

# 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

04646324

Name of Company

The Red Orange Clothing Company Limited

I / We

Darren Terence Brookes, The Old Bank, 187a Ashley Road, Hale, Cheshire, WA15 9SQ

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 10/10/2014 to 09/10/2015

Signed

Date

4/11/15

Milner Boardman & Partners  
The Old Bank  
187a Ashley Road  
Hale  
Cheshire  
WA15 9SQ

Ref TH2327/DTB/MM

THURSDAY



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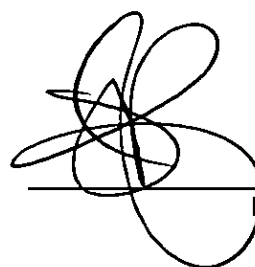
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COMPANIES HOUSE

**The Red Orange Clothing Company Limited**  
**(In Liquidation)**  
**Liquidator's Abstract of Receipts & Payments**

Statement of Affairs		From 10/10/2014 To 09/10/2015
	<b>ASSET REALISATIONS</b>	
25,000 00	Corporation Tax Refund (estimated)	17,994 15
94 00	VAT Refund	93 41
514,100 00	Cash at Bank	514,062 69
238,687 00	Director's Loan Account	242,237 00
		<u>774,387 25</u>
	<b>COST OF REALISATIONS</b>	
	Specific Bond	408 00
	Office Holders Fees	2,250 00
	Accountancy Fees	1,365 00
	Agents/Valuers Fees (1)	NIL
	Statutory Advertising	253 80
		<u>(4,276 80)</u>
	<b>UNSECURED CREDITORS</b>	
	Trade & Expense	1,158 00
	Directors	3,550 00
		<u>(4,708 00)</u>
	<b>DISTRIBUTIONS</b>	
(1,000 00)	Ordinary Shareholders	734,846 72
		<u>(734,846 72)</u>
<u>776,881.00</u>		<u><u>30,555.73</u></u>
	<b>REPRESENTED BY</b>	
	VAT Receivable	273 00
	Current Account	30,282 73
		<u><u>30,555 73</u></u>



\_\_\_\_\_  
Darren Terence Brookes  
Liquidator



MILNER BOARDMAN  
& PARTNERS

*Corporate Recovery*

Our ref DTB/MM/2327/24

4 November 2015

**TO ALL MEMBERS**

The Old Bank  
187a Ashley Road  
Hale  
Cheshire  
WA15 9SQ

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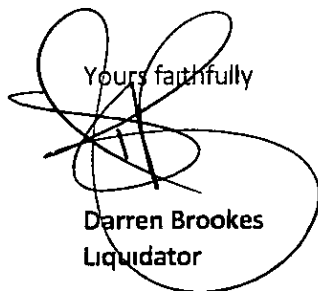
Dear Sirs

**The Red Orange Clothing Company Limited - In Members' Voluntary Liquidation**

This is my report to members following the first anniversary of my appointment as Liquidator on 10 October 2014

If you have any queries regarding this report or the conduct of the Liquidation in general, please contact Molly Monks on 0161 927 7788

Yours faithfully



Darren Brookes  
Liquidator



MILNER BOARDMAN  
& PARTNERS  
*Corporate Recovery*

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## **THE RED ORANGE CLOTHING COMPANY LIMITED - IN MEMBERS' VOLUNTARY LIQUIDATION**

### **Liquidator's Progress Report**

10 October 2014 to 9 October 2015

4 November 2015

Milner Boardman and Partners  
The Old Bank  
187A Ashley Road  
Hale  
Cheshire  
WA15 9SQ

Our Ref DTB/MM/2327/24

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Liquidator's  
Progress Report



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- 1 Receipts and Payments Account
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- 3 Members Rights in Relation to Liquidator's Remuneration



## 1 Statutory Information

1.1 On 10 October 2014, the members of The Red Orange Clothing Company Limited ("the Company") passed the following resolutions by written resolutions:-

