

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

04487961

Name of Company

04487961 Limited (Formerly Merchant Capital Ltd)

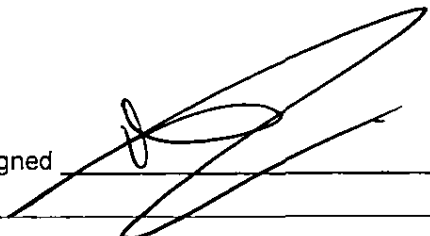
I / We

Anthony Davidson, 10 Orange Street, Haymarket, London, WC2H 7DQ

S B Ryman, 10 Orange Street, Haymarket, London, WC2H 7DQ

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 13/02/2013 to 12/02/2014

Signed 

Date 29/3/14.

Shipleys LLP
10 Orange Street
Haymarket
London
WC2H 7DQ

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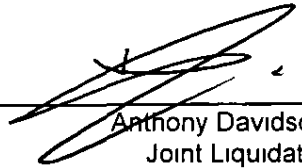
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COMPANIES HOUSE

04487961 Limited (Formerly Merchant Capital Ltd)
(In Liquidation)
Joint Liquidators' Abstract of Receipts & Payments

Statement of Affairs	From 13/02/2013 To 12/02/2014
ASSET REALISATIONS	
Uncertain	Book Debts 6 68
492,384 32	Inter-Company Debtors NIL
	Cash at Bank 7,683 98
	Bank Interest Gross 1 11
	Third Party Contribution 2 00
	Costs Relating to Name Change 580 00
Uncertain	Book of Structured Product Investors 3,000 00
	Purchase of Company Name 1,000 00
	Third Party Funds (DP Advice) 2,580 00
	14,853 77
COST OF REALISATIONS	
	Preparation of S of A 5,000 00
	S of A Disbursements 220 66
	Agents/Valuers Fees 2,000 00
	Agents/Valuers Disbursements 82 00
	Legal Fees 4,650 00
	Companies House Fee for Name Chan 10 00
	Sale Agreement Payment to Third Par 600 00
	(12,562 66)
PREFERENTIAL CREDITORS	
(8,821 45)	Employee Arrears/Hol Pay NIL
(11,690 65)	Redundancy Payments Office NIL
	NIL
UNSECURED CREDITORS	
(875,031 32)	Trade & Expense Creditors NIL
(55,182 37)	Employees NIL
(48,623 60)	Redundancy Payments Office NIL
(53,180 96)	HMRC (VAT) NIL
(210,442 15)	HMRC (PAYE/NIC) NIL
(61,265 00)	HMRC (Corporation Tax) NIL
(144,073 21)	Contractor Commission Payable NIL
(69,613 00)	Loan - Jordasic UK Limited NIL
	NIL
DISTRIBUTIONS	
(641,000 00)	Ordinary Shareholders NIL
	NIL
(1,686,539.39)	2,291.11
REPRESENTED BY	
	VAT Receivable 1,346 40
	Bank 1 Current 1,744 71
	VAT Payable (800 00)
	2,291 11



Anthony Davidson
Joint Liquidator

04487961 Limited (formerly Merchant Capital Limited) (In Creditors' Voluntary Liquidation) ("the Company")

Registered Office: PO Box 60317, 10 Orange Street, London, WC2H 7WR

Registered number: 04487961

Joint Liquidators: Stephen Ryman and Anthony Davidson

Joint Liquidators Address: 10 Orange Street, Haymarket, London WC2H 7DQ

Date of Appointment: 13 February 2013

Period of Report: 13 February 2013 to 12 February 2014

Please find following my Annual Progress Report in accordance with Section 104A of the Insolvency Act 1986 and Rule 4.49C of the Insolvency Rules 1986

I also enclose a Receipts and Payments account showing a balance in hand of £2,291.11 for your information

RECEIPTS

The Receipts shown are largely self-explanatory, although I would comment specifically on

Book Debts

A claim in the sum of £15,698.68 was made to John Weston and Timothy Ball of Mazars LLP, the Joint Administrators of Pritchard Stockbrokers Limited, for funds due to the Company prior to the Company entering Liquidation

Since my appointment the Administrators have advised that the prospects of a dividend being distributed in the case is uncertain, though reports will be issued to this office which will continue to update the Liquidators on the progress of the Administration and the likelihood of any dividend

In addition, Mazars LLP have forwarded £6.68 to this office in relation to funds received from Computershare in respect of a missing income payment from 27 February 2012 of the 'Merchant Capital Income Plan FTSE Issue 2'

