribed Part**

Section 176A of the Act requires the Joint Liquidators to set aside a prescribed amount of the Company's "net property" towards the satisfaction of unsecured debts. Net property is the amount of property that would otherwise be available for satisfaction of holders of debentures secured by, or holders of, any floating charge created by the Company on or after 15 September 2003. Given the limited realisations in this matter a distribution under the Prescribed Part is not anticipated.

## **Dividend Distribution**

In accordance with Rule 4.186 and Rule 11.7 of the Insolvency Rules 1986, I would advise that there is no likelihood of a dividend distribution to any class of creditor due to insufficient realisations.

## **Remuneration and disbursements**

The basis of the Joint Liquidators' fee approval was agreed at a meeting of creditors held on 8 October 2012 in accordance with Rule 4.127 of the Insolvency Act 1986 when a resolution was passed that their remuneration be fixed by reference to the time properly given in attending to matters arising in the Liquidation at PKF (UK) LLP's (Now BDO LLP) usual charge out rates.

The time costs incurred in the period covered by this report from 8 October 2014 to 7 October 2015 amount to £2,989 and represent 14 hours at an average hourly rate of £213 per hour.

Time costs incurred from the date of appointment on 8 October 2012 to 7 October 2015 amount to £49,466 which represents 187 hours at an average rate of £265. A detailed analysis of the time costs incurred is enclosed. These are shown on separate schedules due to a change in our accounting system on 1 June 2013. No fees have been drawn to date. However, it is the Joint Liquidators' intention to shortly draw down an amount on account of their time costs incurred to date. The balance of time costs will then be written off.

These amounts are derived from BDO LLP's normal rates for time properly spent by the liquidators and their staff in attending to matters arising in the liquidation. Where members of staff have been employed on this case they have been so based on their experience and abilities in dealing with a case of this nature. Where appropriate certain staff have dealt with a specific area of the liquidation due to their specialist skills in that area. BDO LLP's scale rates may increase from time to time over the period of an assignment.

All staff who have worked on this matter, including cashiers and secretarial staff, have charge time directly to the assignment and are included in the enclosed analysis. The cost of staff employed in central administration functions is not charged directly to the assignment but is reflected in the general level of charge out rates.

Attached to this report is a summary of the policies of BDO LLP in respect of fees and expenses for work in relation to the liquidation. Also attached is a creditors' guide to fees, which provides information regarding creditors' rights in relation to insolvency practitioners' fees.

## **Joint Liquidators' Disbursements**

There have been no Category 1 or Category 2 disbursements charged in the period.

## **Creditors' rights**

I 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 expenses within the Liquidation.



If you have a complaint you should address it in the first instance to the Senior Partner, BDO LLP, 55 Baker Street, London, W1U 7EU. If you are still dis-satisfied, 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.

#### Concluding Comments

I confirm that I am not aware of any outstanding matters in relation to the Liquidation proceedings and have received no objection to H M Revenue & Customs to the closure of the close. A final report will be forwarded to Members and Creditors in due course

I trust the above provides you with sufficient information, but if you require more or have any questions please contact Diane Chapman on 0116 250 4477.

Yours faithfully

For and on behalf of  
Abcellule Limited

A handwritten signature in black ink, appearing to be 'ETK'.

Edward T Kerr  
Joint Liquidator





## STATUTORY INFORMATION

**Company name** Abcellute Limited

**Registration number** 04295590

**Registered office address** c/o BDO LLP  
125 Colmore Row  
Birmingham  
B3 3SD

**Liquidator(s) details**

Ian J Gould  
BDO LLP  
125 Colmore Row, Birmingham, B3 3SD  
Appointed 08/10/2012  
Resigned

Edward T Kerr  
BDO LLP  
Pannell House, 159 Charles Street, Leicester LE1 1LD  
Appointed: 08/10/2012  
Resigned:



**Abcellute Limited**  
**(In Liquidation)**  
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	<b>REPRESENTED BY</b>		
	Bank 1 - Current		4,603 16
			<u><b>4,603.16</b></u>

*ETK*





# SIP9 Analysis of OfficeHolders Timecosts for the Period 8 October 2012 to 7 October 2013

Client: 4022828 Abcellute Limited

Grade: Partner / Director

Manager

Supervisor / Senior Administrator

Administrator / Assistant

Total

Average Cost per hour: £317.00

£235.00

£181.00

£102.00

£289.00

Tasks	Amount (£)	Hours	Amount (£)	Hours	Amount (£)	Hours	Amount (£)	Hours	Amount (£)	Hours
Partner/Senior Manager Review	126 80	0 40	0 00	0 00	0 00	0 00	41 40	0 30	168 20	0 70
Planning & Monitoring	1,585 00	5 00	0 00	0 00	170 90	1 10	0 00	0 00	1,755 90	6 10
Cashiering Function Generally	57 00	0 20	223 40	1 00	145 80	0 80	498 54	5 38	924 74	7 38
Office Holders Tax Liabilities	46 10	0 10	637 10	2 95	181 00	1 00	0 00	0 00	864 20	4 05
CDDA 1986 Work	380 40	1 20	0 00	0 00	126 70	0 70	0 00	0 00	507 10	1 90
Secured Creditors (reporting/accounting for funds, etc)	4,100 25	13 75	0 00	0 00	36 20	0 20	0 00	0 00	4,136 45	13 95
Partly Secured Creditors (including of lease and HP)	1,109 50	3 50	0 00	0 00	0 00	0 00	0 00	0 00	1,109 50	3 50
Non Preferential Creditors	0 00	0 00	0 00	0 00	90 50	0 50	0 00	0 00	90 50	0 50
Employee Claims	62 70	0 15	0 00	0 00	670 50	3 70	204 76	1 56	937 96	5 41
Fixed Asset Realisation	6,339 75	21 05	0 00	0 00	36 20	0 20	0 00	0 00	6,375 95	21 25
Book Debt Realisations	0 00	0 00	0 00	0 00	65 20	0 40	0 00	0 00	65 20	0 40
Other Asset Realisations	6,815 50	21 50	0 00	0 00	18 10	0 10	0 00	0 00	6,833 60	21 60
Insurance & Bonding	0 00	0 00	0 00	0 00	199 10	1 10	0 00	0 00	199 10	1 10
General Administration	1,788 00	5 80	0 00	0 00	1,249 00	4 50	0 00	0 00	3,037 00	10 30
Statutory Compliance (including CRO returns and lodges)	3,233 00	10 40	0 00	0 00	291 80	1 60	0 00	0 00	3,524 80	12 00
Computensation/PS	0 00	0 00	0 00	0 00	0 00	0 00	99 44	1 13	99 44	1 13
Liasing with Agents/Solicitors/Other Professionals	4,834 25	15 25	0 00	0 00	0 00	0 00	0 00	0 00	4,834 25	15 25
	30,478 25	98 30	860 50	3 95	3,281 00	15 90	844 14	8 37	35,463 89	126 52

Summary of Time Charged and Rates Applicable for the Period From 1 June 2013 to 7 October 2015

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		GRAND TOTAL		AV RT
	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	Hours	Total	
		£		£		£		£		£		£		£	
C Planning and Strategy			7.40	2,183.00					0.50	£4.20			7.90	2,237.20	283.19
D General Administration	0.10	46.10	8.80	2,472.20	3.40	617.00	1.10	185.00	1.85	233.70	1.50	83.25	16.75	3,637.25	217.15
E Assets Realisation/Dealing			5.75	1,507.25	0.30	47.10							6.05	1,554.35	256.92
G Employee Matters			0.35	71.05	0.40	73.20					0.20	19.80	0.95	164.05	172.68
I Reporting			11.35	3,348.25	0.90	164.70	3.00	516.00	3.00	350.20			18.25	4,379.15	239.95
J Distribution and Closure			0.90	265.50			3.00	522.30					3.90	787.80	202.00
K Work			2.05	551.05	1.45	279.85	1.90	330.40	0.95	81.45			6.35	1,242.75	195.71
	0.10	46.10	36.60	10,398.30	6.45	1,181.85	9.00	1,533.70	6.30	719.55	1.70	103.05	60.15	14,002.55	
										Net Total					

**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



## **Abcellute 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.

<b>GRADE</b>	<b>£</b>
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. The current policy of BDO LLP is to recharge this expense on the basis of a figure based upon the number of creditors with whom we have to communicate and report during the insolvency. This is the method of calculation that was historically provided under statutory orders for the Official Receiver.

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

BDO LLP

**A Creditor's Guide to Liquidators' Fees****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, explains the basis on which fees are fixed and how creditors 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. 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 an official belonging to The Insolvency Service. 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 Insolvency Service on behalf of the Secretary of State. 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. An administrator may also subsequently act as liquidator in a CVL.

**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 6 weeks 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 remuneration**

- 4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 - 4.127B of the Insolvency Rules 1986. The Rules state that the remuneration shall be fixed:
- as a percentage of the value of the assets which are realised or distributed or both,
  - by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation, or
  - as a set amount



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.

It is for the liquidation committee (if there is one) 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 committee to determine the percentage or percentages 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 apply in the case of the committee. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.

4.3 If the remuneration is not fixed as above, it will be fixed in one of the following ways. In a CVL, it will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment. In a compulsory liquidation, it will be in accordance with a scale set out in the Rules.

4.4 Where the liquidation follows directly on from an administration in which the liquidator had acted as administrator, the basis of remuneration fixed in the administration continues to apply in the liquidation (subject to paragraph 8 below).

## **5. Review of remuneration**

Where there has been a material and substantial change in circumstances since the basis of the liquidator's remuneration was fixed, the liquidator may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

## **6 What information should be provided by the liquidator?**

### **6.1 When fixing bases of remuneration**

6.1.1 When seeking agreement for the basis or bases of remuneration, the liquidator should provide sufficient supporting information to enable the committee or the creditors 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. The appendix to this guide sets out a suggested format for the provision of information.

6.1.2 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.

6.1.3 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 or her staff.

6.1.4 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.

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

The liquidator is required to send progress reports to creditors at specified intervals (see paragraph 7.1 below). When reporting periodically to creditors, in addition to the matters specified in paragraph 7.1, 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. Creditors 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). 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 or her staff.

**6.3 Disbursements and other expenses****6.3 1 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**

- **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 or her staff.
- **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.

**6.3.2 The following are not permissible.**

- a charge calculated as a percentage of remuneration;
- an administration fee or charge additional to the liquidator's remuneration,
- recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

**6.4 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 11.1 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.

**7. Progress reports and requests for further information****7.1 The liquidator is required to send annual progress reports to creditors. The reports must include:**

- details of the basis fixed for the remuneration of the liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it),
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report),
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;

- a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was actually made during that period;
- a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the liquidator's remuneration and expenses

7.2 Within 21 days of receipt of a progress report (or 7 business days where the report has been prepared for the purposes of a meeting to receive the liquidator's resignation) a creditor may request the liquidator to provide further information about the remuneration and expenses set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court

7.3 The liquidator must provide the requested information within 14 days, unless he considers that

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
- the liquidator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information

Any creditor may apply to the court within 21 days of the liquidator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information

## **8. Provision of information - additional requirements**

The liquidator must provide certain information about the time spent on the 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

## **9 What if a creditor is dissatisfied?**

9.1 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

9.2 If a creditor believes that the liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

9.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). 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

9.4 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the insolvent company

**10. What if the liquidator is dissatisfied?**

If the liquidator considers that the remuneration fixed by the liquidation committee, or in the preceding administration, is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the liquidation committee, the creditors, in the preceding administration or in accordance with the statutory scale is insufficient, or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. 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.

**11 Other matters relating to remuneration**

- 11.1 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 a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.
- 11.2 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.
- 11.3 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.
- 11.4 If a new liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, resolution or court order is made.
- 11.5 Where the basis of the remuneration is a set amount, and the liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.
- 11.6 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.

**12. Effective date**

This guide applies where a company goes into liquidation on or after 1 November 2011.

**Appendix****Suggested format for the provision of information**

Professional guidance issued to insolvency practitioners sets out the following suggested format for the provision of information when seeking approval of remuneration. However, the level of disclosure suggested below may not be appropriate in all cases, and will be subject to considerations of proportionality. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.

**Narrative overview of the case**

In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are

- the complexity of the case,
- any exceptional responsibility falling on the liquidator,
- the liquidator's effectiveness,
- the value and nature of the property in question

The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include.

- an explanation of the nature, and the liquidator's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known),
- initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers;
- any significant aspects of the case, particularly those that affect the remuneration and cost expended,
- the reasons for subsequent changes in strategy,
- the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing;
- any existing agreement about remuneration;
- 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;
- in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed,
- details of work undertaken during the period,
- any additional value brought to the estate during the period, for which the liquidator wishes to claim increased remuneration

**Time cost basis**

Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide.

- An explanation of the liquidator's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes
- A description of work carried out, which might include:
  - details of work undertaken during the period, related to the table of time spent for the period,
  - an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used,
  - any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make
- Time spent and charge-out summaries, in an appropriate format

It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case.

The following areas of activity are suggested as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff:

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

The level of disclosure suggested above will not be appropriate in all cases, and considerations of proportionality will apply

- where cumulative time costs are, and are expected to be, less than £10,000 the liquidator should, as a minimum, state the number of hours and average rate per hour and explaining unusual features of the case;
- where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features),
- where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted