

# Liquidator's Progress Report

# S.192

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

To the Registrar of Companies

Company Number

07700569

Name of Company

(a) Insert full name of company

(a) CIMEX DIGITAL LIMITED

(b) Insert full name(s) and address(es)

We (b)

Gary Steven Pettit of PBC Business Recovery & Insolvency Limited, 9-10 Scirocco Close, Moulton Park, Northampton, NN3 6AP and Gavin Geoffrey Bates of PBC Business Recovery & Insolvency Limited, 9-10 Scirocco Close, Moulton Park, Northampton, NN3 6AP

the liquidators of the company attach a copy of our Progress Report under section 192 of the Insolvency Act 1986

The Progress Report covers the period from 13 September 2014 to 12 September 2015

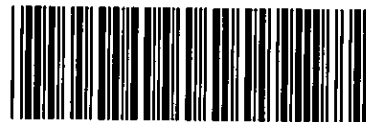
Signed

Date 23/10/15

Presenter's name, address and reference (if any)

Gary Steven Pettit  
PBC Business Recovery & Insolvency Limited  
9-10 Scirocco Close  
Moulton Park  
Northampton  
NN3 6AP

FRIDAY  
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A17 06/11/2015 #432  
COMPANIES HOUSE

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**Cimex Digital Limited – In Liquidation**

**Joint Liquidators' Annual Report to Members and Creditors  
For the year ending 12 September 2015**

**STATUTORY INFORMATION**

Company name.	Cimex Digital Limited – In Liquidation
Registered office	9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP
Former registered office	The Olde Bakehouse, 156 Watling Street East, Towcester, NN12 6DB
Registered number	07700569
Joint Liquidators	Gary S Pettit and Gavin G Bates
Liquidators' address	9/10 Scirocco Close, Moulton Park, Northampton, NN3 6AP
Date of appointment	13 September 2012 This appointment was ratified at a meeting of creditors held on 27 September 2012

**RECEIPTS AND PAYMENTS ACCOUNT**

I attach my receipts and payments account for the period from 13 September 2014 to 12 September 2015

**ASSETS**

There have been no asset realisations (other than bank interest) during the course of the year and I refer creditors to my previous report

As previously reported, the company's records show it is owed approximately £73,000 by a connected company, Cimex Media Limited (which is also in liquidation and creditors should note Messrs Pettit and Bates are joint liquidators) I am currently taking legal advice over whether the joint liquidators can rely on the company records and await a dividend from the liquidation of Cimex Media Limited, which is solely reliant on the outcome of the investigations This matter remains ongoing and forms part of the investigations being undertaken in the liquidation of Cimex Media Limited

## **LIABILITIES**

### **Secured Liabilities**

An examination of the company's mortgage register held by the Registrar of Companies, showed that the company granted a debenture in favour of Lloyds TSB Commercial Finance. As previously reported, there are no amounts due to Lloyds under their security.

### **Preferential Creditors**

The statement of affairs anticipated £20,327 in preferential creditors. I have received a claim from the Redundancy Payments Office for £10,314 and I am yet to establish whether the employees are owed any further amounts.

### **Crown Creditors**

The statement of affairs included £109,809 owed to HM Revenue & Customs for PAYE and VAT. To date, I have received a claim for £4,988 in relation to VAT but I am yet to receive a claim for PAYE.

### **Unsecured Creditors**

The statement of affairs included one unsecured trade creditor of £7,470 and I have received a claim for this amount. In addition, I have received a claim from The Redundancy Payments Office for £14,070 and as outlined above I am yet to establish whether the employees have any residual claims.

## **INVESTIGATION INTO THE AFFAIRS OF THE COMPANY**

Within six months of my appointment as joint 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.

## **PRE-APPOINTMENT REMUNERATION**

The creditors previously authorised (at a meeting held on 27 September 2012) the payment of a fee of £5,000 for assistance with the statement of affairs and producing and circulating the notices for the meetings of members and creditors prior to my appointment.

The fee for the statement of affairs and meetings was paid from first realisations on appointment and is shown in the enclosed receipts and payments account.

## LIQUIDATORS' REMUNERATION

My remuneration was previously authorised by creditors at a meeting held on 27 September 2012 to be drawn on a time cost basis. My total time costs to date amount to £17,118.78, the above is inclusive of an amount of £3,404.19 that was charged in the period between 13 September 2014 and 12 September 2015.

I have drawn £16,744.25 to date. A schedule of my time costs incurred to date is attached to this report. A description of the routine work undertaken in the liquidation to date is as follows:

- 1 Administration and Planning
  - 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
  - Review and storage
  - Case bordereau
  - Case planning and administration
  - Preparing reports to members and creditors
  - Convening and holding meetings of members and creditors
  
- 2 Cashiering
  - Maintaining and managing the liquidator's cashbook and bank account
  - Ensuring statutory lodgements and tax lodgement obligations are met
  
- 3 Creditors
  - Dealing with creditor correspondence and telephone conversations
  - Preparing reports to creditors
  - Maintaining creditor information
  - Reviewing and adjudicating on proofs of debt received from creditors
  
- 4 Investigations
  - Review and storage of books and records
  - Prepare a return pursuant to the Company Directors Disqualification Act
  - Conduct investigations into suspicious transactions
  - Review books and records to identify any transactions or actions a liquidator may take against a third party in order to recover funds for the benefit of creditors
  
- 5 Realisation of Assets
  - Corresponding with debtors and attempting to collect outstanding book debts
  - Liaising with agents regarding the chattel assets

A copy of 'A Creditors Guide to Liquidators' Fees' published by the Association of Business Recovery Professionals together with an explanatory note which shows the PBC fee policy are enclosed Further copies are available upon request

#### **LIQUIDATORS' EXPENSES**

My expenses to date amount to £1,006 04, the above is inclusive of £14 15 that was incurred in the period between 13 September 2014 and 12 September 2015 I have drawn my expenses in full

The following agents or professional advisors have been utilised in this matter

<b>Professional Advisor</b>	<b>Nature of Work</b>	<b>Fee Arrangement</b>
Eddisons	Valuer/Auctioneer	Fixed Fee to prepare an inventory of the company's assets The advice received was the costs of selling these would outweigh any benefit to creditors
Franklins	Solicitors	To be agreed

The choice of professionals was based on my perception of their experience and ability to perform this type of work, the complexity and nature of the assignment and the basis of my fee arrangement with them The fees charged have been reviewed and I am satisfied that they are reasonable in the circumstances of this case

#### **FURTHER INFORMATION**

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

#### **DIVIDEND PROSPECTS**

I anticipate preferential creditors will be paid in full I am unable to comment on a dividend to unsecured creditors until the position regarding the connected debtor is resolved



**Cimex Digital Limited - In Creditors Voluntary Liquidation  
Joint Liquidators' Abstract of Receipts & Payments**

**From 13 September 2014 To 12 September 2015**

<b>S of A £</b>	<b>As Previously Reported</b>	<b>13/09/14 to 12/09/15</b>	<b>Total £</b>
<b>RECEIPTS</b>			
26,513 Book Debts	NIL	NIL	NIL
12,407 Cash at Bank	12,392 11	NIL	12,392 11
NIL Bank Interest Net of Tax	91 84	56 03	147 87
25,524 Factoring Surplus	37,213 42	NIL	37,213 42
<u>64,444</u>	<u>49,697 37</u>	<u>56 03</u>	<u>49,753 40</u>
<b>PAYMENTS</b>			
Statement of Affairs Fee	5,000 00	NIL	5,000 00
Office Holders Fees	13,446 03	3,298 22	16,744 25
Office Holders Expenses	990 99	15 05	1,006 04
Agents/Valuers Fees (1)	500 00	NIL	500 00
Corporation Tax	NIL	15 80	15 80
Storage Costs	21 49	NIL	21 49
Vat Receivable	915 76	(645 28)	270 48
Specific Bond	46 00	NIL	46 00
	<u>20,920 27</u>	<u>2,683 79</u>	<u>23,604 06</u>
<b>CASH IN HAND</b>	<u>28,777 10</u>	<u>(2,627 76)</u>	<u>26,149 34</u>

**Joint Liquidators' Remuneration Schedule  
Cimex Digital Limited  
Between 13 September 2012 and 12 September 2015**

Classification of work function	Partner/ Director	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost	Average Hourly Rate
Administration & Planning	6 70	10 30	19 30	43 10	79 40	10,450 68	131 62
Investigations	1 30	0 10	2 20	0 40	4 00	800 59	200 15
Realisations	0 80	0 40	2 20	0 50	3 90	792 82	203 29
Trading	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Creditors	3 30	0 30	8 10	10 10	21 80	3,312 48	151 95
Case Specific Matters	0 00	0 80	3 60	9 10	13 50	1,762 21	130 53
<b>Total hours</b>	<b>12 10</b>	<b>11 90</b>	<b>35 40</b>	<b>63 20</b>	<b>122 60</b>		
<b>Time costs</b>	<b>4,455 50</b>	<b>2,654 86</b>	<b>4,666 79</b>	<b>5,341 63</b>	<b>17,118 78</b>		
<b>Average hourly rate</b>	<b>368 22</b>	<b>223 10</b>	<b>131 83</b>	<b>84 52</b>	<b>139 63</b>		

Description	Total Incurred £	Total Recovered £
Mileage	1 45	1 45
Advertising	223 90	223 90
Cheque fee	35 00	35 00
Postage/Stamps/Copying/Stationery	61 69	61 69
Companies House Services	2 00	2 00
Bordereau	272 00	272 00
Insolv Case Administration Fee	110 00	110 00
Global Transfer	300 00	300 00
<b>Totals</b>	<b>1,006.04</b>	<b>1,006 04</b>

**Summary of Fees**

Time spent in administering the Assignment	Hours	122 60
Total value of time spent to 12 September 2015	£	17,118 78
Total Joint Liquidators' fees charged to 12 September 2015	£	16,744 25



**Joint Liquidators' Remuneration Schedule**  
**Cimex Digital Limited**  
**Between 13 September 2014 and 12 September 2015**

Classification of work function	Partner/Director	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost	Average Hourly Rate
Administration & Planning	1 90	2 80	6 20	3 80	14 70	2,405 22	163 62
Investigations	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Realisations	0 40	0 00	0 00	0 00	0 40	150 59	376 48
Trading	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Creditors	0 00	0 30	3 70	0 00	4 00	519 79	129 95
Case Specific Matters	0 00	0 70	0 60	0 60	1 90	328 59	172 94
<b>Total hours</b>	<b>2 30</b>	<b>3 80</b>	<b>10 50</b>	<b>4 40</b>	<b>21 00</b>		
<b>Time costs</b>	<b>865 90</b>	<b>1,027 52</b>	<b>1,294 80</b>	<b>215 97</b>	<b>3,404 19</b>		
<b>Average hourly rate</b>	<b>376 48</b>	<b>270 40</b>	<b>123 31</b>	<b>49 08</b>	<b>162 10</b>		

Description	Total Incurred £	Total Recovered £
Postage/Stamps/Copying/Stationery	14 15	14 15
<b>Totals</b>	<b>14.15</b>	<b>14 15</b>

**Summary of Fees**

Time spent in administering the Assignment	Hours	21 00
Total value of time spent to 12 September 2015	£	3,404 19
Total Joint Liquidators' fees charged to 12 September 2015	£	16,744 25



Business Recovery  
& Insolvency

## PRACTICE FEE RECOVERY POLICY FOR PBC

### Introduction

The insolvency legislation was changed in April 2010 for insolvency appointments commenced from that time in order to allow more flexibility on how an office holder's fees are charged to a case. This sheet explains how we may apply the alternative fee bases. The new legislation allows different fee bases to be used for different tasks within the same appointment. The basis or combination of bases set for a particular appointment are subject to approval, generally by a committee if one is appointed by the creditors, failing which the creditors in general meeting, or the court. Further details about how an office holder's fees are approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9). A hard copy may be requested from PBC, 9/10, Scirocco Close, Moulton Park, Northampton, NN3 6AP.

Once the basis of the office holder's remuneration has been approved, a periodic report will be provided to any committee and also to each creditor. The report will provide a breakdown of the remuneration drawn and time costs incurred and will also enable the recipients to see the average rates of such costs. Under the new legislation, any such report must disclose how creditors can seek further information and challenge the basis on which the fees are calculated and the level of fees drawn in the period of the report. Once the time to challenge the office holder's remuneration for the period reported on has elapsed, then that remuneration cannot subsequently be challenged.

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

### Time cost basis

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

### Charge-out Rates

Grade of staff	Charge-out rates per hour, (w e f 31 March 2013) £	Previous charge our rate per hour £
Partner – appointment taker	250 - 377	250-362
Senior Manager	271	260
Manager	176	176
Supervisor/Senior Administrator	82 - 125	75-125
Case Administrator	55 - 120	55-120
Other clerical/administrative staff	44	42

These charge-out rates charged are reviewed on 31 March each year and are adjusted to take account of inflation and the firm's overheads

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. Each unit of time is 6 minutes. The work is recorded under the following categories.

- Administration and Planning.
- Investigations
- Realisation of Assets
- Employee matters
- Creditors
- Trading

#### **Percentage basis**

The new legislation allows fees to be charged on a percentage of the value of the property with which the office holder has to deal. Different percentages can be used for different assets or types of assets. Where we would like to realise any asset or type of assets on a percentage basis we will provide further information explaining why we think that this basis is appropriate and ask creditors to approve the basis.

#### **Fixed fee**

The new legislation allows fees to be charged at a set amount. Different set amounts can be used for different tasks. Where we would like to charge a set amount for a task or different set amounts for different tasks we will provide further information explaining why we think that this basis is appropriate and ask creditors to approve the basis.

#### **All bases**

The officeholder's remuneration invoiced to the insolvent estate will be subject to VAT at the prevailing rate. However, following the "Paymex" court decision, all fees charged on voluntary arrangements are zero-rated for VAT purposes.

#### **Agents' Costs**

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

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

## Disbursements

In accordance with Statement of Insolvency Practice 9 (SIP9) the basis of disbursement allocation in respect of disbursements incurred by the Office Holder in connection with the administration of the estate must be fully disclosed to creditors. Disbursements are categorised as either Category 1 or Category 2.

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

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

We charge for the following Category 2 disbursements

Room Hire	40 00	Per formal meeting at firm's offices
Case File Storage & Destruction	20 00	Storage of case files for 6 years after case closure and final shredding – per case (Min up to 4 case files) Additional files charged at £5 each
Mileage	0 45	Per mile travelled
Cash usage fee	7 00/17 00	Use of office account funds to meet direct estate liability when estate funds not available, the higher amount will be charged if the cash paid is above £750
Card printing	0 17	Per sheet
Digital photographs	0 50	High Resolution digital photographs - each
Electoral Database Search	1 00	Use of commercial database of electoral rolls
Archive boxes	5 00	Per box
Files & dividers	3 50	Per file
Labels	0 50	Per sheet used
Photocopying	0 15	Per sheet used

## 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.