

## Liquidator's Progress Report

# S.192

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

To the Registrar of Companies

Company Number

04368433

Name of Company

A A G INVESTMENTS LIMITED

I / We

Gareth David Peckett, 2 Rutland Park, Sheffield, S10 2PD

Graham Leslie Stuart-Harris, 2 Rutland Park, Sheffield, S10 2PD

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

The Progress Report covers the period from 25/11/2013 to 24/11/2014

Signed \_\_\_\_\_

Date \_\_\_\_\_

Barber Harrison & Platt  
2 Rutland Park  
Sheffield  
S10 2PD

Ref INA005/GDP/OA/HJ

WEDNESDAY



A33

\*A3MGB2DU\*

10/12/2014

#123

COMPANIES HOUSE

**A. A.G. INVESTMENTS LIMITED**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 25/11/2013 To 24/11/2014	From 25/11/2011 To 24/11/2014
<b>ASSET REALISATIONS</b>			
200 00	Plant & Equipment	NIL	NIL
565 96	Office Equipment	NIL	650 00
4,000 00	Motor Vehicles	NIL	2,350 00
50 00	Fixtures & Fittings	NIL	NIL
79,000 00	WIP BAA	NIL	6,929 13
7,500 00	Book Debts	NIL	793 79
Uncertain	Investments	NIL	6 48
	Explorer Associates	NIL	6,283 32
NIL	Prepayments	NIL	NIL
	VAT Refund	1,584 00	1,584 00
	Bank Interest Gross	0 66	4 97
		<u>1,584 66</u>	<u>18,601 69</u>
<b>COST OF REALISATIONS</b>			
	Preparation of S of A	NIL	5,000 00
	Office Holders Fees 15/05/14	NIL	9,300 00
	Office Holders Expenses 15/05/14	NIL	1,707 58
	Future office holders fees	NIL	NIL
	Agents/Valuers Fees - CWH	NIL	455 70
	Legal Fees - Walker Morris	NIL	NIL
		<u>NIL</u>	<u>(16,463 28)</u>
<b>PREFERENTIAL CREDITORS</b>			
(1,000 00)	Employee Arrears/Hol Pay	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
<b>FLOATING CHARGE CREDITORS</b>			
(346,821 36)	The Royal Bank of Scotland	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
<b>UNSECURED CREDITORS</b>			
(418,870 65)	Trade & Expense Creditors	NIL	NIL
(57,140 98)	HM Revenue & Customs (VAT)	NIL	NIL
(289,835 55)	HM Revenue & Customs (PAYE)	NIL	NIL
(82,680 00)	HM Revenue & Customs (CT)	NIL	NIL
(34,569 09)	Employees Redundancy & Pension	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
<b>DISTRIBUTIONS</b>			
(20,000 00)	Ordinary Shareholders	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
<u>(1,159,601.67)</u>		<u>1,584 66</u>	<u>2,138.41</u>
<b>REPRESENTED BY</b>			
	Bank 1 Current		554 41
	Vat Control Account		1,584 00
			<u>2,138.41</u>

**A.A.G. Investments Limited**  
**Creditors Voluntary Liquidation**

**Strictly Private & Confidential**

**Joint Liquidators Report to Members & Creditors**

**Pursuant to the Insolvency Rules 1986**

**For the period 25 November 2013 to 24 November 2014**

**Barber Harrison & Platt**  
**Corporate Recovery & Insolvency**  
**2 Rutland Park Sheffield**  
**S10 2PD**  
**Tel: 0114 266 7171 Fax: 0114 266 9846**  
**[www.bhp.co.uk](http://www.bhp.co.uk)**

## **Contents**

- 1. Introduction**
- 2. Statutory Information**
- 3. Receipts and Payments Account**
- 4. Assets**
- 5. Investigations**
- 6. Creditors**
- 7. Dividend Prospects**
- 8. E.C. Regulations**
- 9. Bordereau**
- 10. Payments and Expenses**
- 11. Conclusion**

## **Appendices**

- 1. Joint liquidators' receipts and payments account for period 25 November 2013 to 24 November 2014.**
- 2. Joint liquidators SIP 9 Time Charge Out and Disbursement Summary for the period 25 November 2013 to 24 November 2014.**
- 3. Barber Harrison & Platt current charge-out rates and disbursements  
Creditors Guide to Fees**

## **A.A.G. Investments Limited – Creditors Voluntary Liquidation**

**The Joint Liquidators report to Members & Creditors pursuant to the Insolvency Rules 1986 from 25 November 2013 to 24 November 2014.**

### **1. Introduction**

I, Gareth David Peckett and Graham Leslie Stuart-Harris of Barber Harrison & Platt, Chartered Accountants were appointed Joint Liquidators of AAG Investments Limited on 25 November 2011 and now present our 3<sup>rd</sup> progress report to members & creditors pursuant to the Insolvency Rules 1986

### **2. Statutory Information**

Company Name	A A G Investments Limited
Registered office	2 Rutland Park, Sheffield, S10 2PD
Former registered office	Westthorpe Innovation Centre, Block B Suite 22, Killamarsh, S21 1TZ
Registered number	04368433
Liquidator's details	Gareth David Peckett and Graham Leslie Stuart-Harris of Barber Harrison & Platt, Chartered Accountants, 2 Rutland Park, Sheffield, S10 2PD

### **3. Receipts and Payments Account**

I attach for your information at appendix 1 a copy of our summarised receipts and payments account for the period of this report. The figures under "S of A" are taken from the Company's statement of affairs

### **4. Assets**

#### **4.1 Plant and Equipment**

This relates to various skips, bins signs and containers used by the Company. These items were on site at a customer's premises. Our agents advised that it was not commercially viable to remove and sell them so they have been left on site.

#### **4.2 Office equipment**

This relates to various office equipment including computers, laptops, printers, office chairs and software.

The former director Mr Stuart McQueen purchased three computers on 17 February 2012 for £650 plus VAT. The offer was in line with the independent valuation and was accepted on the advice of our agents.

#### **4.3 Motor Vehicles**

The company owned a Vauxhall Vectra 2.2 Cdti Exec Reg KY56 UXW. The vehicle was collected and sold at auction by our agents for the sum of £2,350.

#### **4.4 Work in progress ('WIP')**

The Directors took legal action regarding outstanding WIP through their solicitors which related to a breach of contract by BAA Airports Limited ('BAA'). Prior to the Liquidation of the company an offer of £75,000 was made by BAA.

The offer was accepted by the directors prior to the liquidation and the settlement monies paid to the company's solicitor, Hill Dickinson of Sheffield. Hill Dickinson claim to have a solicitor's lien against the settlement monies received from BAA and have drawn their outstanding fees against the settlement monies resulting in a surplus of £6,929.13.

#### **4.5 Book debts**

Upon appointment the company records showed debtors with a book value of £36,960.21. The Directors advised that many of the book debts are not realisable and estimated that £7,500 of the debtors will be recoverable. Book debts totalling £793.79 have been received to date, the balance of debtors appears to be irrecoverable and has been written off.

#### **4.6 Tomlin order**

In the period of this report we have received repayments £200 during the period of this report and total repayments of £6,283.32 from Explorer Associates Limited. The funds relate to litigation which became subject to a Tomlin order. The balance of £1,383.32 is still to be collected and the matter is to be referred to our solicitors.

#### **4.7 Assignment of cause of action**

The former directors have contacted the liquidators via their solicitors Woskow Brown regarding the potential assignment of a claim of action owned by the company.

The joint liquidators are currently considering the terms of the offer and the potential benefits to the liquidation.

#### **4.8 Miscellaneous Receipts**

An amount of £4.97 has been received in respect of Gross Bank interest and £6.48 in respect of a company owned investment with IG Markets.

## **5. Investigations**

Within six months of my appointment as liquidator, I am required to submit a confidential report to the Secretary of State to include any matters which have come to my attention during the course of my work which may indicate that the conduct of any past or present director would make him unfit to be concerned with the management of the company. I would confirm that my report has been submitted.

## **6. Creditors**

### **6.1 Secured Creditors**

The Company banked with the Royal Bank of Scotland plc. The Bank facilities comprise an overdraft and loan account.

The bank holds Fixed and floating charges over the undertaking and all property and assets present and future including goodwill, bookdebts, uncalled capital, buildings, fixtures, fixed plant and machinery. I have received a confirmation from the bank that the debt outstanding in the liquidation is £347,468.90.

### **6.2 Preferential Creditors**

The director's estimated Statement of Affairs provided for preferential creditors in the sum of £1,000 which related to claims made by the employees in respect of arrears of wages and holiday pay.

Claims made by employees/directors are adjudicated by the Insolvency Service through the Redundancy Payments Service and then any claims notified to the appointed liquidators in due course.

We have received a preferential claim from the Insolvency Service in the sum of £342.86 which is yet to be agreed for dividend purposes.

### **6.3 Unsecured Creditor**

Unsecured creditors, as estimated in the director's statement of affairs, totalled £883,096.27. To date we have received claims of £863,998.89 in respect of unsecured creditors.

### **6.4 Section 176A (2)a of the Insolvency Act 1986**

Section 176A(2)a of the Insolvency Act 1986 provides that where a qualifying floating charge has been created on or after 15 September 2003, the Liquidator must make a prescribed part of the company's net property available for the satisfaction of the unsecured debt.

It is uncertain whether there will be sufficient funds to facilitate a dividend to any class of creditor at this stage.

## **7. Dividend Prospects**

It is currently uncertain if there will be a dividend to any class of creditor

## **8. E.C. Regulations**

The E.C Regulations applies to this case, and these proceedings are main proceedings as defined in Article 3 of the E.C Regulations

## **9. Bordereau**

The case was bonded for £100,000 on 5 December 2011

## **10. Payments & Expenses**

Details of payments made during the period of this report as shown on the enclosed receipts and payment abstract and detailed Time charge-out and disbursement summary Should you require any explanations over and above those given below, please contact my colleague, Oliver Adams in the first instance

### **10.1 Joint Liquidators Remuneration**

At the meeting of creditors held on 25 November 2011, it was agreed that the Statement of Affairs fee of £5,000, plus VAT and disbursements in respect of work undertaken up to and including the Section 98 meeting be approved by the creditors and that the Joint Liquidators remuneration will be fixed by reference to the time properly given by them and their staff in attending to matters arising in the winding up

It was resolved that in respect of disbursements, the joint liquidators be authorised to draw disbursements, including disbursements for services provided by their firm (defined as Category 2 disbursements in Statement of Insolvency Practice 9), in accordance with their firms' policies, details of which accompanied the information presented to the creditors meeting

Time charged by Barber Harrison & Platt for the period of this report amounts to 15 65 hours totalling £2,228 75 which is an average hourly rate of £142 41 per hour I have not drawn any fees against my time costs in this period

Total Time charged by Barber Harrison & Platt for the liquidation amounts to hours totalling £16,560 50 which is an average hourly rate of £155 57 per hour I have drawn fees in accordance with the resolutions passed by creditors The enclosed receipts and payments account details the fees taken against my time costs during the liquidation

Attached to this report at appendix 2 is a charge out summary detailing the time charged in the period



## **Explanatory notes to the summary of time costs**

### **Administration and Planning**

Work performed includes Preparing the documentation and dealing with the formalities of appointment, statutory notifications and advertising, preparing documentation required, dealing with all routine correspondence, maintaining physical case files and electronic case details on IPS, review and storage, case bordereau, case planning and administration, preparing reports to members and creditors, convening and holding meetings of members and creditors

### **Realisation of Assets**

Work performed includes identifying, securing and insuring the assets, dealing with any sale of the business, dealing with any retention of title claims over the assets, transition of contracts, property issues, collecting the debts and disposal of the stock and other assets

### **Investigations**

Work performed includes investigation of the company's affairs in accordance with Statement of Insolvency Practice 2 and the submission of a report to the Insolvency Service in accordance with the Company Directors Disqualification Act 1986

### **Creditors**

Work Performed includes setting up of our creditor records for secured, preferential and non-preferential creditors and for the employees, communication with the creditors/employees after our appointment by telephone, e-mail and letter, as required, dealing with creditors/employee correspondence and telephone calls and, where appropriate, agreeing creditors/employees claims in the insolvency proceedings and distribution of funds Work also includes providing reports to Banks/secured creditors as necessary

A copy of 'A Creditors Guide to Liquidators' Fees' published by the Association of Business Recovery Professionals and 'A Statement of Insolvency Practice 9 (Revised) together with an explanatory note which shows Barber Harrison & Platt's fee policy are attached to this report at appendix 3

## **10.2 Liquidators Disbursements**

Liquidators' disbursements of £2,012 33 have been incurred in respect of disbursements relating to the Creditors Voluntary Liquidation A breakdown of the disbursements incurred can be seen on the attached charge out schedule at appendix 2

## **10.3 Solicitors Fees**

Walker Morris Solicitors of Leeds were instructed to assist with collection of the remaining debtors and provide general advice regarding the liquidation They have been instructed based

upon their normal charge out rates They have incurred WIP in the sum of £14,360 50 and unbilled disbursements of £575 during the liquidation They have not received any payment to date

#### **10.4 Agents Fees**

C W Harrison & Son of Ossett were instructed with regards to a valuation and sale of the Plant & Machinery, office furniture, vehicle and stock They have been instructed based upon their normal charge out rates and have received £455 70 to date which is detailed on the attached receipts and payments account

It is not expected that any further fees will be paid to C W Harrison & son

#### **10.5 Request for further Information & Creditors Right of Challenge**

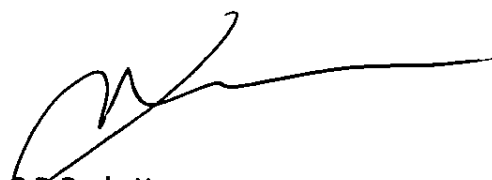
An unsecured creditor may, with the permission of the court or with the concurrence of 5% in value of the unsecured creditors (including the creditor in question) request further details of the Liquidator's remuneration and expenses, within 21 days of receipt of this report Any secured creditor may request the same details in the same time limit.

An unsecured creditor may, with the permission of the court or with the concurrence of 10% in value of the creditors (including the creditor in question), apply to court to challenge the amount and/or basis of the Liquidator's fees and the amount of any proposed expenses or expenses already incurred, within 8 weeks of receipt of this report Any secured creditor may make a similar application to court within the same time limit

### **11. Conclusion**

I can advise that the liquidation cannot yet be brought to a close as collection the Tomlin order and the issue regarding the assignment of the cause of action are still ongoing A further report will be sent to all known creditors at the second anniversary of my appointment, or upon completion of the liquidation

I hope that the above information is of value to you as members & creditors Should you require any further information or explanation regarding this report then please do not hesitate to contact me in writing



**G.D Peckett**  
Joint Liquidator

**8 December 2014**

## **APPENDIX 1**

### **JOINT LIQUIDATORS' RECEIPTS AND PAYMENTS ACCOUNT FOR THE PERIOD 25 NOVEMBER 2013 TO 24 NOVEMBER 2014**

**A. A.G. INVESTMENTS LIMITED**  
**(In Liquidation)**  
**Joint Liquidators' Abstract of Receipts & Payments**

Statement of Affairs		From 25/11/2013 To 24/11/2014	From 25/11/2011 To 24/11/2014
	<b>ASSET REALISATIONS</b>		
200 00	Plant & Equipment	NIL	NIL
565 96	Office Equipment	NIL	650 00
4,000 00	Motor Vehicles	NIL	2,350 00
50 00	Fixtures & Fittings	NIL	NIL
79,000 00	WIP BAA	NIL	6,929 13
7,500 00	Book Debts	NIL	793 79
Uncertain	Investments	NIL	6 48
	Explorer Associates	NIL	6,283 32
NIL	Prepayments	NIL	NIL
	VAT Refund	1,584 00	1,584 00
	Bank Interest Gross	0 66	4 97
		<u>1,584 66</u>	<u>18,601 69</u>
	<b>COST OF REALISATIONS</b>		
	Preparation of S of A	NIL	5,000 00
	Office Holders Fees 15/05/14	NIL	9,300 00
	Office Holders Expenses 15/05/14	NIL	1,707 58
	Future office holders fees	NIL	NIL
	Agents/Valuers Fees - CWH	NIL	455 70
	Legal Fees - Walker Morris	NIL	NIL
		<u>NIL</u>	<u>(16,463 28)</u>
	<b>PREFERENTIAL CREDITORS</b>		
(1,000 00)	Employee Arrears/Hol Pay	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
	<b>FLOATING CHARGE CREDITORS</b>		
(346,821 36)	The Royal Bank of Scotland	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
	<b>UNSECURED CREDITORS</b>		
(418,870 65)	Trade & Expense Creditors	NIL	NIL
(57,140 98)	HM Revenue & Customs (VAT)	NIL	NIL
(289,835 55)	HM Revenue & Customs (PAYE)	NIL	NIL
(82,680 00)	HM Revenue & Customs (CT)	NIL	NIL
(34,569 09)	Employees Redundancy & Pension	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
	<b>DISTRIBUTIONS</b>		
(20,000 00)	Ordinary Shareholders	<u>NIL</u>	<u>NIL</u>
		NIL	NIL
<u>(1,159,601 67)</u>		<u>1,584 66</u>	<u>2,138.41</u>
	<b>REPRESENTED BY</b>		
	Bank 1 Current		554 41
	Vat Control Account		1,584 00
			<u>2,138 41</u>

## **APPENDIX 2**

### **SIP 9 TIME CHARGE OUT AND DISBURSEMENT SUMMARY FOR THE PERIOD 25 NOVEMBER 2013 TO 24 NOVEMBER 2014**

AAG Investments Limited - In liquidation  
Joint Trustees - SIP 9 Time & charge-out summaries

Time analysis from 25 November 2011 to 24 November 2014

	Partner		Senior Manager		Manager		Other Senior Professionals		Assistance & Support Staff		Total		Av rate £/hr
	hrs	£	hrs	£	hrs	£	hrs	£	hrs	£	hrs	£	
Administration and Planning	0.05	13.00	11.60	2,320.00	-	-	46.20	6,193.50	5.30	450.50	63.15	8,977.00	142.15
Investigations	-	-	1.70	340.00	-	-	10.60	1,431.00	-	-	12.30	1,771.00	143.98
Realisation of Assets	0.50	130.00	20.40	4,080.00	-	-	5.25	713.75	-	-	26.15	4,923.75	188.29
Creditors	-	-	3.60	720.00	-	-	1.25	168.75	-	-	4.85	888.75	183.25
Total	0.55	143.00	37.30	7,460.00	-	-	63.30	8,507.00	5.30	450.50	106.45	16,560.50	155.57
Av (£/hr)	260.00		200.00		0.00		134.39		85.00		155.57		

Disbursements analysis (including SIP 9 category 2 disbursements) from 25 November 2011 to 24 November 2014

Date	Description	Amount
05/12/2011	Statutory advertising	76.50
05/12/2011	Statutory advertising	76.50
05/12/2011	Statutory advertising	76.50
18/11/2011	Statutory advertising	76.50
06/12/2011	Bordereau	67.50
12/12/2011	Asset insurance	428.08
25/04/2012	Petitioner cost	900.00
06/02/2013	Document upload fee	6.00
19/04/2013	Counsels fees	304.75
Total		2,012.33

AAG Investments Limited - In liquidation  
Joint Trustees - SIP 9 Time & charge-out summaries

Time analysis from 25 November 2013 to 24 November 2014

	Partner		Senior Manager		Manager		Other Senior Professionals		Assistance & Support Staff		Total		Av rate £/hr
	hrs	£	hrs	£	hrs	£	hrs	£	hrs	£	hrs	£	
Administration and Planning	-	-	0.30	60.00	-	-	8.15	1,124.25	3.20	272.00	11.65	1,456.25	125.00
Investigations	-	-	0.50	100.00	-	-	-	-	-	-	0.50	100.00	200.00
Realisation of Assets	-	-	3.00	600.00	-	-	0.50	72.50	-	-	3.50	672.50	192.14
Creditors	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	3.80	760.00	-	-	8.65	1,196.75	3.20	272.00	15.65	2,228.75	142.41
Av (£/hr)	0.00		200.00		0.00		138.35		85.00		142.41		

Disbursements analysis (including SIP 9 category 2 disbursements) from 25 November 2013 to 24 November 2014

Date	Description	Amount
	Total	0.00

## **APPENDIX 3**

### **BARBER HARRISON & PLATT CHARGE-OUT RATES AND DISBURSEMENTS CREDITORS GUIDE TO FEES**



## CHARGE-OUT RATES AND DISBURSEMENTS 2014

In accordance with the Joint Insolvency Committee Statement of Insolvency Practice Number 9 ("SIP 9") we would confirm that this firm's policy as regards charging for time costs and disbursements incurred is as follows:

### CHARGE-OUT RATES

Grade	Standard Rate per hour
Insolvency Consultant	£250
Insolvency Senior Manager	£200
Insolvency Manager	£145
Insolvency Case Manager	£135
Cashier / Other administrators	£85

In cases that require a significant amount of investigation or where the ability to pay fees is dependent on realising assets that are considered irrecoverable at the outset, an uplift of 50% may be applied to the above rates. This will be referred to as the Premium Rate and will be requested where our costs would otherwise be at risk. Creditors will be advised on a case by case basis when approval for these higher rates is being sought and such Premium Rates will only be payable out of the enhanced recovery. The department charges in minimum time units of 6 minutes.

In certain cases specialist in-house advice may be appropriate and the following hourly rates will apply

Tax Partner	£275
Audit & Accounts Partner	£275

It is not this firm's policy to charge separately for secretarial or most administrative staff.

We would point out that charge-out rates do change from time to time. We will advise any material changes to charge-out rates either when seeking approval of creditors or the creditors committee to draw fees, or with the next annual meeting report if a resolution based on time costs has already been passed.

### DISBURSEMENTS

This firm recharges Category 1 disbursements in accordance with SIP 9 as and when they are incurred. These charges do not require specific authorisation but details can be provided on request. However, other disbursements are classed as Category 2 and require specific approval by creditors or any creditors' committee. This firm does not attempt to recover all such disbursements from the individual case but does seek approval to the recharges on the following page

<b>Disbursement</b>	<b>Rate</b>	<b>Basis of charge</b>
<b>Staff Mileage</b>	£0.40 per mile	This is charged regardless of fuel type and engine size on journeys made outside of the boundaries of the City of Sheffield. Journeys within the city boundaries are not recharged
<b>Room Hire</b>	£50	This charge is for the use of a meeting room and is levied per meeting. Where a room has to be hired elsewhere, this will be a Category 1 charge and is likely to be well in excess of the internal charge
<b>Storage</b>	£4.00 per box plus £0.125 per box per wk	Books and records have to be stored for a certain period of time. Off site storage is recharged by an independent storage company and will be recovered under Category 1. A charge is however levied for internal storage and the provision of storage boxes at. <ul style="list-style-type: none"> <li>• Boxes - £4.00 per box;</li> <li>• Storage - £0.125 per box per week</li> </ul>
<b>Company Searches</b>		
• Insolvency department standard pack.	£25	These charges are levied to all clients of the firm and are based on the direct cost plus an uplift to cover administration costs of collating the information. We believe the rates to be comparable to outside agencies
• Company Report		
• Accounts		
• Annual Return		
• Accounts	£10	
• Annual Return	£5	
• Mortgage summary	£5	
• Company Report	£10	
• Memo and arts	£36	
• Insolvency Status	N/C	

**BHP Financial Planning Limited ("BHP FP")**

Insurance and pension costs would usually be referred to the Alexander Forbes Group, or another independent insurance company, and such costs would be chargeable under Category 1. However, very occasionally the firm's financial advisor company, BHP FP, is instructed to assist with, for example, disposing of endowment policies. BHP FS usually takes its fees from the commissions arising at market rates, as is normal practice in the insurance and pensions market.

This firm does not attempt to recover the cost of telephone calls/faxes or emails

# **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 fixing bases of remuneration**

6.1.1 When seeking agreement for the basis or bases of remuneration, the Liquidator should provide sufficient supporting information to enable the committee or the creditors to make an informed judgement as to whether the basis sought is appropriate having regard to all the circumstances of the case. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought. The appendix to this guide sets out a suggested format for the provision of information.

6.1.2 If any part of the remuneration is sought on a time costs basis, the Liquidator should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.

6.1.3 The Liquidator should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the Liquidator or his or her staff.

6.1.4 If work has already been carried out, the Liquidator should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case

Where the proposed charge is calculated on a time costs basis, the Liquidator should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. The Liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Liquidator or his or her staff.

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

The Liquidator is required to send progress reports to creditors at specified intervals (see paragraph 7.1 below). When reporting periodically to creditors, in addition to the matters specified in paragraph 7.1, the Liquidator should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed.

Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the Liquidator must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate). Where any remuneration is on a time costs basis, the Liquidator should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. The Liquidator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Liquidator or his or her staff.

## **6.3 Disbursements and other expenses**

6.3.1 Costs met by and reimbursed to the Liquidator in connection with the liquidation should be appropriate and reasonable. Such costs will fall into two categories

☐ Category 1 disbursements These are costs where there is specific expenditure directly referable both to the liquidation and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the Liquidator or his or her staff

☐ Category 2 disbursements These are costs that are directly referable to the liquidation but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the liquidation on a proper and reasonable basis, for example, business mileage

Category 1 disbursements can be drawn without prior approval, although the Liquidator should be prepared to disclose information about them in the same way as any other expenses. Category 2 disbursements may be drawn if they have been approved in the same manner as the Liquidator's remuneration. When seeking approval, the Liquidator should explain, for each category of expense, the basis on which the charge is being made

6.3.2 The following are not permissible.

☐ A charge calculated as a percentage of remuneration,

☐ An administration fee or charge additional to the Liquidator's remuneration,

☐ Recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges

## **6.4 Realisations for secured creditors**

Where the Liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

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

7.1 The Liquidator is required to send annual progress reports to creditors. The reports must include:

- ☐ details of the basis fixed for the remuneration of the Liquidator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- ☐ if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);
- ☐ if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- ☐ a statement of the expenses incurred by the Liquidator during the period of the report, irrespective of whether payment was actually made during that period;
- ☐ a statement of the creditors' rights to request further information, as explained in paragraph 7.2, and their right to challenge the Liquidator's remuneration and expenses.

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

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

- ☐ the time and cost involved in preparing the information would be excessive, or
- ☐ disclosure would be prejudicial to the conduct of the liquidation or might be expected to lead to violence against any person, or
- ☐ the Liquidator is subject to an obligation of confidentiality in relation to the information requested, in which case he must give the reasons for not providing the information.

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

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

The Liquidator must provide certain information about the time spent on the case, free of charge, upon request by any creditor, director or shareholder of the company.

The information which must be provided is –

- ☐ the total number of hours spent on the case by the Liquidator or staff assigned to the case,
- ☐ for each grade of staff, the average hourly rate at which they are charged out,
- ☐ the number of hours spent by each grade of staff in the relevant period.

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

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

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

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

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

9.3 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the Liquidator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 7.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the Liquidator a copy of the application and supporting evidence at least 14 days before the hearing.

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

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

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

If he decides to apply to the court he must give at least 14 days' notice to the members of the committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the Liquidator's notice of his application must be sent to such of the creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

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

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

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

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

11.4 If a new Liquidator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new Liquidator until a further determination, resolution or court order is made.

11.5 Where the basis of the remuneration is a set amount, and the Liquidator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing Liquidator. The application must be made to the same body as approved the remuneration. Where the outgoing Liquidator and the incoming Liquidator are from the same firm, they will usually agree the apportionment between them.

11.6 There may also be occasions when creditors will agree to make funds available themselves to pay for the Liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors.

Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the Liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

## **12. Effective date**

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