- to place the Company into Members' Voluntary Liquidation
- to appoint Darren Brookes as Liquidator
- to authorise the Liquidator to distribute all or part of the assets in specie to the shareholders in such proportion as they mutually agree
- to authorise the Liquidator under the provisions of Section 165(2) to exercise the powers laid down in schedule 4, Part 1, of the Insolvency Act 1986
- that the Liquidator's remuneration shall be fixed by the time properly given by the Liquidator and his staff in attending to matters arising in the winding-up limited to a total of £2,250 excluding VAT together with any out of pocket expenses incurred

1.2 The Liquidation is being handled by Milner Boardman & Partners ("MBP"), situated at The Old Bank, 187A Ashley Road, Hale, Cheshire, WA15 9SQ

1.3 The registered office of the Company is c/o MBP, The Old Bank, 187A Ashley Road, Hale, Cheshire, WA15 9SQ and its registered number is 04646324. The former registered office and trading address was 49-51 Dale Street, Manchester, M11 2HF

## 2 Case Overview

2.1 The principal business activity of the Company was that of wholesale of clothing and footwear

2.2 According to the declaration of solvency, the Company assets consisted of the following -

Assets	Estimated value £
Corporation Tax Refund	25,000 00
VAT Refund	94 00
Cash at Bank	514,100 00
Directors Loan Account	238,687 00

Further details of which can be found below

2.3 Once there were sufficient funds the unsecured creditors' claims were agreed and paid in full, the Liquidation costs were settled and two interim distributions were made to the shareholders. The Liquidation remains open to receive the terminal relief refund and to pay a final dividend



### 3. Asset Realisation and Actions Since Appointment

- 3 1 **Corporation Tax Refund.** The declaration of solvency stated that an estimated amount of £25,000 was due to the Company from H M Revenue & Customs ("HMRC") as a Corporation Tax ("CT") refund. The Company's accountants, UHY Hacker Young were instructed to complete and file the relevant CT Return. This has been carried out and a CT refund of £17,994 15 was received on 2 October 2015. The terminal relief refund of £6,718 20 is expected shortly.
- 3 2 **VAT Refund:** The VAT Refund of £93 41 was received on 7 November 2014.
- 3 3 **Cash at Bank:** The Company operated a bank account with the HSBC Bank plc ("HSBC") and the credit balance of £514,062 69 was remitted to the estate on the 7 November 2014.
- 3 4 **Director's Loan Account:** The declaration of solvency stated that a director's loan account of £238,687 was outstanding, this was offset in full against the first dividend declared on the 13 November 2014.

### 4 Receipts and Payments

- 4 1 A receipts and payments account for the period 10 October 2014 to 9 October 2015 is enclosed with this report at appendix 1. The balance of funds is held in a non-interest bearing estate bank account.
- 4 2 Total receipts in this matter amount to £774,387 25 and are broken down as follows -
- |                          |             |
|--------------------------|-------------|
| • Corporation Tax Refund | £17,994 15  |
| • VAT Refund             | £93 41      |
| • Cash at Bank           | £514,062 69 |
| • Directors Loan Account | £242,237 00 |
- 4 3 Total payments for the period are £743,831 52 and are broken down as follows -
- |                               |             |
|-------------------------------|-------------|
| • Specific Bond               | £408 00     |
| • Office Holder Fees          | £2,250 00   |
| • Accountancy Fees            | £1,365 00   |
| • Statutory Advertising       | £253 80     |
| • Trade and Expense Creditors | £1,158 00   |
| • Director                    | £3,550 00   |
| • Shareholders Distribution   | £743,831 52 |

### 5. Liquidator's Remuneration

- 5 1 The initial written resolutions passed by members, on 10 October 2014, provided sanction for the remuneration of the Liquidator to be calculated on a time costs basis and charged at the applicable rates of MBP and to be drawn as and when appropriate,



but to be limited to £2,250 plus VAT. The policy of MBP is to charge the time, directly to each case, of all staff with the exception of secretarial staff. The attached summary at appendix 2 is intended to provide a breakdown of time costs incurred to date. Please note that MBP record time in 6 minute units. A copy of the current charge out rates of MBP is also attached at appendix 2. Please note that the charge-out rates of MBP changed on 1 April 2015. A copy of MBP's charge-out rates up to 31 March 2015 is also attached at appendix 2. Please be advised that the two changes to the charge out rate relate to the introduction of a 'Senior Manager' rate and the consolidation of all 'Partner' time to the same rate of £370 per hour.

- 5.2 As you can see from the attached summary, the time costs to date are £7,449.50 representing 34.50 hours work at an average charge out rate of £215.93 per hour. No pre-appointment fee was charged. A total sum of £2,250 has been paid in respect of the Liquidator's fees and the balance will be written off.
- 5.3 Also attached at appendix 3 are details of member's rights in relation to the Liquidator's remuneration and also to request information on the Liquidator's remuneration and expenses.
- 5.4 The main areas where time costs have been incurred are 'Administration and Planning', 'Realisation of Assets' and 'Dealing with Creditors'. These are discussed in more detail below.

## 5.5 Administration and Planning

- 5.5.1 A total of £6,697.00 has been spent on administration and planning, including
- Preparing the documentation and dealing with the formalities of appointment
  - Statutory notifications and advertising
  - Dealing with all routine correspondence
  - Maintaining physical case files and electronic case details on IPS
  - Case bordereau
  - Case planning
  - Preparing reports to members
  - Requesting clearance from HMRC

## 5.6 Realisation of Assets

- 5.6.1 A total of £430 has been spent on realisation of assets including liaising with the HSBC regarding the closure of the account and liaising with the Company's accountant and HMRC in relation to the terminal relief, CT and VAT refunds.

## 5.7 Creditors

- 5.7.1 A total of £322.50 has been spent agreeing the creditors' claims and settling both in full, in addition to advising of the appointment and dealing with any other queries.





## **6. Liquidator's Disbursements**

6 1 With regard to disbursements, specific expenditure relating to the administration of the estate and payable to an independent third party is recoverable without member approval. Payments made in respect of the above are defined as "Category 1 disbursements". Category 1 disbursements incurred in this case total £2,026.00 since appointment and this has been drawn.

6 2

Type of expense	Amount incurred in reporting period (£)	Amount drawn in reporting period (£)
Specific Bond	408.00	408.00
Accountancy Fee	1,365.00	1,365.00
Statutory Advertising	253.00	253.00

6 3 Expenditure incidental to the administration of the estate, which by its nature includes an element of shared or allocated costs, are recoverable with members' approval. Payments in respect of this type of expense are referred to as "Category 2 disbursements". Category 2 disbursements require authorisation before they can be drawn. Category 2 disbursements include staff mileage costs. MBP have not charged Category 2 disbursements.

6 4 All disbursements are shown net of VAT and as the Company was registered for VAT purposes, VAT totalling £500.76 has been recovered and £273 is recoverable for the benefit of the insolvent's estate.

6 5 I have used UHY Hacker Young, the Company's accountants, to assist me in the submission of the relevant returns to HMRC. The basis of fees was agreed on a fixed basis.

6 6 UHY Hacker Young was selected as they were the Company's and has the relevant experience and ability to perform this type of work and nature and complexity of the assignment and the basis of the fee arrangement with them. The fees charged have been reviewed and I am satisfied they are reasonable in the circumstances.

## **7. Creditors**

### **7.1 Secured Creditors**

7 1 1 An examination of the Company's mortgage register held by the Registrar of Companies showed that the Company has no current charges registered over its assets.

### **7.2 Preferential Creditors**

7 2 2 There were no preferential claims in this matter, as anticipated.



