

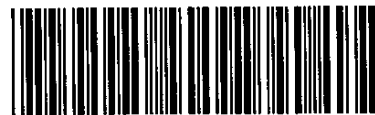
# LIQ03

## Notice of progress report in voluntary winding up



Companies House

FRIDAY



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A14

24/04/2020

#129

COMPANIES HOUSE

### 1 Company details

Company number 0 6 7 7 9 9 8 8

Company name in full BM EUROPE LIMITED - IN LIQUIDATION

→ Filling in this form

Please complete in typescript or in  
bold black capitals.

### 2 Liquidator's name

Full forename(s) ROBERT

Surname DAY

### 3 Liquidator's address

Building name/number ROBERT DAY AND COMPANY LIMITED

Street THE OLD LIBRARY

THE WALK

Post town WINSLOW

County/Region BUCKINGHAM

Postcode M K 1 8 3 A J

Country

### 4 Liquidator's name ●

Full forename(s)

Surname

● Other liquidator

Use this section to tell us about  
another liquidator.

### 5 Liquidator's address ●

Building name/number

Street

Post town

County/Region

Postcode

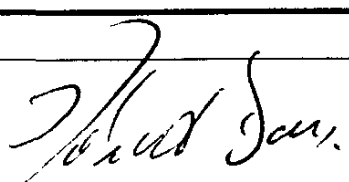
Country

● Other liquidator

Use this section to tell us about  
another liquidator.

# LIQ03

## Notice of progress report in voluntary winding up

|                        |           |   |  |   |   |   |   |   |   |   |   |   |   |   |   |   |  |
|------------------------|-----------|---|--|---|---|---|---|---|---|---|---|---|---|---|---|---|--|
| <b>6</b>               |           | <b>Period of progress report</b>                                    |  |   |   |   |   |   |   |   |   |   |   |   |   |   |  |
| From date              | d         | 1   | d  | 6 | m | 0 | m | 4 | y | 2 | y | 0 | y | 1 | y | 9 |  |
| To date                | d         | 1   | d  | 5 | m | 0 | m | 4 | y | 2 | y | 0 | y | 2 | y | 0 |  |
| <b>7</b>               |           | <b>Progress report</b>  |  |   |   |   |   |   |   |   |   |   |   |   |   |   |  |
|                        |           | <input checked="" type="checkbox"/> The progress report is attached |  |   |   |   |   |   |   |   |   |   |   |   |   |   |  |
| <b>8</b>               |           | <b>Sign and date</b>  |  |   |   |   |   |   |   |   |   |   |   |   |   |   |  |
| Liquidator's signature | Signature |   | <div style="display: flex; align-items: center;"> <div style="margin-right: 20px;">X</div> <div style="flex-grow: 1; text-align: center;">  </div> <div style="margin-left: 20px;">X</div> </div> |   |   |   |   |   |   |   |   |   |   |   |   |   |  |
| Signature date         | d         | 2   | d  | 0 | m | 0 | m | 4 | y | 2 | y | 0 | y | 2 | y | 0 |  |

# **Liquidator's Annual Account to Creditors and Members**

## **BM Europe Limited - In Liquidation**

**16 April 2020**

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- 2** Receipts and Payments
- 3** Work undertaken by the Liquidator
- 4** Outcome for Creditors
- 5** Liquidator's Remuneration & Expenses
- 6** Conclusion

## **APPENDICES**

- A** Receipts and Payments Accounts from 16 April 2015 to 15 April 2020
- B** Additional Information in Relation to the Liquidator's Fees, Expenses & Disbursements

## **BM Europe Limited – In Creditors Voluntary Liquidation ('the company')**

**Company Number:** 06779988

**Current Registered Office:** c/o Robert Day and Company Limited, The Old Library, The Walk, Winslow, Buckingham MK18 3AJ

**Previous Registered Office:** 13 Vansittart Estate, Windsor, Berkshire SL4 1SE

**Trading Address:** 13 Vansittart Estate, Windsor, Berkshire SL4 1SE

**Basis of Remuneration:** Time Cost - Fixed

**Office Holder Details:** Robert Day, of Robert Day and Company Limited, The Old Library, The Walk, Winslow, Buckingham MK18 3AJ

**Date of Appointment:** 16 April 2015

## **1 Introduction**

- 1.1 I, Robert Day of Robert Day and Company Limited, The Old Library, The Walk, Winslow, Buckingham MK18 3AJ, was appointed as Liquidator of BM Europe Limited (the Company) on 16 April 2015. This report sets out an account of my acts and dealings and the conduct of the liquidation during the period 16 April 2019 to 15 April 2020.

This report is intended for use by those parties entitled to a copy thereof under the Insolvency Rules (England and Wales) 2016. It may contain information that is privileged, confidential or exempt from disclosure and any dissemination, distribution or copying of it and its attachments is strictly prohibited. It is not suitable to be relied upon by any other person, or for any other purpose, or in any other context.

Any estimated outcomes for creditors are for illustration only and cannot be relied upon as to the actual outcome for creditors.

Robert Day is authorised in the UK to act as an Insolvency Practitioner by the Institute of Chartered Accountants in England and Wales. All work is conducted in accordance with the Insolvency Code of Ethics.

## **2 Receipts and Payments**

- 2.1 At Appendix A, I have provided an account of my Receipts and Payments for the Period with a comparison to the directors' statement of affairs values, which provides details of the remuneration charged and expenses incurred and paid by the Liquidator.

## **3 Work undertaken by the Liquidator**

- 3.1 This section of the report provides creditors with an overview of the work undertaken in the liquidation since the date of my appointment, together with information on the overall outcome of the liquidation.

### ***Administration (including statutory compliance & reporting)***

3.2 As you may be aware, the Liquidator must comply with certain statutory obligations under the Insolvency Act 1986 and other related legislation.

This work has not necessarily brought any financial benefit to creditors, but is work required on every case by statute. This work includes (but is not limited to):

- Notifying creditors of the Liquidator's appointment and other associated formalities including statutory advertising and filing relevant statutory notices at Companies House.
- Complying with statutory duties in respect of the Liquidator's' specific penalty bond.
- Corresponding and dealing with creditors queries and claims
- Creation and update of case files on the firm's insolvency software.
- Pension search and regulatory reporting if appropriate.
- Completion and filing of the notice of the Company's insolvency to HM Revenue & Customs.
- Initial assessment required by Statement of insolvency Practice 2 and the Company Directors Disqualification Act 1986 (CDDA) including the review of the Company's books and records and the identification of potential further asset realisations which may be pursued
- Submitting a statutory report to the insolvency Service under the CDDA.
- Periodic case progression reviews (typically at the end of month 1 and every 6 months thereafter),
- Opening, maintaining and managing the insolvent estate Cashbook and bank account(s).
- Converting the Liquidation from a Members Voluntary Liquidation to a Creditors Voluntary Liquidation
- Liaising with stakeholders in relation to possible disguised remuneration schemes and Loan Charge notifications
- Dealing with all post-appointment VAT and corporation tax compliance.

3.3 I planned to discharge my obligations to creditors by seeking to maximise asset realisations, minimise the input required from me, compatible with complying with the various statutory and professional regulatory requirements which flowed from my appointment and consequently to maximise any return to the creditors.

3.4 During the period covered by this return as well as attending to my statutory administrative duties I have been liaising with both HM Revenue & Customs and the company's advisors and director.

3.5 Prior to the liquidation the company operated an Employer Financed Retirement Benefit Scheme (EFRBS) and the open enquiries relate to the contributions made to this scheme. HM Revenue and Customs accept that EFRBS is a legitimate way of providing future pension

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benefits however they consider that some schemes do not work as intended and thus these schemes are subject to ongoing litigation.

- 3.6 In light of ongoing litigation I am not yet in a position to adjudicate on the outstanding claim received and it is disputed by the company and its advisors.
- 3.7 During the period of this report I have been liaising with the company's director, advisors and HMRC in relation to "Disguised Remuneration Loan Charge" and other matters as the directors are seeking settlement of sums deemed to be outstanding.

### ***Realisation of Assets***

- 4 The only asset realisations have been cash at bank following an erroneous third party payment into the company's bank account, bank interest and third party funds.

### ***Creditors (claims and distributions)***

- 4.1 Further information on the outcome for creditors in this case can be found at section 4 of this report. A liquidator is not only required to deal with correspondence and claims from unsecured creditors, but also those of any secured and preferential creditors of the Company. This may involve separate reporting to any secured creditor and dealing with distributions from asset realisations caught under their security, most typically a debenture as well as dealing with the general handling of communications with stakeholders, such as customers and suppliers.
- 4.2 Claims from preferential creditors typically involve employee claims and payments made on behalf of the Company by the Redundancy Payments Service following dismissal. I would confirm that in this case no preferential claims were received.

### ***Investigations***

- 4.3 Some of the work I as Liquidator was required to undertake was to comply with legislation such as the Company Directors' Disqualification Act 1986 (CDDA 1986) and Statement of Insolvency Practice 2 – Investigations by Office Holders in Administration and Insolvent Liquidations and may not necessarily bring any financial benefit to creditors, unless those investigations revealed potential asset recoveries that could have been pursued for the benefit of creditors.
- 4.4 My report on the conduct of the Directors of the Company to the Department for Business, Energy & Industrial Strategy under the CDDA 1986 was submitted in accordance with statutory timescales and is confidential.

## **5 Outcome for Creditors**

### ***Secured Creditors***

- 5.1 No secured creditor claims have been received in this matter.

### ***Preferential Creditors***

- 5.2 I received no preferential claims in this matter.

### ***Unsecured Creditors***

- 5.3 HM Revenue and Customs have submitted an interim claim in the liquidation in the sum of £1,193,573.47. This claim is disputed by the company's director and advisors.

- 5.4 I can confirm that the realisations are insufficient to declare a dividend to the unsecured creditors.

## **6 Liquidator's Remuneration & Expenses**

I have not yet agreed the basis of my remuneration for acting as liquidator of the Insolvent liquidation.

The agreed fee for conducting the Members Voluntary liquidation of £4,000 plus VAT has been paid by the company's director.

I also attach copies of Rules 4.49E and 4.131 of the Insolvency Rules 1986 and a further copy of 'A Creditors' Guide to Liquidator's Fees' for your information.

The following category 1 disbursements have been incurred but are yet to be fully re-charged to the estate:-

Statutory Advertising (London Gazette) - £139.10  
Specific Penalty Bond Premium - £40.00

Statutory Advertising costs are re-charged at the actual cost incurred where possible.

I am required to purchase a bond on all formal insolvency appointments undertaken. The purpose of the bond is to indemnify the creditors of the insolvent estate being administered against losses caused by dishonesty or fraud on the part of the insolvency practitioner. The bond must be for the level of assets potentially available to creditors. In this case I have purchased a £5,000 bond however there is scope to increase the level of bond should realisations be made.

I attach copies of Rules 18.9 and 18.34 of the Insolvency (England and Wales) Rules 2016 for your information.

I also attach a further copy of 'A Creditors' Guide to Liquidator's Fees' for your information.

- 6.1 A narrative explanation of the work undertaken by the Liquidator during the Period can be found at section 3 of this report.
- 6.2 Attached as Appendix B is additional information in relation to the Liquidator's fees and the expenses and disbursements incurred in the liquidation.

## **7 Conclusion**

I am unable to conclude my administration of the liquidation until the issues surrounding HM Revenue & Customs enquiries have been concluded

Yours faithfully




**Robert Day**  
**Liquidator**

Enc



**BM Europe Limited**  
(In Liquidation)  
Liquidator's Abstract of Receipts & Payments

| Statement<br>of Affairs        | From<br>To | 16/04/2015<br>15/04/2016 | 16/04/2016<br>15/04/2017 | 16/04/2017<br>15/04/2018 | 16/04/2018<br>15/04/2019 | 16/04/2019<br>15/04/2020 | Total    |
|--------------------------------|------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|----------|
| SECURED ASSETS                 |            |                          |                          |                          |                          |                          |          |
|                                |            | 0 00                     | 0 00                     | 0 00                     | 0 00                     | 0 00                     | 0 00     |
| ASSET REALISATIONS             |            |                          |                          |                          |                          |                          |          |
| Cash at Bank                   |            | 5 331 12                 | -                        | -                        | -                        | -                        | 5 331 12 |
| Gross Bank Interest            |            | 0 69                     | 0 13                     | -                        | -                        | -                        | 0 82     |
| Third Party Funds              |            | -                        | 475 00                   | -                        | -                        | -                        | 475 00   |
|                                |            | 5 331 81                 | 475 13                   | 0 00                     | 0 00                     | 0 00                     | 5 806 94 |
| COST OF REALISATIONS           |            |                          |                          |                          |                          |                          |          |
| Bank Charges                   |            | - -                      | -                        | 0 82 -                   | -                        | -                        | 0 82     |
| Repayment of Third Party Funds |            | 5 331 12                 | -                        | -                        | -                        | -                        | 5 331 12 |
| Companies House Fees           |            | -                        | 375 00                   | -                        | -                        | -                        | 375 00   |
| Corporation Tax                |            | -                        | 100 00                   | -                        | -                        | -                        | 100 00   |
|                                |            | 5 331 12                 | 475 00                   | 0 82                     | 0 00                     | 0 00                     | 5806 94  |
| PREFERENTIAL CREDITORS         |            |                          |                          |                          |                          |                          |          |
|                                |            | 0 00                     | 0 00                     | 0 00                     | 0 00                     | 0 00                     | 0 00     |
| UNSECURED CREDITORS            |            |                          |                          |                          |                          |                          |          |
| DISTRIBUTIONS                  |            |                          |                          |                          |                          |                          |          |
| Ordinary Shareholders          |            |                          |                          |                          |                          |                          |          |
| Balance in Hand                |            | 0 69                     | 0 82                     | 0 00                     | 0 00                     | 0 00                     | 0 00     |
| REPRESENTED BY                 |            |                          |                          |                          |                          |                          |          |
| Bank 1 Current                 |            | 0 69                     | 0 82                     | 0 00                     | 0 00                     | 0 00                     | 0 00     |

  
Robert Day  
Liquidator

## **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**

- 2.1.1 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.
- 2.1.2 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 ('IP') acts as liquidator throughout.
- 2.1.3 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 the specialist skills of an insolvency practitioner are required or the majority of creditors request the appointment of an insolvency practitioner, an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver. Where an insolvency practitioner is not appointed the official receiver remains liquidator.
- 2.1.4 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**

- 3.1.1 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. An invitation to decide on whether a committee is to be established will be sent to creditors at the same time as a decision is sought on the appointment of a liquidator. 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.
- 3.1.2 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 Basis**

4.1.1 The basis for fixing the liquidator's remuneration is set out in Rules 18.16, 18.17, 18.19 and 18.20 of the Insolvency (England and Wales) Rules 2016. The Rules state that the basis of remuneration must be fixed:

- as a percentage of the value of the assets which are realised, distributed or both, by the liquidator
- 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.

##### **4.2 Advance information where remuneration not based on time costs**

4.2.1 Prior to the determination of the basis of remuneration, the liquidator must give the creditors details of the work the liquidator proposes to undertake, and the expenses he considers will be, or are likely to be, incurred. However, where the liquidator proposes to take any part or all of his remuneration on a time cost basis, he must provide more detailed information in the form of a 'fees estimate', as explained below.

##### **4.3 Fees estimates where remuneration to be based on time costs**

4.3.1 Where the liquidator proposes to take remuneration based on time costs, he must first provide the creditors with detailed information in the form of a 'fees estimate'. A fees estimate is a written estimate that specifies –

- details of the work the liquidator and his staff propose to undertake;
- the hourly rate or rates the liquidator and his staff propose to charge for each part of that work;
- the time the liquidator anticipates each part of that work will take;
- whether the liquidator anticipates it will be necessary to seek approval or further approval under the Rules; and
- the reasons it will be necessary to seek such approval.

In addition, the liquidator must give the creditors details of the expenses he considers will be, or are likely to be, incurred.

##### **4.4 Who fixes the remuneration**

4.4.1 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 18.16 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 property which the liquidator has to deal with.
- 4.4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a decision of the creditors. The creditors take account of the same matters as apply in the case of the committee.
- 4.4.3 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.
- 4.4.4 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**

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

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

### **6.1 General principles**

- 6.1.1 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 creditors, while being proportionate to the circumstances of the case.
- 6.1.2 A proposed liquidator may issue a fees estimate to creditors prior to being appointed liquidator.
- 6.1.3 The liquidator should disclose:
- payments, remuneration and expenses arising from the liquidation 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 creditors 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.

- 6.1.4 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 creditors with an explanation of why it is being done.

### **6.2 Key issues**

- 6.2.1 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 to creditors, 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 to creditors, 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.

- 6.2.2 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 Fee estimates and subsequent reports**

- 6.3.1 When providing a fee estimate, the liquidator should supply that information in sufficient time to facilitate that body making an informed judgement about the reasonableness of the liquidator's requests. The estimate should clearly describe what activities are anticipated to be conducted in respect of the estimated fee. When subsequently reporting to creditors, the actual hours and average rate (or rates) of the costs charged for each activity should be provided for comparison.

### **6.4 Disbursements**

- 6.4.1 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. Category 2 disbursements require approval in the same manner as a liquidator's remuneration.

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.

- 6.4.2 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.

## **6.5 Payment of pre appointment expenses**

6.5.1 The following categories of expenses may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the winding-up:

- Any reasonable and necessary expenses of preparing the statement of affairs.
- Any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of a liquidator under R6.14.

6.5.2 If payment has not been made pre-commencement of the liquidation, payment may not be made to the liquidator or any associate of the liquidator, otherwise than with the approval of the liquidation committee, the creditors or the court.

6.5.3 Disclosure should be made in the fees estimate of amounts already paid to the liquidator in respect of pre-appointment costs, giving the amounts paid, the name of the payer and its relationship to the estate and the nature of the payment.

6.5.4 Disclosure should follow the principles and standards as set out in this guidance.

## **6.6 Realisations for secured creditors**

6.6.1 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 creditors when considering a decision for the purpose of determining his fees, and in any reports he sends to creditors.

## **7. Exceeding the amount set out in the fees estimate**

7.1 Remuneration cannot be drawn in excess of the fees estimate without approval by the body which fixed the original basis of the remuneration. The request for approval must specify –

- the reason why the liquidator has exceeded, or is likely to exceed, the fees estimate;
- the additional work the liquidator has undertaken or proposes to undertake;
- the hourly rate or rates the liquidator proposes to charge for each part of that additional work;
- the time that additional work has taken or the liquidator anticipates that work will take;
- whether the liquidator anticipates that it will be necessary to seek further approval; and
- the reasons it will be necessary to seek further approval.

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

8.1.1 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;
- details of progress during the period of the report, including a summary of the receipts and payments during the period;
- details of what remains to be done;
- where appropriate, a statement –
  - that the remuneration anticipated to be charged is likely to exceed the fees estimate or any approval given for remuneration exceeding the estimate;
  - that expenses incurred or anticipated to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of remuneration; and
  - the reason for that excess.
- a statement of the creditors' rights to request further information, as explained in paragraph 8.2, and their right to challenge the liquidator's remuneration and expenses.

**8.1.2** Within 21 days of receipt of a progress report 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.

**8.1.3** 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
- 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 some or all of the information.

**8.1.4** 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.

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

**9.1.1** 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.

**9.1.2** If a creditor believes that the liquidator's remuneration is excessive, 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

**9.1.3** 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 8.1 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.

9.1.4 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.

9.1.5 On receipt of the liquidator's final account creditors have 8 weeks in which they may challenge the liquidator's remuneration and expenses under R18.34

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

10.1 If the liquidator 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, decision 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, decision 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 6 April 2017.

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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 18**

**REPORTING AND REMUNERATION OF OFFICE-HOLDERS**

**CHAPTER 4**

**Remuneration and expenses in administration, winding up and bankruptcy**

**Remuneration and expenses: application to court by a creditor or member on grounds that remuneration or expenses are excessive**

**18.34.**—(1) This rule applies to an application in an administration, a winding-up or a bankruptcy made by a person mentioned in paragraph (2) on the grounds that—

- (a) the remuneration charged by the office-holder is in all the circumstances excessive;
- (b) the basis fixed for the office-holder's remuneration under rules 18.16, 18.18, 18.19, 18.20 and 18.21 (as applicable) is inappropriate; or
- (c) the expenses incurred by the office-holder are in all the circumstances excessive.

(2) The following may make such an application for one or more of the orders set out in rule 18.36 or 18.37 as applicable—

- (a) a secured creditor,
- (b) an unsecured creditor with either—
  - (i) the concurrence of at least 10% in value of the unsecured creditors (including that creditor), or
  - (ii) the permission of the court, or
- (c) in a members' voluntary winding up—
  - (i) members of the company 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
  - (ii) a member of the company with the permission of the court.

(3) The application by a creditor or member must be made no later than eight weeks after receipt by the applicant of the progress report under rule 18.3, or final report or account under rule 18.14 which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(5) An office-holder who does not provide all the information or declines to provide the information must inform the person or persons who requested the information of the reasons for so doing.

(6) A creditor, and a member of the company in a members' voluntary winding up, who need not be the same as the creditor or members who requested the information, may apply to the court within 21 days of—

- (a) the office-holder giving reasons for not providing all of the information requested; or
  - (b) the expiry of the 14 days within which an office-holder must respond to a request.
- (7) The court may make such order as it thinks just on an application under paragraph (6).

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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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**PART 18**

**REPORTING AND REMUNERATION OF OFFICE-HOLDERS**

**CHAPTER 2**

**Progress reports**

**Creditors' and members' requests for further information in administration, winding up and bankruptcy**

**18.9.—**(1) The following may make a written request to the office-holder for further information about remuneration or expenses (other than pre-administration costs in an administration) set out in a progress report under rule 18.4(1)(b), (c) or (d) or a final report under rule 18.14 —

- (a) a secured creditor;
- (b) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question);
- (c) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company;
- (d) any unsecured creditor with the permission of the court; or
- (e) any member of the company in a members' voluntary winding up with the permission of the court.

(2) A request, or an application to the court for permission, by such a person or persons must be made or filed with the court (as applicable) within 21 days of receipt of the report by the person, or by the last of them in the case of an application by more than one member or creditor.

(3) The office-holder must, within 14 days of receipt of such a request respond to the person or persons who requested the information by —

- (a) providing all of the information requested;
- (b) providing some of the information requested; or
- (c) declining to provide the information requested.

(4) The office-holder may respond by providing only some of the information requested or decline to provide the information if —

- (a) the time or cost of preparation of the information would be excessive; or
- (b) disclosure of the information would be prejudicial to the conduct of the proceedings;
- (c) disclosure of the information might reasonably be expected to lead to violence against any person; or
- (d) the office-holder is subject to an obligation of confidentiality in relation to the information.