

## Section 94

## The Insolvency Act 1986

**Return of Final Meeting in a  
Members' Voluntary Winding Up  
Pursuant to Section 94 of the  
Insolvency Act 1986****S94**

To the Registrar of Companies

For Official Use

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Company Number

05075803

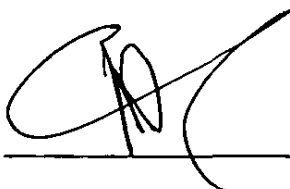
Name of Company

Tonekey Limited

I / We  
Harold J Sorsky FCA FAIA FABRP  
Gable House  
239 Regents Park Road  
London  
N3 3LF

give notice that a general meeting of the company was held/~~summoned~~ for 08 May 2012 pursuant to section 94 of the Insolvency Act 1986, for the purpose of having an account (of which a copy is attached) laid before it showing how the winding up of the company has been conducted, and the property of the company has been disposed of and that ~~the same was done accordingly~~ / no quorum was present at the meeting


Signed



Date 09 May 2012

Streets SPW Plc  
Gable House  
239 Regents Park Road  
London  
N3 3LF

Ref T991/HJS/SGT

WEDNESDAY	For Official Use	
		
	*A1931X0J*	
	A30 16/05/2012 #21	COMPANIES HOUSE

**Tonekey Limited**  
**(In Liquidation)**  
**Liquidator's Abstract of Receipts & Payments**  
**From 30 March 2011 To 8 May 2012**

<b>S of A £</b>	<b>£</b>	<b>£</b>
		<b>NIL</b>
REPRESENTED BY		
		<b>NIL</b>

Note

## **TONEKEY LIMITED (IN LIQUIDATION)**

Registered No 05075803

Registered office situated at Gable House, 239 Regents Park Road, London N3 3LF

### **1 Introduction**

- 1 1 I am Harold John Sorsky of Gable House, 239 Regents Park Road, London N3 3LF and I refer to my appointment as Liquidator of the above Company on 30 March 2011
- 1 2 I believe that matters in this liquidation have now been completed and write to advise you that a Final Meeting of the Company has been convened pursuant to Section 94 of the Insolvency Act 1986 (as amended) ("IA86") I enclose formal notice of this meeting and would further advise you that it is my intention to conclude the administration
- 1 3 This is the final report to the members of the Company pursuant to Section 94 of the Insolvency Act 1986 (as amended) In accordance with that Section, I am required to provide an account as to the conduct of the winding up and the enclosed schedule shows that there were no receipts or payments in the liquidation I would further report as follows -

### **2 Progress of the Liquidation for the period to 26 March 2012**

#### **2 1 Assets/Receipts**

- 2 2 As previously stated, there have been no receipts into the liquidation estate As members will recall, there were no assets available to the liquidation estate, and therefore no realisations have been possible

#### **2 3 Payments**

- 2 4 No payments have been made out of the liquidation estate

#### **2 5 Liabilities/Creditors**

- 2 6 There were no known liabilities of the Company
- 2 7 However, it was necessary for me to obtain agreement from HM Revenue & Customs ("HMRC") as to the following:-
  - a) That there are no taxation matters outstanding,
  - b) That they have no claim in the liquidation, and
  - c) That they have no objection to the liquidation being concluded
- 2 8 Accordingly, the Company's accountants, Raffingers Stuart ("RS"), submitted a Corporation Tax ("CT") return for the final pre-liquidation accounting period to HMRC in respect of the Company At the same time, RS submitted returns for this period in respect of the other 68 group companies registered in England & Wales which were placed into members voluntary liquidation concurrently
- 2 9 Following submission of the return, I wrote to the Company's local CT office on 10 May 2011 requesting agreement as to a nil tax owed position regarding the pre-liquidation period I also asked for HMRC's agreement in principle to clearance for the period of the liquidation, on the basis that there would be no realisations or

payments, nor any other acquisitions or disposals, subject to my notifying them of any event(s) giving rise to a potential tax liability

- 2 10 Obtaining the necessary agreement has, however, proved an extremely difficult and protracted process. The procedure as originally advised to me required that a central insolvency claims handling office confirm that they had no claim and no objection to closure, but additionally required that I obtain similar confirmation from the local CT office. I understand that the volume of work involved in dealing with all 69 requests created particular delays in the central office dealing with the claims.
- 2 11 Additionally, HMRC's records appeared to be in error as regards a considerable number of the Companies, resulting in the issue of incorrect Notices to deliver already-submitted CT returns and penalty determinations, from two additional HMRC offices. Each item had to be dealt with by me or RS, before nil claims could be agreed or clearance finalised.
- 2 12 The delays in obtaining suitable agreement eventually became so significant that the local CT office agreed to take control of the process entirely. This enabled the procedure to be streamlined to a certain extent, although the number of requests being dealt with concurrently continued to cause considerable delays in obtaining the agreement required.
- 2 13 Despite further progress being made, it was necessary for me to liaise with the local CT office on a frequent basis to ensure that ongoing difficulties could be resolved promptly and that momentum in dealing with the clearances was maintained.
- 2 14 As a result of these efforts, I am pleased to report that confirmation as to no claim and clearance for the pre-liquidation period for the Company was obtained on 17 January 2012, and for the period of the liquidation on 10 February 2012.
- 2 15 Once confirmation that a nil claim position had been agreed with HMRC, a Notice to Creditors to Submit Claims was subsequently advertised, giving a deadline by which any claims were to be submitted of 2 March 2012.
- 2 16 No claims were notified to me by the deadline.
- 2 17 Additionally, I requested confirmation on 15 February 2012 that any objection to closure in relation to PAYE and NIC matters be provided before 8 March 2012, failing which it would be taken that there was no such objection. No objection has been received.

### **3 Liquidator's Remuneration**

- 3 1 Rule 4 49B of the Insolvency Rules 1986 (as amended) ("IR86") requires Liquidators to provide details of the basis fixed for the remuneration of the Liquidator under Rule 4 148A IR86. Members resolved at the meeting held on 30 March 2011 that the Liquidator's fees be fixed by reference to the time spent by him and his staff in attending to matters arising both before his appointment and during the liquidation but capped by agreement at £2,500 00 plus VAT.
- 3 2 Statement of Insolvency Practice No 9, an extract from which I enclose for reference, requires Liquidators to provide creditors with certain information regarding time spent on the administration of Liquidations. In accordance with these requirements, I would advise that in the period to 26 March 2012, my staff and I have spent a total of 10 05 hours on the administration of this case, incurring time costs in the sum of £3,512 50, providing an average hourly charge out rate of £349 50.

- 3 3 This time relates to statutory notification, taxation, dealing with potential creditor claims, maintenance of records and the conduct of the liquidation generally
- 3 4 As further required by Rule 4 49B IR86, I would draw your attention to the provisions of IR86 Rules 4 49E and 4 131 as appropriate in this connection, copies of which I enclose for your reference
- 3 5 There are no realisations in the liquidation and accordingly no funds have been paid out as costs from the estate
- 3 6 For your information I enclose a schedule of my firm's current charge out rates, which I trust you will find self-explanatory

#### **4 Liquidator's Disbursements**

- 4 1 These are set out as follows:-

	£
Statutory Advertising	69
Liquidators Bond	20
Total	£89

- 4 2 These relate to expenses incurred by the Liquidator whilst carrying out his duties
- 4 3 It is also this firm's policy to recharge expenses or disbursements directly incurred on a case which may include elements of shared or allocated costs, and typically comprise meeting room hire, photocopying, postage and storage. These costs will be recharged where specifically identifiable. However, there are currently no shared or allocated costs of this nature which have been charged to the case
- 4 4 As required by Rule 4 49B IR86, I would draw your attention to the provisions of IR86 Rules 4 49E and 4 131 as appropriate in this connection, copies of which are enclosed as previously stated
- 4 5 For your information, please find enclosed a schedule of my firm's current disbursement charges, which I trust you will find self-explanatory

#### **5 Other Matters**

- 5 1 As previously advised, I had been seeking to resolve outstanding tax matters with HMRC prior to bringing this liquidation to a close. I am pleased to advise that, as stated above, these matters have now been settled satisfactorily


#### **6 Conclusion**

- 6.1 A notice convening a final meeting of members pursuant to Section 94 of the IA 1986 is enclosed. I should like to point out that the meeting to be held will be purely formal and is necessary to consider the following Resolutions -

- 1 That the Liquidator's final report and receipts and payments account be approved
- 2 That the Liquidator proceed to conclude the administration and obtain his release
- 3 That the Liquidator be authorised to destroy any books and records of the company 12 months after its dissolution, should there be no valid objections

- 6 2 Attendance at the meeting is not required. If you do not wish to attend the meeting, you may appoint the Chairman to act for you by proxy. The Chairman will be the Liquidator for purposes of the meeting. A form of proxy is enclosed for your use only if you so require, to be completed and returned to my North London office.
- 6 3 In the event, however, that you do wish to attend the meeting, would you please notify me accordingly as soon as possible.
- 6 4 I trust the contents of this report are self-explanatory. However, if you would like to discuss any of the above matters, please do not hesitate to contact Neil Barry of my office.

Dated 26 March 2012



H Sorsky  
Liquidator

**Tonekey Limited  
(In Liquidation)**

**Liquidator's Abstract Of Receipts And Payments**

	<b>Declaration of Solvency £</b>	<b>From 30/03/2011 To 26/03/2012 £</b>	<b>From 30/03/2011 To 26/03/2012 £</b>
<b>RECEIPTS</b>			
		<u>0 00</u>	<u>0 00</u>
<b>PAYMENTS</b>			
		<u>0 00</u>	<u>0 00</u>
<b>BALANCE - 26 March 2012</b>			<u><u>0.00</u></u>
<b>MADE UP AS FOLLOWS</b>			
			<u><u>0 00</u></u>

Note

## **TONEKEY LIMITED – IN LIQUIDATION**

**NOTICE IS HEREBY GIVEN** pursuant to Section 94 of the Insolvency Act 1986 that a meeting of the Members of the above named Company will be held at Streets SPW plc, Gable House, 239 Regents Park Road, Finchley, London N3 3LF on 8 May 2012 at 10 00 am for the purpose of receiving an account of the Liquidator's acts and dealings and of the conduct of the winding-up since the date of liquidation, and considering the resolutions set out on the proxy form enclosed herewith

A proxy form is enclosed which must be lodged at the offices of Streets SPW plc, Gable House, 239 Regents Park Road, Finchley, London N3 3LF, no later than 12 00 noon on the preceding business day, to entitle you to vote by proxy at the meeting, if you are unable to attend. This meeting is purely a formality and the only business at this meeting will be to present the enclosed report and consider the resolutions referred to above

Dated this 26<sup>th</sup> day of March 2012

Signed

H J Sorsky – Liquidator



## Proxy (Members' or Creditors' Voluntary Winding Up)

## Tonekey Limited – In Liquidation

Name of Member \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please insert name of person (who must be 18 or over) or the chairman of the meeting (see note below) if you wish to provide for alternative proxy holders in the circumstances that your first choice is unable to attend please state the name(s) of the alternatives as well

Name of Proxy Holder

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

Please delete words in brackets if the proxy holder is only to vote as directed i.e. he has no discretion

Please complete paragraph 1 if you wish to nominate or vote for a specific person as liquidator

Please delete words in brackets if the proxy holder is only to vote as directed i.e. he has no discretion

I appoint the above person to be my/the member's proxy holder at the meeting of members to be held on 8 May 2012, or at any adjournment of that meeting. The proxy holder is to propose or vote as instructed below (and in respect of any resolution for which no specific instruction is given, may vote or abstain at his/her discretion)

## Voting Instructions for Resolutions

1 That the Liquidator's final report and receipts and payments account be approved  
(ACCEPT/ REJECT)

2 That the Liquidator proceed to conclude the administration and obtain his release  
(ACCEPT/ REJECT)

3 That the Liquidator be authorised to destroy any books and records of the company 12 months after its dissolution, should there be no valid objections  
(ACCEPT/ REJECT)

Any other resolutions which the proxy-holder is to propose or vote in favour of or against should be set out in numbered paragraphs in the space provided below paragraph 1. If more room is required please use the other side of this form

This form must be signed

[In the event of a person named in paragraph 1 withdrawing or being eliminated from any vote for the appointment of a liquidator the proxy-holder may vote or abstain in any further ballot at his/her discretion]

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name in CAPITAL LETTERS \_\_\_\_\_

Only to be completed if the member has not signed in person

Position with member or relationship to member or other authority for signature \_\_\_\_\_

Please note that if you nominate the chairman of the meeting to be your proxy-holder he will either be a director of the company or the current liquidator.  
Remember there may be resolutions on the other side of this form

# STREETS | SPW PLC

Licensed Insolvency Practitioners

## Creditors Guide to Remuneration & Disbursements

### Remuneration Rates\*

Our current charge-out rates which may be amended from time to time are as follows

Position	Hourly Charge Out Rate (£)
Senior Partner	500
Partner	400
Associate	375
Senior Manager	300
Manager	250
Administrator	150
Assistants & Support Staff	90

NB - Time costs are calculated in 6 minute units

### Agents Costs

These are charges at cost, based upon the charge(s) made by Agents instructed  
The Term "Agent" includes, but may not be limited to -

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

### Disbursement Rates\*

It is this company's policy to recharge expenses or disbursements directly incurred on a case which may include elements of shared or allocated costs. These costs will be recharged where specifically identifiable and shall be subject to approval by those responsible for agreeing remuneration. Incidental expenses or disbursements are disclosed from time to time on estate receipts and payments accounts circulated. At this time our charges are as follows

Disbursement	Basis of Charge
Bond	At cost of mandatory cover required in accordance with the Insolvency Act 1986
Insurance of Assets	At cost in relation to asset coverage requirements
Company Searches	At cost incurred
Travel	Motor vehicle at 45p per mile. All other forms of travel at actual cost
Meeting Room Hire	£100 per meeting
Report to Creditors	£3.00 per copy report
Postage	At cost
Storage Costs/ Box	£10 per box, per 6 months

\*Please note that these rates are subject to change from time to time, in line with changes in costs incurred by this company. These rates are correct as at 1 January 2012

**Rule 4 49E of the Insolvency Rules 1986**

**4 49E Creditors' and members' request for further information**

**4 49E(1) (Duty of liquidator re remuneration or expenses) 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 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

**4.49E(2) (Period for compliance with r.4 49E(1)) 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.

**4 49E(3) (How liquidator to comply) The liquidator complies with this paragraph by either-**

- (a) providing all 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

**4 49E(4) (Application to Court by creditors and members) Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the Court within 21 days of -**

- (a) the giving by the liquidator of reasons for not providing all the information asked for, or
- (b) the expiry of the 14 days provided for in paragraph (1),

and the Court may make such order as it thinks just

**4 49E(5) (Court may extend period in rr 4 131(1B), 4.148C(2))** Without prejudice to the generality of paragraph (4), the order of the Court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4 131(1B) or 4 148C(2) by such further period as the Court thinks just

**4 49E(6) (Non application to official receiver)** This Rule does not apply where the liquidator is the official receiver

## **Rule 4 131 of the Insolvency Rules 1986**

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

**4 131 (1) (Secured or certain unsecured creditors may apply to Court)** 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)

**4 131(1A) (Grounds for application)** 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

**4 131(1B) (Time limit for application)** 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")

**4.131(2) (Power of Court to dismiss etc)** 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

**4.131(3) (Notice to the liquidator)** 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

**4.131(4) (Court Order)** 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

**4 131(5) (Costs of Application)** 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

### **4.131A Review of remuneration**

**4 131A(1) (Power of liquidator to request change)** Where, after the basis of the liquidator's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the liquidator may request that it be changed

**4 131A (2) (To whom request must be made)** The request must be made –

- (a) where the liquidation committee fixed the basis, to the committee,
- (b) where the creditors fixed the basis, to the creditors,
- (c) where the Court fixed the basis, by application to the Court,
- (d) where the remuneration was determined by application of the realisation scale under Rule 4 127A, to the liquidation committee if there is one or otherwise to the creditors,

and subject to paragraph (3), Rules 4 127 and 4 131 apply as appropriate

**4.131A (3) (Where r 4 129A applied with r.4 131A(2))** Where Rule 4 129A is applied in accordance with paragraph (2) of this Rule, ignore the words "in which the administrator had not requested an increase under Rule 2 107"

**4.131A (4) (Date when change in basis applies from)** Any change in the basis for remuneration applies from the date of the request under paragraph (2) and not for any earlier period

**4 131A (5) (Non-application where liquidator official receiver)** This Rule does not apply where the liquidator is the official receiver

#### **4 131B Remuneration of new liquidator**

**4.131B (1) (Basis of remuneration of former liquidator continues)** If a new liquidator is appointed in place of another, any determination, resolution or Court order in effect under the preceding provisions of this Section of this Chapter immediately before the former liquidator ceased to hold office continues to apply in respect of the remuneration of the new liquidator until a further determination, resolution or Court order is made in accordance with those provisions

**4 131B (2) (Non-application where liquidator official receiver)** This Rule does not apply where the new liquidator is the official receiver

#### **4 131C Apportionment of set fee remuneration**

**4 131C(1) (Where liquidator ceases to hold office)** In a case in which the basis of the liquidator's remuneration is a set amount under Rule 4 172(2)(c) and the liquidator ("the former liquidator") ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former liquidator or the former liquidator's personal representative in respect of the time which has actually elapsed or the work which has actually been done

**4.131C (2) (By whom and by when application may be made)** Application may be made –

- (a) by the former liquidator or the former liquidator's personal representative within the period of 28 days beginning with the date upon which the former liquidator ceased to hold office, or
- (b) by the liquidator for the time being in office if the former liquidator or the former liquidator's personal representative has not applied by the end of that period

**4.131C (3) (To whom application must be made)** Application must be made –

- (a) where the liquidation committee fixed the basis, to the committee,
- (b) where the creditors fixed the basis, to the creditors for a resolution determining the portion,
- (c) where the Court fixed the basis, to the Court for an order determining the portion

**4 131C (4) (Copy of application to recipient)** The applicant must give a copy of the application to the liquidator for the time being in office or to the former liquidator or the former liquidator's personal representative, as the case may be ("the recipient")

**4 131C (5) (Notice of recipient's intention to make representations etc )** The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the liquidation committee or the creditors or to appear or be represented before the Court, as the case may be

**4.131C (6) (Period for determination)** No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or to be represented, as the case may be

**4 131C (7) (Application to increase portion)** If the former liquidator or the former liquidator's personal representative (whether or not the original applicant) considers that the portion determined upon application to the liquidation committee or the creditors is insufficient, that person may apply-

(a) in the case of a determination by the liquidation committee, to the creditors for a resolution increasing the portion,

(b) in the case of a resolution of the creditors (whether under paragraph (1) or under sub-paragraph (a)), to the Court for an order increasing the portion,

and paragraphs (4) to (6) apply as appropriate

## **A CREDITORS' GUIDE TO LIQUIDATORS' FEES**

### **ENGLAND AND WALES**

#### **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 seeking remuneration approval**

- 6 1 1** When seeking agreement to his fees the liquidator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on

- the nature of the approval being sought,

- the stage during the administration of the case at which it is being sought, and
- the size and complexity of the case

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

6.1.3 Where the liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the liquidator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity 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 explanation of what has been done can be expected to include an outline of the nature of the assignment and the liquidator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

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

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

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

## **6.2 After remuneration approval**

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution (see further paragraph 7.1 below). Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 6.1.3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 6.1.4 above regarding work which has been sub-contracted out.

## **6.3 Disbursements and other expenses**

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements, but there is provision for the creditors to challenge them, as described below. Professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

## **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 a winding-up resolution passed on or after 6 April 2010,
- goes into voluntary liquidation immediately following an administration on or after 6 April 2010, except where the preceding administration began before that date,
- goes into compulsory liquidation as the result of a petition presented on or after 6 April 2010, except where the liquidation was preceded by:
  - an administration which began before that date,
  - a voluntary liquidation in which the winding-up resolution was passed before that date