### 7.3 Crown Creditors

7.3.1 There were no crown claims in this matter, as anticipated

### 7.4 Non-Preferential Unsecured Creditors

7.4.1 I can confirm that two creditor claims were received, one from the Company's accountant for work carried out prior to the Liquidation in the sum of £1,158 and the second from a director, Mr J Isler, in the sum of £3,550.00 Both were duly paid in full on 24 November 2014. It was agreed that statutory interest would not be charged.

## 8. Distributions

8.1 The Company issued 1000 shares of £1 each to four members as follows -

Shareholder	Shares
Nurez Abdullah Kamani	350
John Isler	50
Mahud Kamani	250
Carol Kane	350

8.2 I can confirm that the following distribution has been made to the members during the period under review

Date	Amount	Nature of distribution
13 November 2014	£734,846.72	Cash Distribution

8.3 With a second interim distribution being made after the period under review -

Date	Amount	Nature of distribution
22 October 2015	£20,000.00	Cash Distribution

8.4 A total of £734,846.72 has been distributed to the four shareholders during this period, which equates to £734.85 per share.

## 9. Conclusion

This concludes the Liquidator's progress report for the year ended 9 October 2015. The Liquidation will remain open until the terminal relief refund in the sum of £6,718.20 is received, the final distribution has been made to shareholders and relevant clearances obtained from HMRC. Once these matters have been resolved, the Liquidation will be finalised and the files closed. If the Liquidation has not been finalised, the next report is due within 2 months of the next year's anniversary, i.e. before 9 December 2016.



If members have any queries they are asked to contact Molly Monks on 0161 927 7788

Yours faithfully

for and on behalf of

The Red Orange Clothing Company Limited

Darren Brookes  
Liquidator



MONTER BOARDMAN  
& PARTNERS  
*Corporate Recovery*

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# Appendix 1

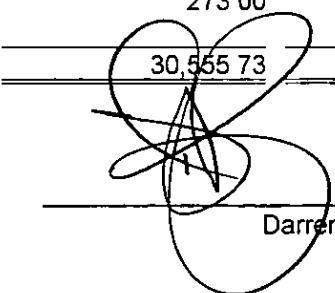
## Receipts and Payments Account

**The Red Orange Clothing Company Limited  
(In Liquidation)**

**LIQUIDATOR'S RECEIPTS AND PAYMENTS ACCOUNT**

	Declaration of Solvency £	From 10/10/2014 To 09/10/2015 £	From 10/10/2014 To 09/10/2015 £
<b>RECEIPTS</b>			
Corporation Tax Refund (estimated)	25,000 00	17,994 15	17,994 15
VAT Refund	94 00	93 41	93 41
Cash at Bank	514,100 00	514,062 69	514,062 69
Director's Loan Account	238,687 00	242,237 00	242,237 00
		<u>774,387 25</u>	<u>774,387 25</u>
<b>PAYMENTS</b>			
Specific Bond		408 00	408 00
Office Holders Fees		2,250 00	2,250 00
Accountancy Fees		1,365 00	1,365 00
Statutory Advertising		253 80	253 80
Trade & Expense		1,158 00	1,158 00
Directors		3,550 00	3,550 00
Ordinary Shareholders	(1,000 00)	734,846 72	734,846 72
		<u>743,831 52</u>	<u>743,831 52</u>
Net Receipts/(Payments)		<u>30,555 73</u>	<u>30,555 73</u>

**MADE UP AS FOLLOWS**

Current Account	30,282 73	30,282 73
VAT Receivable / (Payable)	273 00	273 00
	<u>30,555 73</u>	<u>30,555 73</u>
		
	Darren Terence Brookes Liquidator	



MILNER BOARDMAN  
& PARTNERS  
*Costs & Charge Out Rates*

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## Appendix 2

# Milner Boardman & Partners' Time Analysis and Charge Out Rate Details

# Milner Boardman & Partners

## TIME & CHARGEOUT SUMMARIES

The Red Orange Clothing Co Limited

From 10 Oct 2014 to 9 Oct 2015

HOURS							
Classification Of work Function	Partner	Manager	Other Senior Professional	Assistants & Support Staff	Total Hours	Time Cost £	Average Hourly Rate £
Administration & Planning	0 00	30 80	0 00	0 20	31 00	6,697 00	216 03
Investigations	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Realisation of Assets	0 00	2 00	0 00	0 00	2 00	430 00	215 00
Creditors	0 00	1 50	0 00	0 00	1 50	322 50	215 00
Trading	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Total Fees Claimed £	0 00	7,414 50	0 00	35 00		7,449 50	
Total Hours	0 00	34 30	0 00	0 20	34 50		
Average Rate	0 00	216 17	0 00	175 00			

## PRACTICE FEE RECOVERY POLICY FOR MILNER BOARDMAN & PARTNERS

### Introduction

The insolvency legislation was changed in October 2015, with one or two exceptions, for insolvency appointments made from that time. This sheet explains how we intend to apply the alternative fee bases allowed by the legislation when acting as office holder in insolvency appointments. The legislation allows different fee bases to be used for different tasks within the same appointment. The fee basis, or combination of bases, set for a particular appointment is/are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors in general meeting, or the Court.

Further information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at <http://www.creditorinsolvencyguide.co.uk/>. Details about how an office holder's fees may be approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9) and can be accessed at <http://www.insolvency-practitioners.org.uk>. Alternatively a hard copy may be requested from the offices of Milner Boardman & Partners. Please note, however, that the guides have not yet been updated for the revised legislation, so we have provided further details in this policy document.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor. The report will provide a breakdown of the remuneration drawn. If approval has been obtained for remuneration on a time costs basis, i.e. by reference to time properly spent by members of staff of the practice at our standard charge out rates, the time incurred will also be disclosed, whether drawn or not, together with the average, or "blended" rates of such costs. Under the legislation, any such report must disclose how creditors can seek further information and challenge the basis on which the fees are calculated and the level of fees drawn in the period of the report. Once the time to challenge the office holder's remuneration for the period reported on has elapsed, then that remuneration cannot subsequently be challenged.

Under some old legislation, which still applies for insolvency appointments commenced before 6 April 2010, there is no equivalent mechanism for fees to be challenged.

### Time cost basis

When charging fees on a time costs basis we use charge out rates appropriate to the skills and experience of a member of staff and the work that they perform. This is combined with the amount of time that they work on each case, recorded in 6 minute units with supporting narrative to explain the work undertaken.

### Charge-out Rates

Grade of staff	Current charge-out rate per hour, effective from 1 April 2015 £	Previous charge-out rate per hour, effective from 1 November 2008 £
Partner – appointment taker	370	295-370
Senior Manager	255	N/A
Manager	215	215
Case Administrator	175	175
Support Staff	175	175



These charge-out rates charged are reviewed on 1 April 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. The work is generally recorded under the following categories

- Administration and Planning
- Investigations
- Realisation of Assets
- Creditors
- Trading
- Case specific matters
- 

In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015 and on new appointments we now only seek time costs for the following categories

- Investigations
- Distributions
- Trading

When we seek time costs approval we have to set out a fees estimate. That estimate acts as a cap on our time costs so that we cannot draw fees of more than the estimated time costs without further approval from those who approved our fees. When seeking approval for our fees, we will disclose the work that we intend to undertake, the hourly rates we intend to charge for each part of the work, and the time that we think each part of the work will take. We will summarise that information in an average or "blended" rate for all of the work being carried out within the estimate. We will also say whether we anticipate needing to seek approval to exceed the estimate and, if so, the reasons that we think that may be necessary.

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal.

If we subsequently need to seek authority to draw fees in excess of the estimate, we will say why we have exceeded, or are likely to exceed the estimate, any additional work undertaken, or proposed to be undertaken, the hourly rates proposed for each part of the work, and the time that the additional work is expected to take. As with the original estimate, we will say whether we anticipate needing further approval and, if so, why we think it may be necessary to seek further approval.

### **Percentage basis**

The legislation allows fees to be charged on a percentage of the value of the property with which the office holder has to deal (realisations and/or distributions). Different percentages can be used for different assets or types of assets. In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015 and we now seek remuneration on a percentage basis more often. A report accompanying any fee request will set out the potential assets in the case, the remuneration percentage proposed for any realisations and the work covered by that remuneration, as well as the expenses that will be, or are likely to be, incurred. Expenses can be incurred without approval, but must be disclosed to help put the remuneration request into context.

The percentage approved in respect of realisations will be charged against the assets realised, and where approval is obtained on a mixture of bases, any fixed fee and time costs will then be charged against the funds remaining in the liquidation after the realisation percentage has been deducted

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal

If the basis of remuneration has been approved on a percentage basis then an increase in the amount of the percentage applied can only be approved by the committee or creditors (depending upon who approved the basis of remuneration) in cases where there has been a material and substantial change in the circumstances that were taken into account when fixing the original level of the percentage applied. If there has not been a material and substantial change in the circumstances then an increase can only be approved by the Court

### **Fixed fee**

The legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. In cases where we were appointed prior to 1 October 2015, most of our fees were recovered on a time costs basis and appropriate authority was obtained from the creditors or the committee as set down in the legislation. The legislation changed on 1 October 2015 and we now seek remuneration on a fixed fee basis more often. A report accompanying any fee request will set out the set fee that we proposed to charge and the work covered by that remuneration, as well as the expenses that will be, or are likely to be, incurred. Expenses can be incurred without approval, but must be disclosed to help put the remuneration request into context

The disclosure that we make should include sufficient information about the insolvency appointment to enable you to understand how the proposed fee reflects the complexity (or otherwise) of the case, any responsibility of an exceptional kind falling on the office holder, the effectiveness with which the office holder has carried out their functions, and the value and nature of the property with which the office holder has to deal

If the basis of remuneration has been approved on a fixed fee basis then an increase in the amount of the fixed fee can only be approved by the committee or creditors (depending upon who approved the basis of remuneration) in cases where there has been a material and substantial change in the circumstances that were taken into account when fixing the original level of the fixed fee. If there has not been a material and substantial change in the circumstances then an increase can only be approved by the Court

### **Members' Voluntary Liquidations and Voluntary Arrangements**

The legislation changes that took effect from 1 October 2015 did not apply to members' voluntary liquidations (MVL), Company Voluntary Arrangements (CVA) or Individual Voluntary Arrangements (IVA). In MVLs, the company's members set the fee basis, often as a fixed fee. In CVAs and IVAs, the fee basis is set out in the proposals and creditors approve the fee basis when they approve the arrangement

### **All bases**

With the exception of Individual Voluntary Arrangements and Company Voluntary Arrangements which are VAT exempt, the officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate

### **Agent's Costs**

Charged at cost based upon the charge made by the Agent instructed, the term Agent includes

- Solicitors/Legal Advisors
- Auctioneers/Valuers
- Accountants
- Quantity Surveyors
- Estate Agents
- Other Specialist Advisors

In new appointments made after 1 October 2015, the office holder will provide details of expenses to be incurred, or likely to be incurred, when seeking fee approval. When reporting to the committee and creditors during the course of the insolvency appointment the actual expenses incurred will be compared with the original estimate provided.

### **Disbursements**

In accordance with SIP 9 the basis of disbursement allocation in respect of disbursements incurred by the Office Holder in connection with the administration of the estate must be fully disclosed to creditors. Disbursements are categorised as either Category 1 or Category 2.

Category 1 expenses are directly referable to an invoice from a third party, which is either in the name of the estate or Milner Boardman & Partners, in the case of the latter, the invoice makes reference to, and therefore can be directly attributed to, the estate. These disbursements are recoverable in full from the estate without the prior approval of creditors either by a direct payment from the estate or, where the firm has made payment on behalf of the estate, by a recharge of the amount invoiced by the third party. Examples of category 1 disbursements are statutory advertising, external meeting room hire, external storage, specific bond insurance and Company search fees.

Category 2 expenses are incurred by the firm and recharged to the estate, they are not attributed to the estate by a third party invoice and/or they may include a profit element. These disbursements are recoverable in full from the estate, subject to the basis of the disbursement charge being approved by creditors in advance. Examples of category 2 disbursements are photocopying, internal room hire, internal storage and mileage.

Milner Boardman & Partners do not intend to recover Category 2 disbursements.



## Appendix 3

# Members' Rights in Relation to Liquidator's Remuneration

## **Milner Boardman & Partners – Information Sheet for Members**

### **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 4.148A of the Insolvency Rules 1986. 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,
  - 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

- 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 148A(3) says that in arriving at their decision the members 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 winding up,
- 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 above, 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 members as described above, and in any case not later than 18 months after his appointment

#### **4 Fixing the Liquidator's remuneration**

- 4 1 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

### **5 What information should be provided by the Liquidator?**

#### **5.1 When fixing bases of remuneration**

- 5 1 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. The appendix to this guide sets out a suggested format for the provision of information

- 5 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

- 5.1.3 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 staff
- 5.1.4 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

## **5.2 After the bases of remuneration have been fixed**

- 5.2.1 The Liquidator is required to send progress reports to members at specified intervals (see paragraph 6.1 below). When reporting periodically to members, in addition to the matters specified in paragraph 6.1, 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. 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)
- 5.2.2 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

## **5.3 Disbursements and other expenses**

- 5.3.1 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 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

5.3.2 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

## **5.4 Realisations for secured creditors**

5.4.1 Where the Liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 10.1 below), he should disclose the amount of that remuneration to any meeting of members convened for the purpose of determining his fees, and in any reports he sends to members

## **6. Progress reports and requests for further information**

6.1 The Liquidator is required to send annual progress reports to members 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 members' rights to request further information, as explained in paragraph 6 2, and their right to challenge the Liquidator's remuneration and expenses
- 6 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 member 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 by a member or members representing at least 5% in value of the total voting rights of members (including himself), or any member with the permission of the Court
- 6 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
- 6 4 Any member 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

## **7. Provision of information – additional requirements**

- 7 1 The Liquidator must provide certain information about the time spent on the case, free of charge, upon request by any director or member 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
- 7 2 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

- 7 3 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

## **8 What if a member is dissatisfied?**

- 8 1 If a member believes that the basis of the Liquidator's remuneration is inappropriate, or the remuneration charged or expenses incurred by the Liquidator are in all the circumstances excessive he may, provided certain conditions are met, apply to the Court
- 8 2 Application may be made to the Court by any member or members representing at least 10 per cent in value of voting rights (including himself), or by any member with 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 6 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
- 8 3 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 Company being wound up

## **9. What if the Liquidator is dissatisfied?**

- 9 1 If the Liquidator considers that the remuneration fixed by the members 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
- 9 2 If he decides to apply to the Court he must give at least 14 days' notice to the members, or such one or more of the members as the Court may direct, to appear or be represented at the Court hearing The Court may order the costs of the application or of any member appearing at the Court hearing to be paid out of the assets

## **10. Other matters relating to remuneration**

- 10 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

- 10 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 or a meeting of members.
- 10 3 If the appointed Liquidator is a solicitor and employs his own firm to act in the winding up, profit costs may not be paid unless authorised by the members or the Court.
- 10 4 If a new Liquidator is appointed in place of another, any determination 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 by the members, or Court order, is made.
- 10 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, i.e. either to the members or the Court. Where the outgoing Liquidator and the incoming Liquidator are from the same firm, they will usually agree the apportionment between themselves.
- 10 6 There may also be occasions when members 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 members. Arrangements of this kind are sometimes made to fund litigation. Any arrangements of this nature will be a matter for agreement between the Liquidator and the members concerned and will not be subject to the statutory rules relating to remuneration.

## **11. Effective date**

- 11 1 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,
- 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 members, 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 explain any 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.