Cash at Bank

As you can see from the attached receipts and payments account the Company had cash at bank of £7,683.98 which has been transferred into the Liquidation account. These funds have been used to discharge part of my fee for the assistance in the preparation of the Statement of Affairs, in accordance with the resolution passed at the initial meeting of the creditors committee on 13 February 2013

Bank Interest Gross

All funds received into the Liquidation are deposited in a high street bank account, which accrues interest. As you can see from the attached receipts and payments account I have received the sum of £1.11 in respect of bank interest in the period to which this report relates

Third Party Contribution

An overpayment of £2.00 was received from the purchaser of the Book of Structured Product Investors when the sale completed. Rather than reimburse the purchaser, it was agreed that this overpayment would be contributed to the Liquidation estate

Costs Relating to Name Change

A sum of £580 was paid by the purchaser to the Liquidation account upon completion of the sale in order to settle the costs incurred which relate to the name change. An invoice will be raised in due course by the Liquidator which will be equal to these funds.

Book of Structured Product Investors

As you will recall from my previous report, the Company owns a database of client information which is potentially a realisable asset.

I can confirm that a sale for the Book of Structured Product Investors completed on 23 December 2013 to Manx IFA Limited ('the purchaser'), a Company which Mr Holmes set-up but is not a director or shareholder of, which was structured as follows:

- £3,000 plus VAT, legal, IT technician costs and Liquidators costs for the name change, on completion of the agreement
- £3,000 plus VAT 60 days after the last day of the month in which completion occurs
- £4,000 plus VAT 90 days after the last day of the month in which completion occurs
- The greater of £25,000 plus VAT or the Net Profit for Year 1 plus VAT, with the end of Year 1 being 30 June 2014
- The greater of £50,000 plus VAT or the Net Profit for Year 2 plus VAT, with the end of Year 2 being 30 June 2015
- The greater of £50,000 plus VAT or the Net Profit for Year 3 plus VAT, with the end of Year 3 being 30 June 2016

A personal guarantee has been provided by Mr Holmes for the initial outlay of £10,000.

As you can see from the attached receipts and payments account, we have realised the initial payment of £3,000.

Purchase of Company Name

The purchaser has purchased the name of the Company as part of the sale agreement for the purchase of the Book of Structured Product Investors. Payment for the name of the Company has been structured as follows:

- £1,000 plus VAT paid in cash or cleared funds on or before Completion by the Buyer to the Liquidation Account,
- £2,000 plus VAT on or before 30 June 2015, and
- £2,000 plus VAT on or before 30 June 2016

As you can see from the attached receipts and payments account, a sum of £1,000 has been realised in relation to the purchase of the Company name. In addition, please note that the Company's name has been changed to 04487961 Limited.

Third Party Funds (DP Advice)

A sum of £2,580 was paid by the purchaser to the Liquidation account upon completion of the sale in order to settle the costs incurred which relate to the legal advice obtained which relate to potential breaches of the Data Protection Act 1998.

PAYMENTS

Statement of Affairs Fee & Disbursement

I advise that £5,000 of my Statement of Affairs fee, which totalled £10,000 and disbursements amounting to £220 66 have been settled in full from funds held in the Liquidation. This fee relates to the assistance given to the Director of the Company in notifying and convening the members' and creditors' meeting, the preparation of the Statement of Affairs and the Director's Report to Creditors and was settled in the period to which this report relates.

Agents/Valuers Fees and Disbursements

I confirm that James Owen & Co Limited were instructed to assist with the valuation of the book of structured product investors. A sum of £2,000 and £82 00 has been paid to James Owen & Co Limited respectively in relation to their fee and disbursements.

Legal Fees

I confirm that Barker Gotelee Solicitors LLP were instructed to assist with legal advice and services relating to the sale of the book of structured product investors. A sum of £4,650 00 has been paid to Barker Gotelee Solicitors LLP for this service and I can confirm that £6,350 00 plus

Companies House Fee For Name Change

A sum of £10 was paid to Companies House in relation to the change of the Company's name during the period to which this report relates.

Sale Agreement: Payment to Third Party

During the negotiations relating to the sale of the book of structured product investors and the sale of the Company name, it transpired that a third party, namely a partnership called Absolute Partners, validly held title to around 20% of the data contained within the book of structured product investors. Therefore, it was agreed as part of the sale the Absolute Partners would receive 20% of all realisations from the sale, and as a result £600 has been paid to Absolute Partners during the period to which this report relates.

Following is a summary of the professional fees and other expenses which have been paid in this period of the Liquidation and the costs which have accrued and not yet been paid. I would specifically comment as follows:

Professional Advisors

Name	Nature of Work	Basis of Fee Arrangement	Accrued Fee	Fee Paid
James Owen & Co Limited	Valuing and sale of assets	Fixed Fee	£2,000 00	£2,000 00
Barker Gotelee Solicitors LLP	Legal advice and services	Time costs	£11,000 00	£4,650 00

The Joint Liquidators' choice was based on their perception of the advisors' experience and ability to perform this type of work, the complexity and nature of the assignment and the basis of the fee arrangement with them.

The Joint Liquidators have reviewed the fees incurred to date and are satisfied that they are reasonable in the circumstances of the case

PROGRESS OF THE LIQUIDATION

A large amount of time has been spent on negotiating and agreeing a sale of the book of structured product investors. If the funds which are expected to be realised are received from the purchaser then the chances of a distribution to unsecured creditors will be vastly increased. I will continue to pursue the funds due under the sale agreement and provide an update to creditors in relation to this in future reports.

In addition, a substantial amount of time has been spent in this case dealing with investors. As much guidance has been given to these investors as possible, however, we will not be spending extensive time advising the investors as it will be to the detriment of any distribution to creditors in the future.

Finally, I will continue to pursue the inter-company debtors in order to attempt to realise the funds due, however, until further funds are realised it will not be commercial to pursue these debts with increased pressure.

ASSETS

The assets that remain to be realised are as follows

Inter-Company Debtors

Correspondence has been sent to the director of Merchant Turnaround Plc ("Merchant Turnaround") and Merchant Strategic Renewal Plc ("Merchant Strategic") requesting payment or a proposal for payment of the funds due to the Company in the sum of £13,453.90 and £35,371.52 respectively.

Mr James Holmes has stated that the funds due from Merchant Turnaround may be payable in full dependent on realisations they make from an ongoing legal dispute with a solicitor which was holding funds in a client account on their behalf. Updates are regularly requested from Mr Holmes and it was recently stated that a settlement figure had been offered in partial settlement of the litigation matter, however, Mr Holmes has stated that as yet no funds have been received, therefore, the debt owed to the Company remains outstanding.

It was also advised that Merchant Strategic own shares in an oil and gas company which was due to be listed on the stock exchange before Christmas. Mr Holmes stated that some of these shares would be sold in order to generate funds to settle the liability owed to the Company. No shares had been sold as of January 2014, therefore, I am yet to realise any funds in relation to this.

Should sufficient progress not be made within the next 3 to 6 months I will look to pursue these funds with increased pressure, as it is expected that realisations will be made elsewhere, however, due to the current paucity of funds in the case it is not presently commercial for me to pursue.

You will recall from the Director's Estimated Statement of Affairs that a sum of £443,558 90 was estimated to be realised from the amount owed to the Company from its parent Company, Merchant House Group Plc ('MHG') I can confirm that since my appointment MHG have entered Administration, however, comments from the Administrator of MHG would suggest that a dividend to unsecured creditors in that case is unlikely, therefore, despite the submission of the Company's claim in the Administration it is not expected that any funds will be realised

LIABILITIES

UNSECURED CREDITORS

Numbers of Unsecured Creditors	Statement of Affairs amount £	Total value of claims received £	Total dividend paid £	Dividend rate £
Trade & Expense	875,031 32	3,578,396 75	0 00	N/A
Employees	55,182 37	132,641 24	0 00	N/A
Redundancy Payments Office	48,623 60	0 00	0 00	N/A
HMRC (VAT)	53,180 96	0 00	0 00	N/A
HMRC (PAYE/NIC)	210,442 15	26,326 37	0 00	N/A
HMRC (Corporation Tax)	61,265 00	0 00	0 00	N/A
Contractor Commission Payable	144,073 21	123,563 32	0 00	N/A
Loan – Jordasic UK Limited	69,613 00	69,613 00	0 00	N/A
TOTAL PAID	1,517,411.61	3930,540.68	0.00	N/A

PRESCRIBED PART

Under the provisions of Section 176A of the Insolvency Act 1986 the Liquidators must report on the amount of funds distributed to unsecured creditors in respect of the prescribed part. This provision only applies where the Company has granted a floating charge to a creditor after 15 September 2003 and where it is estimated that the Company will have, after discharging the costs of distribution and preferential creditors claims, net property exceeding £10,000

The Company had not granted a floating charge to any creditor, therefore, the prescribed part does not apply in this case

INVESTIGATIONS

In accordance with the Company Directors Disqualification Act 1986, I have submitted a report on the conduct of the Directors of the Company to the Department for Business Innovation & Skills (BIS). As this is a confidential report, I am unable to disclose the contents

FUTURE PROSPECTS

Should sufficient funds be realised from the sale of the book of structured product investors then a distribution to preferential and unsecured creditors is possible, however, the way in which the sale is structured will mean that a distribution may not take place for a number of years. I will

continue to monitor realisations in this regard and attempt to realise the funds due from the inter-company debtors, and will be providing further updates in future reports to creditors

LIQUIDATORS' REMUNERATION

Pursuant to the Insolvency Rules 1986, the Joint Liquidators are obliged to fix their remuneration in accordance with Rule 4 127(2) of the Insolvency Rules 1986 This permits remuneration to be fixed either

- (1) as a percentage of the assets realised and distributed, or
- (2) by reference to the time the Joint Liquidators and the staff have spent attending to matters in the liquidation

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- (1) as a percentage of the assets realised and distributed, and/or
- (2) by reference to the time the Joint Liquidators and the staff have spent attending to matters in the liquidation, and/or
- (3) as a set amount, and/or
- (4) as a combination of the above

The Joint Liquidators' remuneration has been approved on the basis of time properly spent in dealing with issues in the Liquidation at a meeting of the Creditors' Committee held on 25 February 2014

To 12 February 2014, the Joint Liquidators have drawn no funds in respect of remuneration as shown on the enclosed Receipts and Payments account

I attach at Appendix 1 a schedule analysing the timecosts for the period under review which records the work undertaken Timecosts totalling £50,086 80 have been incurred which represents a total of 279 hours and 30 minutes at an average charge out rate of £179 21 per hour

For guidance, I enclose "A Creditors' Guide to Liquidators' Fees", together with a document that outlines the policy of Shipleys LLP in respect of fees and disbursements

DISBURSEMENTS

Where disbursements are recovered in respect of precise sums expended to third parties there is no necessity for these costs to be authorised These are known as category 1 disbursements We therefore report that the sum of no fees have been drawn but have been incurred in respect of category 1 disbursements as follows

Disbursement	Amount incurred this period £	Amount reimbursed £	Amount still to be reimbursed £
Advertising	169 20	0 00	169 20
Searches	13 00	0 00	3 00
IT Assistance	40 00	0 00	40 00
Postage	107 05	0 00	107 05
Storage	87 59	0 00	87 59
TOTAL	416 84	0 00	416 84

Liquidators often charge expenses for example photocopying and facsimile charges, mileage and room hire. Such expenses, which are attributable to cases, require the approval of the creditors before they can be drawn and these are known as category 2 disbursements. I can confirm that during the last year category 2 disbursement expenses totalling £947 25 have been incurred, but not yet drawn as follows:

Disbursement	Amount incurred this period £	Amount reimbursed £	Amount still to be reimbursed £
Photocopying	947 25	0 00	947 25
TOTAL	947.25	0 00	947 25

CREDITORS' RIGHTS

Creditors with the concurrence of at least 5% in value of the unsecured creditors may within 7 business days request in writing further information regarding the remuneration and expenses set out in this report. In accordance with Rule 4.49E(3) of the Insolvency Rules 1986, within 14 days of a request we will provide further information or explain why further information is not being provided.

A creditor (who need not be the creditor who asked for the information) may, with the concurrence of at least 5% or more in value of the creditors (including the creditor in question), apply to the court within 21 days of our response or the expiry for the period of my response and the court may make such order as it thinks fit (Rule 4.49E(4) of the Insolvency Rules 1986). Creditors with the concurrence of at least 10% of the creditors may apply to the court if they consider that the remuneration of the liquidators, or the basis fixed for the remuneration of the liquidator or expenses charged by the liquidator are excessive (Rule 4.131 of the Insolvency Rules 1986). Such an application must be made within 8 weeks of receiving this draft report.

I provide at the end of this report an extract from the Insolvency Rules 1986 setting out the rights of creditors.

Dated 24 March 2014



Anthony Davidson
Joint Liquidator

Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Liquidators' fees and expenses:

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

- (1) If
- (a) within the period mentioned in paragraph (2)—
 - (i) a secured creditor, or
 - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
 - (iii) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
 - (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)—
 - (i) any unsecured creditor, or
 - (ii) any member of the company in a members' voluntary winding up,

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4 49B(1)(e) or (f) (including by virtue of Rule 4 49C(5)) or in a draft report under Rule 4 49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter[s] in a draft report under Rule 4 49D or a progress report required by Rule 4 108 which (in either case) was previously included in a progress report not required by Rule 4 108

- (2) The period referred to in paragraph (1)(a) and (b) is—
- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4 108, and
 - (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case
- (3) The liquidator complies with this paragraph by either—
- (a) providing all of the information asked for, or
 - (b) so far as the liquidator considers that—
 - (i) the time or cost of preparation of the information would be excessive, or
 - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
 - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information, giving reasons for not providing all of the information

Rule 4 131 Creditors' claim that remuneration is or other expenses are excessive

(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4)

(1A) Application may be made on the grounds that-

- (a) the remuneration charged by the liquidator,
- (b) the basis fixed for the liquidator's remuneration under Rule 4 127, or
- (c) expenses incurred by the liquidator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate

(1B) The application must, subject to any order of the court under Rule 4 49E(5), be made no later than 8 weeks (or, in a case falling within Rule 4 108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4 49D, which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report")

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application, but it shall not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least 5 business days' notice but which is without notice to any other party

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly

(3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it

(4) If the court considers the application to be well-founded, it must make one or more of the following orders-

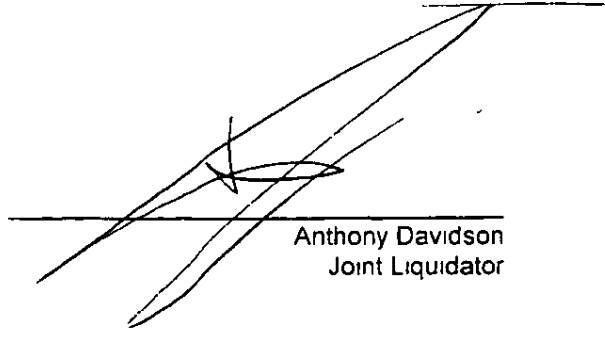
- (a) an order reducing the amount of remuneration which the liquidator was entitled to charge,
- (b) an order fixing the basis of remuneration at a reduced rate or amount,
- (c) an order changing the basis of remuneration,
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation,
- (e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the liquidation

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Anthony Davidson
Joint Liquidator

Shipleys LLP
10 Orange Street, Haymarket, London WC2H 7DQ

CREDITORS' GUIDE TO FEES
EFFECTIVE FROM 1 JANUARY 2014
CHARGE-OUT RATES

Staff Allocation and Support Staff

An objective and practical approach is taken to each case which includes active Principal involvement from the outset. Other members of staff will be assigned on the basis of experience and specific skills to match the needs of the case. Set out below are the relevant charge-out rates per hour worked for the grades of all staff. Time is charged by reference to actual work carried out on each assignment. There has been no allocation of any general or overhead costs.

Grade	Charge-out rate (£ per hour) plus VAT where applicable
Principal*	465 - 495
Manager	250 - 325
Assistant Manager	240 - 250
Senior Administrator	220 - 240
Administrator	140 - 190
Assistant & Cashier	110 - 265

* or equivalent

NB Time costs are calculated at 6 minute units

The time of support staff is not charged to a case except when the initial set up is being performed and appointment documentation is prepared. Support staff will also occasionally charge their time when performing a sizeable administrative task within the case. Support staff charge their time at the £110/hr Assistant rate shown on the preceding table.

Specialist departments with the firm such as Tax and VAT may sometimes charge their time if and when the Office Holders may require their expert advice. The figures below provide details of the charge-out rates per hour worked for typical staff involved in this way.

Grade	Charge-out rate (£ per hour) plus VAT where applicable
Tax Principal*	300-400
Tax Manager	250
Tax Practitioner	200
Tax Assistant	145

Details of historic charge out rates in respect of the London office are provided at the end of this guide. Should any creditor wish to receive details of the charge out rates for the London office in force prior to those shown, these can be provided upon request.

DISBURSEMENTS

Category 1 Disbursements

These are costs where there is specific expenditure directly referable both to the appointment in question and a payment to an independent third party. Examples of equivalent costs that may be reimbursed to the office holders without uplift and do not require prior approval are given below.

Category	Basis of Charge
Indemnity Bond	At cost of mandatory cover required in accordance with the Insolvency Act 1986 for each appointment
Insurance of assets	At cost in relation to asset coverage requirements
Company searches	At cost incurred
Travel	All forms other than mileage at actual cost
Room Hire	All external venues at actual cost
Stationery	At cost incurred
Storage	Charge at actual cost incurred for storage (and retrieval, when appropriate) of records
Other	At actual cost charged

Category 2 Disbursements

These are costs that are directly referable to the appointment in question but not to an independent third party. They may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis. In the event of charging for Category 2 disbursements the following items of expenditure are recharged on the basis specified.

Category	Basis of Charge
Business Mileage	Motor vehicle at 40p per mile
Internal Room Hire	Held at Shipleys LLP, 10 Orange Street, Haymarket, London WC2H 7DQ £50
Photocopying	Specific calculation of 25 pence per sheet x number of creditors
Facsimiles	£1 for 1 st page and 10 pence for each additional page

Subcontractors

Details and the cost of any work which has been or is intended to be sub-contracted out that could otherwise be carried out by the office holder or his staff will be provided in any report which incorporates a request for approval of the basis upon which remuneration may be charged.

Professional Advisors

Details of any professional advisor(s) used will be given in reports to creditors. Unless otherwise indicated the fee arrangement for each is based on hourly charge out rates, which are reviewed on a regular basis, together with the recovery or relevant disbursements. The choice of professional advisors is based around a number of factors including, but not restricted to, their expertise in a particular field, the complexity or otherwise of the assignment and their geographic location.

LONDON OFFICE - HISTORIC CHARGE OUT RATES - 1 APRIL 2007 ONWARDS

	01/04/07-31/12/07	01/01/08-31/12/08	01/01/09-31/12/09	01/01/10-31/12/10	01/01/11-31/12/11	01/01/12-31/01/12
	Charge-out rate (£ per hour) plus VAT where applicable					
Principal*	360-370	375	395	395-445	410-460	460
Director	n/a	340	355	375-400	n/a	n/a
Manager	285-300	300	300	245-270	280	300-325
Assistant Manager	200-220	222	180-228	180-250	260	n/a
Senior Administrator	160-210	175-210	140-190	175-220	200-225	210-230
Administrator	110-155	127-165	100-165	75-155	85-160	125-170
Assistant & Cashier	50-95	50-100	50-215	50-240	99-245	100-245

	01/02/12-30/04/12	01/05/12-31/07/12	01/08/12-31/12/12	01/01/13-30/04/13	01/05/13-31/12/13
	Charge-out rate (£ per hour) plus VAT where applicable				
Principal*	460	400-480	400-480	450-480	465-495
Director	n/a	n/a	n/a	n/a	n/a
Manager	300-325	300-325	230-325	240-325	240-326
Assistant Manager	n/a	n/a	n/a	230-240	230-240
Senior Administrator	210-230	210-230	210-230	220-235	220-235
Administrator	125-170	125-170	125-170	125-185	125-185
Assistant & Cashier	100-250	100-250	100-250	110-260	110-260

* or equivalent

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.

Appendix

Suggested format for the provision of information

Professional guidance issued to insolvency practitioners sets out the following suggested format for the provision of information when seeking approval of remuneration. However, the level of disclosure suggested below may not be appropriate in all cases, and will be subject to considerations of proportionality. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.

Narrative overview of the case

In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are

- the complexity of the case,
- any exceptional responsibility falling on the liquidator,
- the liquidator's effectiveness,
- the value and nature of the property in question.

The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include

- an explanation of the nature, and the liquidator's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known),
- initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers,
- any significant aspects of the case, particularly those that affect the remuneration and cost expended,
- the reasons for subsequent changes in strategy,
- the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing,
- any existing agreement about remuneration,
- details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees,
- in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed,
- details of work undertaken during the period,
- any additional value brought to the estate during the period, for which the liquidator wishes to claim increased remuneration.

Time cost basis

Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide

- An explanation of the liquidator's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.
- A description of work carried out, which might include
 - details of work undertaken during the period, related to the table of time spent for the period,
 - an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used,
 - any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make.
- Time spent and charge-out summaries, in an appropriate format.

It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case

The following areas of activity are suggested as a basis for the analysis of time spent

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The level of disclosure suggested above will not be appropriate in all cases, and considerations of proportionality will apply

- where cumulative time costs are, and are expected to be, less than £10,000 the liquidator should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case,
- where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features),
- where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted