

LIQ13

Notice of final account prior to dissolution in MVL



Companies House

THURSDAY



A853P60X
A23 09/05/2019 #189
COMPANIES HOUSE

1 Company details

Company number

Company name in full

→ Filling in this form
Please complete in typescript or in
bold black capitals.

2 Liquidator's name

Full forename(s)

Surname

3 Liquidator's address

Building name/number

Street

Post town

County/Region

Postcode

Country

4 Liquidator's name ①

Full forename(s)

Surname

① Other liquidator
Use this section to tell us about
another liquidator.

5 Liquidator's address ②

Building name/number

Street

Post town

County/Region

Postcode

Country

② Other liquidator
Use this section to tell us about
another liquidator.

LIQ13

Notice of final account prior to dissolution in MVL

6

Final account

☒ I have delivered the final account of the winding up to the members in accordance with Section 94(2) and attach a copy.

7

Sign and date

Liquidator's signature

Signature

X



X

Signature date

^d0

^d3

^m0

^m5

^y2

^y0

^y1

^y9

Kevin Brown Advisory Limited

Chartered Accountants and Licensed Insolvency Practitioners

The Aquarius Film Company Limited Liability Partnership (In Members' Voluntary Liquidation)

Final Account

Kevin Thomas Brown

Kevin Brown Advisory Limited

500 High Road, Woodford Green, Essex, IG8 0PN

Kevin Brown Advisory Limited: P.O. Box 2620 Woodford Green IG8 0XB

Kevin Thomas Brown; a director of this company; is licensed to act in the UK as an insolvency practitioner by The Institute of Chartered Accountants in England & Wales, and is bound by that Institute's Insolvency Code of Ethics when carrying out all professional work relating to an insolvency appointment.

Kevin Brown Advisory Limited: A Limited Company registered in England & Wales at Companies House under number 9020558. Registered Office: 500 High Road, Woodford Green IG8 0PN

Tel: 01992 678429 email: kevinbrown@kevinbrown.co



ICAEW
LICENSED INSOLVENCY
PRACTITIONERS (UK)

Final Account

The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

The Aquarius Film Company Limited Liability Partnership (IN LIQUIDATION)

FINAL ACCOUNT

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Final Account

The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

1. EXECUTIVE SUMMARY

This Final Account summarises the winding-up as a whole as well as events since the last interim progress report dated 24th October 2018 ("the Review Period").

A summary of key information in this report is detailed below.

Realisations

Realisations	Estimated to realise per Declaration of Solvency	Total realisations
Contributions to Tax Appeal Fund	NIL	£252,571
Contributions to HMRC Legal Costs Fund	NIL	£123,089
Bank Interest Received - Gross	NIL	£92

Expenses

Expense	Total expense incurred	Total payments made
Solicitors' Fees – Keystone Law	£100,919	£100,919
HMRC Legal Costs	£60,000	£60,000
Barrister's Fees	£35,840	£35,840
Liquidator's Remuneration:		
- for statutory duties	£7,000	£7,000
- for non-statutory work	£28,000	£28,000
- for fundraising	£15,000	£15,000
Irrecoverable VAT	£33,839	£33,839
Solicitor's Disbursements – Keystone Law	£3,464	£3,464

Distributions: No distributions were made to any class of creditor.

Surplus Contributions: A surplus of contributions received over expenses incurred, amounting of £89,793, was refunded to the contributing members in the relevant proportions to which they were entitled.

2. INTRODUCTION

Kevin Thomas Brown of Kevin Brown Advisory Limited, 500 High Road, Woodford Green, Essex, IG8 0PN was appointed Liquidator of The Aquarius Film Company Limited Liability Partnership ("the Company") on 17th July 2009.

Final Account

The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

The purpose of this Final Account is to summarise the winding-up as a whole and to put members on notice of the Liquidator's intention to seek release from office. The Final Account details the acts and dealing of the Liquidator and it should be read in conjunction with previous correspondence to members.

3. ADMINISTRATION AND PLANNING (INCLUDING STATUTORY REPORTING)

As Liquidator, I am required to meet a considerable number of statutory and regulatory obligations. Whilst many of these tasks do not have a direct benefit, they assist in the efficient and compliant progressing of the liquidation, which ensures that I and my staff carry out our work to high professional standards. The narrative detail in respect of these tasks may be found in Appendix 3.

4. CASE SPECIFIC MATTERS

Following my appointment as Liquidator, HM Revenue & Customs raised enquiries into the exact nature and structure of the LLP's investment activities which culminated in closure-notices being raised on the LLP and some of its members. The tax affairs of the LLP were to be dealt with by the LLP promoter and tax specialist as it is commonplace for the tax issues of a company in MVL to be dealt with by its nominated tax advisers not the MVL liquidator.

In mid-2015 I was contacted by HMRC Solicitors Office whom informed me that the LLP's tax adviser had not been responding to either their or the Tax Tribunal's communications and subsequently learnt that for personal reasons he was unable to continue to represent the LLP in its tax appeals. I convened a meeting of the LLPs' members to discuss the way forward for the appeals and a voluntary informal committee of three members was formed with a view to generally guiding the process through, and specifically selecting tax lawyers to advise upon the LLP's position and fight the appeals.

I was charged with the responsibility of formally instructing tax lawyers; communicating various milestone events to the members generally; engaged in several fighting-fund raising exercises; bonding for monies coming into the estate; disbursing monies to pay lawyers' fees; keeping a watching brief on the progress of the tax appeals; agreeing with members my fees for carrying-out discrete non-statutory work in relation to my role in the tax appeals and the raising and management of funds, and accounting to members.

As the appeals progressed, legal statements of case were prepared both by counsel acting for the LLPs and counsel acting for HMRC. In coming to a negotiated settlement of the appeals, the LLPs' lawyers reached a position where HMRC's expressed a willingness and basis upon which the appeals might be settled without further recourse to the Tribunal.

Counsel acting for the LLP advised the LLP's solicitors that HMRC's effective offer would not be improved by the LLPs proceeding to hearing before the tax tribunals scheduled for November 2018.

Final Account

The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 25th April 2019

In August 2018, and after an adjournment, members voted overwhelmingly to accept HMRC's offer.

These tasks were necessary to be undertaken as it is likely that the tax appeals would have failed and the LLP's status converted to Creditors Voluntary Liquidation. A more detailed narrative about the work undertaken may be found at Appendix 3.

5. ASSET REALISATIONS

My Receipts and Payments Account for the whole period of the winding-up and for the period from my last progress report is attached at Appendix 1 which should be self-explanatory.

6. CREDITORS

The LLP had no creditors outstanding.

7. DISTRIBUTIONS TO MEMBERS

There were no asset realisations from which to make any distribution to the members.

8. COSTS AND EXPENSES

The payments shown on the Receipts and Payments Account at Appendix 1 are in the main self-explanatory.

Liquidator's Remuneration

The Liquidator's remuneration in relation to the fulfilment of his statutory duties and obligations was agreed by the LLP's Designated Members in a fixed amount of £7,000 p.a. plus VAT.

The Liquidator's remuneration in respect of work carried-out by him in the fund-raising exercise in early 2017 was fixed in an amount of £15,000 plus VAT and was sanctioned by resolution of the members at a meeting held on 9th March 2017.

The Liquidator's other non-statutory work included amongst other things; his monitoring of the progress of the LLP's tax appeals; liaising with the LLP's lawyers and committee members; reporting to the generality of the members; arranging bonding for the funds coming into my control; reporting upon HMRC's offer and communicating the same to members and arranging a vote upon whether to accept the terms thereof; arranging an adjournment thereof; communicating with members as to the impact and potential liability for HMRC's legal costs; raising funds to provide for payment of those costs; negotiating and agreeing the amount of HMRC's legal costs; chasing members for unpaid contributions; seeking directions from the members as to the future progress of the liquidation; calculating and making refunds to contributing members of any surplus due to them, and communicating generally with the members.

Final Account

The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 25th April 2019

The Liquidator's remuneration for the foregoing work was based upon the time properly spent by him and his staff carrying-out the work, at the relevant hourly charge-out rates for the staff engaged thereon; capped at £28,000 plus VAT; as authorised by members on 1st September 2018. This fee has been paid. A detailed explanation is attached at Appendix 3.

Summary of Costs

The Liquidator's time costs in relation to non-statutory work for the period from 23rd October 2018 to 26th February 2019 totals £5,986.20 representing 19 hours and 6 minutes at an average hourly rate of £313.41.

The Liquidator's time costs for the period from on 16th July 2017 to date totals £79,039.80 representing 207 hours and 18 minutes at an average hourly charge-out rate for him and his staff of £381.28.

Members will note from the attached Receipts and Payments account that the sum of only £28,000 plus VAT has been charged and drawn by the Liquidator's firm in relation to this non-statutory work. As a gesture towards the members the remaining balance of £51,039.80 has been written off.

Liquidators' Disbursements

The Liquidators' category 1 disbursements paid are detailed at Appendix 1 and represent the reimbursement of actual out of pocket expenses made in respect of the liquidation.

The Liquidators' category 2 disbursements for the period total £551.88. These have been drawn in accordance with the resolution passed by the members on 9th March 2017. The basis of calculation of this category of disbursement was disclosed to members prior to the resolution being passed and is also detailed at Appendix 2.

A copy of 'A Members' Guide to Liquidators' Fees' may be found at Appendix 4.

Other professional Costs

Solicitors – Keystone Law

Keystone Law Limited were instructed to act as legal advisors in relation to the LLP's appeals in respect of closure notices issued by HMRC. Keystone Law were chosen by the member's Committee on the basis of a recommendation they had received regarding that company's expertise and effectiveness in dealing with tax issues of the nature faced by the LLP. Their fees were agreed on the basis of their standard hourly charge out rates, plus disbursements and VAT. The solicitors' total time costs billed and disbursed from funds raised by the liquidator amount to £100,919 plus VAT which has been paid in full.

Final Account

The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

Barrister's Fees

Rebecca Murray, tax counsel, of Temple Tax Chambers was retained by Keystone Law to advise the LLP upon the issues in and merits of its appeals; to settle the LLP's Statement of Case in the appeals; review and advise the LLP upon HMRC's contrary Statement of Case, and to advise upon the merits of accepting an offer made by HMRC to settle as opposed to continuing to maintain the appeals to a hearing before the First Tier Tax Tribunal. Ms Murray's fees have been agreed on the basis of her standard hourly charge-out rates, plus disbursements and VAT. Ms Murray's total time costs billed and disbursed from funds raised by the liquidator amount to £35,840 plus VAT and have been paid in full.

9. FURTHER INFORMATION

Members' Rights

A member may, with the permission of the court or with the concurrence of 5% in value of the members (including the member in question) request further details of the Kevin Thomas Brown's remuneration and expenses, within 21 days of receipt of this report.

A member may, with the permission of the court or with the concurrence of 10% in value of the members (including the member in question), apply to court to challenge the amount and/or basis of the Kevin Thomas Brown's fees and the amount of any proposed expenses or expenses already incurred, within 8 weeks of receipt of this report.

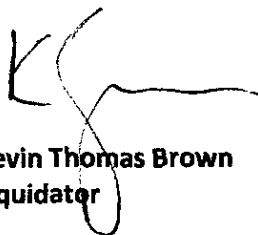
EU REGULATIONS

The LLP's centre of main interest was in the UK as its operations were controlled from the offices of its promoter and designated member in Cardiff, and therefore it is considered that the EU Regulations apply. These proceedings are main proceedings as defined in the EU Regulation.

10. CONCLUSION

The delivery of this final account to members and to the Registrar of Companies concludes the administration of this winding up.

Should you have any queries regarding this matter, or the contents of this report, please do not hesitate to contact this office.



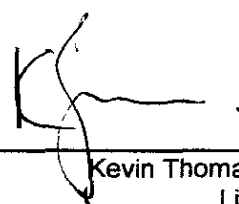
Kevin Thomas Brown
Liquidator

**The Aquarius Film Company Limited Liability Partnership
(In Liquidation)
Liquidator's Summary of Receipts & Payments**

Declaration of Solvency £		From 23/10/2018 To 06/03/2019 £	From 17/07/2009 To 06/03/2019 £
	ASSET REALISATIONS		
100.00	Cash at Bank	NIL	NIL
	Contribution to Tax Appeal Fund	NIL	252,571.24
	Contribution to HMRC Legal Costs Fund	NIL	123,089.00
	Bank Interest Gross	3.87	91.95
		<u>3.87</u>	<u>375,752.19</u>
	COST OF REALISATIONS		
	Specific Bond	NIL	242.00
	Liquidator's Remuneration - Stat Duty	NIL	7,000.00
	Liquidator's Remuneration - Non Stat	NIL	28,000.00
	Liquidator's Fundraising Fees	NIL	15,000.00
	Barrister's Fees	NIL	35,840.00
	Solicitors' Fees - Keystone Law	NIL	100,919.30
	Solicitors' Fees - CRS LLP	NIL	800.00
	Corporation Tax	8.09	18.39
	Irrecoverable VAT	110.37	33,839.43
	HMRC Costs	NIL	60,000.00
	Photocopying, Stationery & Postage	551.88	835.08
	Travel/Couriers - Keystone Law	NIL	121.47
	Courier Services - Keystone Law	NIL	64.34
	Copying - Keystone Law	NIL	1,863.74
	Legastat Charges - Keystone Law	NIL	962.88
	Refund of Member's Contributions	NIL	NIL
	Bank Charges	0.60	0.60
	Search Fees - Keystone Law	NIL	452.00
		<u>(670.94)</u>	<u>(285,959.23)</u>
	UNSECURED CREDITORS		
(100.00)	Members Capital Accounts	NIL	NIL
		<u>NIL</u>	<u>NIL</u>
	DISTRIBUTIONS		
	Refund of Member's Contributions – Tax Appeal	60,000.00	60,000.00
	Refund of Member's Contributions – HMRC Costs	29,792.96	29,792.96
		<u>(89,792.96)</u>	<u>(89,792.96)</u>
		<u><u>(90,460.03)</u></u>	<u><u>(0.00)</u></u>
	REPRESENTED BY		

NIL

Note:


Kevin Thomas Brown
Liquidator

Time Entry - SIP9 Time & Cost Summary

Appendix 2

A035K - The Aquarius Film Company Limited Liability Partnership
From: 23/10/2018 To: 06/03/2019

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Average Hourly Rate (£)
Admin & Planning	5.20	0.00	0.00	8.70	13.90	3,802.20	273.54
Case Specific Matters	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Contributions & Kingston Smith Fees	5.20	0.00	0.00	0.00	5.20	2,184.00	420.00
Creditors	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Investigations	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Realisation of Assets	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Trading	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Hours	10.40	0.00	0.00	8.70	19.10	5,986.20	313.41
Total Fees Claimed						0.00	

Time Entry - SIP9 Time & Cost Summary

Appendix 2

A035K - The Aquarius Film Company Limited Liability Partnership
To: 06/03/2019

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Average Hourly Rate (£)
Admin & Planning	25.20	0.00	0.00	33.30	58.50	16,777.80	286.80
Case Specific Matters	96.90	0.00	0.00	1.00	97.90	40,884.00	417.61
Contributions & Kingston Smith Fees	50.90	0.00	0.00	0.00	50.90	21,378.00	420.00
Creditors	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Investigations	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Realisation of Assets	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Trading	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Hours	173.00	0.00	0.00	34.30	207.30	79,039.80	381.28
Total Fees Claimed	28,000.00						

Insolvency Assignment Charging and Disbursement Recovery Policy

Time spent by this firm's licensed insolvency practitioners and staff, as categorised below, directly engaged upon various aspects of an assignment, is all charged to the case under the five major headings given below, as required by Statement of Insolvency Practice 9 ("SIP 9"). No staff are engaged on assignments without their time being charged to it directly, whereas no time spent by ancillary staff is included or recovered from any assignment as an overhead of this firm.

A Creditors' Guide to Fees, which provides guidance as to how an insolvency practitioner's remuneration is authorised, may be obtained from the Institute of Chartered Accountants in England & Wales' website via the following link, www.icaew.com/en/technical/insolvency

Charge out rates The current basic hourly charge out rate (net of VAT) per hour of each grade of staff employed in the administration of insolvency assignments, as categorised below are as follows: -

	<i>From 1st November 2016</i>	<i>From 1 October 2011</i>	<i>From 1 September 2009 to 30 September 2011</i>
Licensed insolvency practitioners	£420.00	£387.00	£354.00
Managers	-	£287.00	£265.00
Senior case-handler	-	£232.00	£210.00
Case-handler	£186.00	£150.00	£120.00
Cashier	-	£100.00	£95.00
Secretarial	-	£65.00	£60.00

These rates are the basic hourly charge out rates; billed in minimum units of six minutes; applicable to the time spent by each grade of staff attending to any of the following areas of standard activity. Work carried out in relation to specialised activities, examples of which are also given below, are chargeable at an uplift of 33.3% above the basic hourly rates.

Standard Activities**Examples of Work****Administration and Planning**

Case planning; administrative set-up; appointment notification, maintenance of records, statutory reporting, dealing with taxation and VAT.

Creditors

Communication with creditors and shareholders, and dealing with creditor's claims (including employees, secured and other preferential creditors)

Specialised Activities**Case Specific Matters**

Dealing with ad hoc matters arising in the administration of the estate; including for example, disclaiming leases; launching litigation in respect of antecedent transactions.

Investigations

Undertaking an investigation into the accounting books, records and the conduct of its business and affairs as required by SIP 2 and work carried out examining antecedent transactions with a view to recovering assets and complying with the obligations imposed upon insolvency practitioners to make reports upon the conduct of directors under the terms of the Company Directors Disqualification Act 1986.

Trading

Managing operations; accounting for trading and dealing with ongoing employee and supplier issues.

Realisation of Assets

Identifying, securing and insuring assets, debt collection and dealing with the realisation of property and other assets, disposing of a business and ongoing trading.

Disbursement Recovery Policy

The policy regarding payments made to this firm is that these represent the re-imbursement of actual payments made on behalf of the assignment, and do not relate to the recovery of general overhead costs.

Any disbursements that shall be recharged are known as Category 2 Disbursements. In accordance with SIP 9, a resolution for approval by the Creditors or Committee is required.

There are many types of disbursements which are charged in any insolvency and include the following (although these will vary from time to time).

- (a) Specific Insurance Bond
- (b) Asset Insurance
- (c) Statutory Advertising
- (d) Storage Costs
- (e) Agents Fees
- (f) Legal Fees
- (g) Travel Costs
- (h) Hotel and Subsistence
- (i) Couriers
- (j) Telephone and Facsimile
- (k) Printing, Posting and Stationery
- (l) Room Hire

There follows an analysis of the Category 2 Disbursements that may be payable to this firm or to any party in which the Liquidator or his firm or any associate has an interest.

Facsimile:	50p for each incoming and outgoing page
Photocopying	14p per sheet
Telephone	Based on actual call charges
Travelling by motor car	65p per mile
Storage Box Purchase	£2 per 1 cubic foot box (pro rata)
Storage	£6 per 1 cubic foot box per annum (pro rata)
Storage Transportation	£15 per journey
Storage Final Box Destruction	£2 per box
Actual Postage	£1 per letter
Room Hire	Based on actual provider charges
Company searches	At cost
Postal redirection	At cost
Couriers	At cost

All figures are shown net of VAT

Where a room is booked at an external location, this is recharged at cost and if a room is booked at the office of Kevin Brown Associates LLP, this is recharged at the rate of £75.00 per hour or part thereof.

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The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

Appendix 3

Explanatory Narrative upon major areas of time spent in the liquidation

Case Specific Matters: The majority of the time in the Liquidation by the Liquidator and his staff has spent on matters concerning the conduct of the LLP's tax appeals; raising second and third-round funding in relation to those appeals and maintaining the solvency of the LLP. The complexity of the issues at hand demanded this work be undertaken by the Liquidator himself.

Monitoring major 'mile-stones' in the conduct of the tax appeals; in particular; difficulties arising from Counsel's inability to complete the LLPs' Statement of Case;

Receiving and considering commentary from the Committee and remaining abreast of their views on various issues in the management of the tax appeals;

Liaising with Matheu Smith of the LLP's Solicitors Messrs Keystone Law as to Counsel's opinion on the merits of the appeals and likelihood of achieving relatively better success at appeal before the Tribunal. Requesting the LLPs' Solicitors to draft a proposition to members about voting on the matter;

Considering and approving the LLP's Solicitors draft communication to members with its Statement of Case and proposal that without prejudice negotiations on settlement be instigated with HMRC;

Obtaining and reading the LLP Deed of Partnership;

Updating the Members' Committee from time to time as to the balance of funds available to the LLP to fund legal and other management costs;

Working with the Committee members in validating members' contact addresses. Considering and discussing a course of action regarding contributions due from those members that had not made additional contributions;

Requesting from HMRC details of the initial amounts invested by individual members;

Reviewing the LLP's Statement of Case as drafted by counsel;

Attending a meeting at the offices of Keystone Law with the LLP's Solicitors and Members' Committee to discuss the future course of action in the tax appeals, including budgeting for future costs;

Taking independent legal advice regarding members' obligations to make additional contributions to the LLPs in liquidation in accordance with the terms of the Partnership Deed. Discussing preliminary advice received at some length with the LLP's Solicitors and Committee members, and instructing solicitors to provide further and better opinion to support their advice;

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The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

Taking independent legal advice as to the necessity for the LLP in members' voluntary liquidation to remain solvent, and discussing at length the implications of the LLP becoming insolvent under the aegis of a licenced insolvency practitioner, and of the need for the members' Committee to be made acutely aware of the same;

Considering a request from the LLP's Solicitors to revise upwards the level of funding required from members in view of the recent result in the case of Eclipse 35 and in particular questions arising therein about the taxation of 'Dry income'; discussing the impact of this matter with the LLP's Solicitors as regards the demand for funding and the solvency of the LLP;

Arranging the circulation of a Report drafted by the LLP's Solicitors updating members on the position of the tax appeals including Counsel's and HMRC's respective Statements of Case in the matter;

Liaising with members of the Committee regarding the currency and accuracy of members addresses/contact details and contributions received; level of funds raised and details of how funds had been disbursed;

Managing and maintaining the currency of members' contact details;

Discussing with the LLP's Solicitors the settlement opportunities available to the LLP, and whether it is necessary for individual members to settle or whether I in my capacity as Liquidator was capable of settling the matters under appeal on behalf of the LLP;

Accounting for and reconciling members' contributions and disbursement thereof; analysing the breakdown of legal fees disbursed between those of solicitors and counsel;

Following-up on my request of HMRC for details of members' initial level of investment in the LLP, and given their lack of co-operation to this request, making a further request under the terms of Section 236 of the Insolvency Act 1986; indicating that my request would be followed by formal application to the High Court within the ambit of that provision of the Act seeking a direction that HMRC be compelled to comply with a liquidator's reasonable request for information necessary to the proper conduct of his office;

Finally obtaining from HMRC said details of members' initial investments, enabling me to quantify and review this information in the context of my calls for funding, and using such information for my request for further contributions from members; thus enhancing the level of funds available in the LLP estate;

Obtaining surety bonding for the monies under my control, and where necessary increasing the level of the bond and renewing the same on the anniversary of my appointment to office;

Liaising with the LLP's Solicitors over the reconciliation of their statement of account, obtaining copy invoices where appropriate, and arranging payment of their fees and disbursements;

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The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

Preparing a fully analysed Account of my Receipts and Payments for presentation to the Members' Committee;

Discussing with the LLP's Solicitors and considering an email outlining the outcome of the January 2018 meeting of members;

Discussing with the LLP's Solicitors the implications of the aborted meeting scheduled with Counsel and the complications arising therefrom;

Liaising with individual members from time to time confirming receipt of additional contributions; their contact details and giving ad hoc updates and information on request as regards an overview of the progression of matters. Occasionally giving much greater detailed information to the representatives of deceased or infirmed members;

Obtaining identification documents from members making additional contributions in order to comply with Anti Money-Laundering regulations;

Discussing further with the LLP's Solicitors the difficulty experienced in obtaining advice from instructed counsel; my need for definitive advice on the direction and progress of the appeals; the prospective taxation of 'Dry interest income', and other salient matters;

Reviewing Partnership Deed and Information Memoranda regarding members' voting rights; including the different categories of matters requiring varying majorities; establishing the nature of the decision at hand and the level of majority required for it to be made, and whether voting rights attach per member or to the value of their investment;

Calculate the total level of investment made in each of the seven LLPs in liquidation;

Having telephone conversations and email exchanges with LLP's Solicitors regarding progress in negotiations with HMRC; reviewing Committee members' comments; discussing pathways and impediments to settlement; including notification of listing-date for hearing before the First Tier Tribunal; the delay in HMRC serving reply, and Counsel's opinion;

Discussing with Committee members the matter of my time being expended in the conduct of the liquidation and the cost implications thereof;

Reviewing an email from the LLP's Solicitors regarding HMRC's Solicitors' requirement for its legal costs in the appeals of circa £128,000 to be paid as a pre-condition for agreeing to settle the dispute with the LLP; subsequently discussing the same with the LLP's Solicitors; broaching the subject with Committee members, and having follow-up conversations on the subject in view of the fact that opinion had previously been received that a provision of £10,000 would be sufficient to cover HMRC's costs;

Taking independent legal advice on the implications of the LLP in Members' Voluntary Liquidation facing HMRC's substantial claim for unfunded un-provisioned costs and the impending threat to the status of the liquidations; which advice confirmed that the continuing likelihood of

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The Aquarius Film Company Limited Liability Partnership (In Liquidation)

Date: 3rd May 2019

insufficient funding for such costs would force me to convert the status to that of Creditors' Voluntary Liquidation; which conversion might have had a deleterious effect on the conduct of the tax appeals;

Striving to obtain clarity on the position of taxpayers' liability to adverse costs awarded at First Tier Tribunals, and the degree of discretion available to the Tribunal;

Receiving the LLP's Solicitors' initial advice on the matter which was that a Tribunal does not have the ability to make third-party costs awards;

Drafting an email apprising the Committee members of the situation regarding HMRC's legal costs, dealing with my position as Liquidator and that of the LLP's status;

Reviewing emails between the LLP's Solicitors and Committee members on the subject of HMRC's claim for costs; reviewing the effectiveness of indemnities received from members; reviewing case law regarding the award of adverse costs in Tribunal tax cases – in particular the "PAYA" case; reviewing the Partnership Deed for information regarding indemnities and Additional Subscriptions, and reviewing the Tribunal Procedure Rules (FTT) 2013 regarding the award of costs; Discussing the LLP's exposure to costs with an independent legal adviser regarding non-party costs orders in the light of PAYA, and taking the point that whilst the Tribunal Procedure Rules speak of a taxpayers' liability, the LLP is nonetheless a 'Party' to the appeals as it is named as the Appellant;

Generally dealing with the controversy arising from this affair,

Exploring with the LLP's Solicitors whether HMRC could in practice apply a levy for recovery of costs upon individual members when agreeing the overarching tax liabilities, as opposed to them looking to the LLP for payment of their legal costs; instructing the LLP's Solicitors to promote this potential course of action to Terry Holmes of HMRC;

Instructing the LLP's Solicitors to impress upon HMRC of the need to break the impasse on reaching agreement on the major issue of the tax adjustments required to the LLP's tax returns caused by the lesser issue of their solicitors' legal costs, and of the importance of properly quantifying those costs; reviewing and approving the LLP's Solicitors emails in the matter, and gauging what information to impart to HMRC at this stage of proceedings;

Deciding upon a level of funding required to enable me to provide for HMRC's legal costs; translating that figure into a recognisable percentage of members' initial contributions, and reviewing and revising the LLP's Solicitors proposed draft letter to members on the subject of costs, and the general progress reached in the appeals;

Reviewing correspondence between LLP's Solicitors and Committee regarding potentially replacing Counsel if the appeals have to continue to hearing;

Reviewing LLP Bank Statements to gauge progress of the call for funding of HMRC's legal costs and report to members of the Committee;

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Receiving and replying to emails of Committee re progress in fundraising and balancing decision as to whether the relative progress sufficient to enable LLP's in MVL to remain solvent;

Agreeing upon methodology as regards allocation of HMRC's legal costs to various stages and LLP's in appeal;

Discussing with the LLP's Solicitors the progress in fundraising and need to advance to HMRC Solicitors' Office our methodology in calculating across a range of scenarios the costs to which the LLP's might actually be exposed;

Reading and considering further analyses produced, mapping HMRC's cost claim against the LLP's Solicitors' framework;

Fielding numerous enquiries from members as to the levels of their initial investments. The contribution that translates to them personally, and the 'ring-fenced' and cost-specific position of funds so raised;

Requesting KYC due-diligence documentation from members at each opportunity;

Obtaining ad hoc statements of account from bank and reviewing progress in fundraising;

Liaising with LLP Solicitors in initiating Without Prejudice negotiations with HMRC to agree the basis for settling their claim for legal costs against the LLPs;

Settling upon a range of settlement figures that might be acceptable to the LLP's in the various scenarios and deciding upon an offer to HMRC in Full and Final Settlement of their costs;

Reading and approving the LLP's Solicitors' draft offer letter to HMRC. Finally agreeing with HMRC upon a figure to settle the matter – subject to the members voting in agreement of HMRC's Offer to settle the appeals;

Negotiating with LLP's Solicitors for a reduction of the level of fees charged to the LLPs in consideration of circumstances which had presented themselves;

Disbursing the LLP's Solicitors reduced fee note;

Reading the Partnership Deed regarding the conduct of General Meetings;

Preparing a Report to Members – setting out the stage to which Appeals and negotiations with HMRC had reached, and details of HMRC's 'offer' regarding proposed amendments to tax returns; Preparing Notices of Decision Procedure, Written Resolutions; revising, and settling upon a final version. Emailing and posting the Report and ancillary documents to members;

Receiving comments from Committee members as to their view upon the 'message' conveyed by the tenor of my Report;

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Fielding further numerous enquiries from members as to the implications of the matters set out in the Report;

Updating and revising members contact details from an array of sources and messages received and re-sending copies of Report and Notices where necessary;

Considering the terms of the LLP's Solicitors email regarding HMRC's want to shift the deadline for individual members' agreement to their personal calculations, and the effects this might have on LLP's ability to mobilise funding for continuing appeals in the event of a decision by members to reject HMRC's offer;

Considering representations on this point from a number of committee members and general members;

Allocating members' contributions to the general fund or HMRC Costs-fund as appropriate
Researching current addresses of non-paying members; ascertaining the amounts invested to LLP's in which they had invested, and calculating amounts due on each tranche of call;

Drafting and sending letter to members yet to have contributed to calls for additional contributions, including Statement of Account personal to them.

Administration and Planning of the Liquidation:

The work carried out in this area included, amongst other things;

- The maintenance of records;
- Case Reviews;
- Cashiering;
- Preparation of monthly bank reconciliation statements;
- Ethical and anti-money-laundering reviews
- Preparation of Corporation tax returns for the LLP in respect of bank interest received
- Regular bonding reviews and increasing the amounts for which the case is bonded
- Reporting to members. The Key Documents issued during the period under review included
- The Annual Progress Report;
- Letter to members for contributions to provide for HMRC's legal costs in the appeals;
- The Report to Members as to the progress in negotiations with HMRC requiring a decision to be made by members as to the acceptance of HMRC's offer to settle the tax appeals

Contributions and Kingston Smith Fees

Numerous Telephone Conversations with members explaining position of both the Tax Appeals and the individual members contributions;

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Numerous Email correspondence with members and members' representatives regarding the tax appeals and contributions;

Send correspondence chasing outstanding contributions from members;

Calculate and allocate funds correctly between the HMRC costs and the general fighting fund;

Numerous email exchanges and telephone conversations regarding Kingston Smith fees;

Drafting letters out to members enclosing their refund from the surplus funds available;

Email various members confirming their intentions on how to deal with their refunds

1 Introduction

When a company goes into liquidation the costs of the proceedings are paid out of its assets. The members (i.e. shareholders) 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 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 and explains the basis on which fees are fixed.

2 Liquidation procedure

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. Where a declaration of solvency has been sworn by all or a majority of the directors of a company (as would usually be the case where they believe that the company has surplus assets to be distributed to members) a liquidation instituted by resolution of the shareholders is called a members' voluntary liquidation (often abbreviated to 'MVL').

3 Fixing the liquidator's fees

The basis for fixing the liquidator's remuneration in an MVL is set out in the Insolvency (England & Wales) Rules 2016 ("the Rules"). The Rules state that the remuneration shall be fixed either:

- as a percentage of the value of the assets which are realised or distributed or both, or
- by reference to the time properly given by the liquidator and his staff in attending to matters arising in the winding up; 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.

4. Who fixes the remuneration?

It is for the members of the company to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage to be applied. The Rules state that in arriving at their decision the members shall have regard to the following matters:

- the complexity (or otherwise) of the case;
- any respects in which, in connection with the company's affairs, there falls on the liquidator any responsibility of an exceptional kind or degree;
- the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties;

- the value and nature of the assets with which the liquidator has to deal.

A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator. If the remuneration is not fixed in any of these ways, it will be in accordance with the scale laid down for official receivers.

5. **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 **General principles**

The liquidator should provide those responsible for approving his remuneration with sufficient information to enable them to make an informed judgement about the reasonableness of the liquidator's request. The information should be presented in a manner which is transparent, consistent throughout the life of the case and useful to member, while being proportionate to the circumstances of the case.

The liquidator should disclose:

- payments, remuneration and expenses arising from the administration paid to the liquidator or his or her associates;
- any business or personal relationships with parties responsible for approving the liquidator's remuneration or who provide services to the liquidator in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.

The liquidator should inform members of their rights under insolvency legislation, and should advise them how they may access suitable information setting out their rights within the first communication with them and in each subsequent report.

Where the liquidator sub-contracts out work that could otherwise be carried out by the liquidator or his or her staff, this should be drawn to the attention of members with an explanation of why it is being done.

6.2 **Key issues**

The key issues of concern to those with a financial interest in the level of payments from the insolvency estate will commonly be:

- the work the liquidator anticipates will be done, and why that work is necessary;
- the anticipated cost of that work, including any expenses expected to be incurred in connection with it;
- whether it is anticipated that the work will provide a financial benefit, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute);
- the work actually done and why that work was necessary;

- the actual costs of the work, including any expenses incurred in connection with it, as against any estimate provided;
- whether the work has provided a financial benefit, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute).

When providing information about payments, fees and expenses, the liquidator should do so in a way which facilitates clarity of understanding of these key issues. Narrative explanations should be provided to support any numerical information supplied. Where it is practical to do so, the liquidator should provide an indication of the likely return to creditors when seeking approval for the basis of his remuneration.

When approval for a fixed amount or a percentage basis is sought, the liquidator should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the liquidator anticipates will be undertaken.

6.3 Disbursements

Costs met by and reimbursed to the liquidator in connection with the liquidation will fall into two categories:

- Category 1 disbursements: These are payments to independent third parties where there is specific expenditure directly referable to the liquidation. 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: 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 may be incurred by the liquidator or their firm, and that can be allocated to the liquidation on a proper and reasonable basis.

When seeking approval, the liquidator should explain, for each category of cost, the basis on which the charge is being made. If the liquidator has obtained approval for the basis of Category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the liquidator is replaced.

The following are not permissible as disbursements:

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

6.4 Progress reports and requests for further information

The liquidator is required to send annual progress reports to members. The reports must include:

- 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, a statement of 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 things done by the liquidator 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 and their right to challenge the liquidator's remuneration and expenses.

Within 21 days of receipt of a progress report, 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 members 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 by any member with the permission of the court.

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

- the time or cost of preparation of the information would be excessive, or
- disclosure would be prejudicial to the conduct of the liquidation or might reasonably 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 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.

Provision of information – additional requirements

7. 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.

8. What if a member is dissatisfied?

If a member 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.

Application may be made to the court by members with at least 10% of the total voting rights of all the members having the right to vote at general meetings of the Company, or 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. 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.

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.

9. Other matters relating to fees

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

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.

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.

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.

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. 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.

Whilst every care has been taken in its preparation, this statement is intended for general guidance only.